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Monday
November 23, 1998

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WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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(3 blocks north of Union Station Metro)

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 410, 550, 551, 591, 630, and 870

RIN 3206–AI50

Firefighter Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to change the method of computing pay for Federal firefighters. These regulations implement a recent law that established a new approach for calculating basic pay, overtime pay, and other entitlements for Federal employees whose positions are classified in the GS–081 classification series (Fire Protection and Prevention) and who have regular tours of duty averaging at least 53 hours per week.

DATES: *Effective Date:* The regulations are effective on October 4, 1998.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after October 1, 1998.

Comments Date: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to implement the new firefighter pay provisions established by section 628 of the Treasury and General Government Appropriations Act, 1999, as incorporated in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, which was approved on October 21, 1998. The law provides that these provisions are effective on the first day of the first pay period beginning on or after October 1, 1998. This legislation is intended to address concerns about the complexity of firefighter pay computations by establishing a more rational and equitable method of compensation. The law adds a new section 5545b to subchapter V (Premium Pay) of chapter 55 of title 5 of the United States Code. OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V and was also given certain specific regulatory responsibilities in section 5545b.

Federal Firefighters

There are over 9,000 Federal employees covered by the General Schedule (GS) pay system who are classified in the GS–081 Fire Protection and Prevention job classification series, which includes line firefighters, supervisory firefighters, and fire inspectors. Approximately 94 percent of these firefighters are employed by the Department of Defense. Most of these firefighters have extended tours of duty—most commonly, a 72-hour workweek consisting of three 24-hour shifts. These 24-hour shifts include periods of actual work time and substantial periods of time during which firefighters are in ''standby status.'' While in standby status, firefighters are free to eat, sleep, and engage in other personal activities, but are confined to the worksite and must remain in a state of readiness to perform actual work as required. Some firefighters (most commonly supervisors) have a regular 40-hour workweek consisting of five 8-hour days plus regularly scheduled standby duty (e.g., an extra 16-hour standby shift).

Former Pay Computation Method

Under the law and regulations formerly in effect, firefighters were entitled to the same rate of basic pay that applied to General Schedule employees with a 40-hour workweek. In addition, they generally received standby duty pay under 5 U.S.C. 5545(c)(1) to compensate them for their extended tours of duty. Standby duty pay is a special form of premium pay designed to compensate employees who have regularly scheduled workweeks that are much longer than the normal 40-hour workweek and include substantial time during which employees are in a standby status. Standby duty pay is paid as a percentage of basic pay not to exceed 25 percent of the employee's rate of basic pay (but not more than the rate of basic pay for GS–10, step 1). The percentage rate depends on the number of hours in the employee's regularly scheduled tour, hours of Sunday work, type of shift, and various other factors. (See 5 CFR 550.141–550.144.) Standby duty pay is basic pay for retirement purposes (5 U.S.C. 8331(3)(C)).

Firefighters covered by the Fair Labor Standards Act (FLSA) overtime provisions also received additional pay under that Act. Under the FLSA, the overtime standard for firefighters is 53 hours per week (or 106 hours biweekly), instead of 40 hours. For overtime hours within their regularly scheduled workweek, firefighters received a supplemental half-rate premium (in addition to the basic pay and standby pay received for regularly scheduled hours). For irregular overtime hours, firefighters received time-and-one-half overtime pay. FLSA computations used the firefighter's ''hourly regular rate'' (consistent with FLSA rules), which was less than the firefighter's rate of basic pay because the hourly regular rate was derived by dividing the firefighter's total remuneration (including standby duty pay) by the total number of hours worked.

Summary of New Law

The new law makes significant changes in how firefighter pay is computed. These changes apply to GS–081 firefighters whose regularly established workweeks average 53 hours or more. In summary, the new law—

1. Eliminates standby duty pay and pays firefighters on an hourly rate basis. Paying firefighters on an hourly rate basis simplifies the pay computation. It also corrects disproportionality problems in the former pay computation method. (Under the former pay

computation method, employees at the same grade and step and with the same type of shifts received different effective hourly rates—taking standby duty pay into account—depending on the number of hours in the regular tour. In fact, the more hours worked, the smaller the effective hourly rate.)

2. Requires that the applicable GS annual rate of basic pay be divided by a 2756-hour factor to derive the ''firefighter hourly rate'' instead of using the 2087-hour factor applicable to other Federal employees. (The 2756-hour factor is derived by multiplying the number of weeks in a year (52) by the FLSA weekly overtime standard (53 hours), which yields the number of nonovertime hours in a year for the typical full-time firefighter.)

3. Provides time-and-one-half overtime pay for both FLSA-covered (nonexempt) and FLSA-exempt firefighters for all overtime hours. (For FLSA-exempt firefighters, the overtime rate is capped at 1½ times the GS–10, step 1, rate (2087-hour basis), but cannot be less than the individual's firefighter rate of basic pay.)

4. Provides special pay computations for firefighters whose regular tour of duty includes a basic 40-hour workweek.

5. Bars payment of any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

6. Guarantees no loss in regular pay during employer-sanctioned training. (Previously, the move to a training schedule with fewer hours (e.g., 40) could result in a reduction in a firefighter's normal paycheck.)

7. Treats the straight-rate portion of overtime pay for overtime hours in the firefighter's regular tour of duty as basic pay for retirement and certain other purposes. (The extra half-rate premium for those overtime hours is not basic pay for these purposes.)

For the typical FLSA-covered firefighter with a 72-hour workweek, the new law results in a total pay increase of about 9 percent. For example, under the former pay computation rules, a GS–6, step 5, firefighter in the Washington, DC, area in 1998 with 144 hours in a biweekly pay period would receive a regular biweekly paycheck of $1,468.38 ($38,177.88 annually), consisting of the following:

- Basic pay of $1,037.60 (GS–6, step 5, annual locality rate of $27,060 divided by 2087 = $12.97, and $12.97 times 80 hours = $1,037.60);
- Standby duty pay of $259.40 ($1,037.60 times 25 percent); and
- Supplemental FLSA overtime pay of $171.38 (38 overtime hours times $4.51, which is one-half of the hourly regular rate of $9.01).

Under the new law, the same firefighter would receive a regular biweekly paycheck of $1,600.66 ($41,617.16 annually), consisting of the following:

- Basic pay of $1,040.92 (106 nonovertime hours times the firefighter rate of $9.82, which is equal to $27,060 divided by 2756 hours); and
- Overtime pay of $559.74 (1½ times $9.82 = $14.73, and $14.73 times 38 overtime hours = $559.74).

Retirement-creditable basic pay is also 9 percent higher—$1,414.08 biweekly (144 hours times the firefighter rate of $9.82 equals $1,414.08), compared to the old amount of $1,297.00 (basic pay of $1,037.60 plus standby duty pay of $259.40).

The change in pay for other categories of firefighters varies depending on the number of hours in the workweek, whether the firefighter is covered by the FLSA, the former standby duty pay rate, and the type of schedule (24-hour shift or not). In a small number of cases, the new compensation formula would result in a reduction in pay; however, the law provides special pay protection provisions that either increase affected firefighters' pay or at least prevent any reduction upon conversion to the new system.

Description of Regulatory Provisions

We are adding a new subpart M—Firefighter Pay—to part 550 of title 5, Code of Federal Regulations, that implements 5 U.S.C. 5545b and related statutory provisions. In addition, we are making conforming changes in part 410; subparts A, B, and G of part 550; part 551; part 591; part 630; and part 870. A summary description of each new or revised section follows:

Section 410.402—We are adding a new paragraph in OPM's training regulations that provides that firefighters compensated under subpart M of part 550 (as added by these regulations) continue to receive their regular pay during agency-sanctioned training, consistent with 5 U.S.C. 4109(d). This provision is triggered only when the hours in a firefighter's regular tour of duty for any week are reduced due to a temporary training assignment. It does not affect firefighters who voluntarily participate in education or training during non-duty hours, leave hours, or periods of excused absence.

Sections 550.103 and 550.111—We are adding a new paragraph (g) in § 550.111 to provide a special definition of ''overtime work'' performed by firefighters compensated under subpart M. The definition of ''overtime work'' in § 550.103 is revised accordingly.

Section 550.113—We are adding a new paragraph (e) that describes how the firefighter overtime hourly rate is computed using a 2756-hour factor. For FLSA-exempt firefighters whose firefighter hourly rate of basic pay exceeds the minimum hourly rate of basic pay for GS–10 (computed using a 2087-hour factor), the overtime hourly rate is capped at 1½ times that GS–10 minimum rate, but may not fall below the firefighter's own firefighter hourly rate of basic pay. (See 5 U.S.C. 5542(f).)

Section 550.202—We are including firefighter straight-time pay for regular overtime hours in the definition of ''basic pay'' for purposes of advances in pay, consistent with § 550.1305(b).

Sections 550.703 and 550.707(b)—We are including firefighter straight-time pay for regular overtime hours in the definition of ''basic pay'' for severance pay purposes, consistent with § 550.1305(b). We are also providing that an average weekly rate of basic pay be used in computing severance pay for firefighters whose regular tour of duty consists of a cycle of variable workweeks.

Section 550.1301—This section describes the purpose, applicability, and administration of the new subpart M in part 550. Applicability is linked to the definition of ''firefighter'' in § 550.1302.

Section 550.1302—This section defines various terms used in subpart M. The term ''basic 40-hour workweek'' is defined to distinguish between firefighters who generally work on a 24-hour shift basis and those who have a regular workweek of 40 actual work hours (consisting of five 8-hour days or an equivalent schedule such as a flexible schedule containing 80 actual work hours in a biweekly pay period). Consistent with 5 U.S.C. 5545b(a), the term ''firefighter'' is defined to cover General Schedule employees classified in the GS–081 Fire Protection and Prevention classification series whose regular tour of duty averages at least 106 hours per biweekly pay period.

The term ''regular tour of duty'' is defined as a firefighter's officially established work schedule, including any overtime hours in that schedule. Generally, a tour of duty must be established on a regular (nontemporary) and recurring basis to be considered a regular tour of duty; however, a regular tour of duty also includes a temporary tour that, when assigned, results in a reduction in the firefighter's regular work hours or a change in the pay computation method used under § 550.1303. The regular tour of duty concept is used in determining—

• The appropriate pay computation method for a firefighter (see definition of ''firefighter'' and § 550.1303);

• A firefighter's basic pay for retirement and other purposes (see § 550.1305);

• The hours in an uncommon tour of duty established for leave purposes, including lump-sum payments for annual leave (see §§ 550.1306(c), 630.201, and 630.210); and

• The applicability of certain transitional provisions (see § 550.1308).

The term ''regular tour of duty'' is not equivalent to the term ''regularly scheduled administrative workweek'' (as defined in § 550.103) because ''regularly scheduled'' encompasses overtime hours that are scheduled in advance of the workweek, regardless of whether or not those overtime hours are part of a fixed, regularly recurring schedule. Since the ''regular tour of duty'' concept is used to determine what pay is used in computing retirement and other benefits, it is appropriate that the overtime hours included in the regular tour of duty are generally only those that are part of a firefighter's regular fixed schedule. In addition, we note that it is possible to have irregular nonovertime hours that are not part of the firefighter's regular tour of duty in the case of firefighters with variable workweeks (e.g., a 48–48–72-hour workweek cycle).

Section 550.1303—This section describes how to compute basic pay for (1) 24-hour shift firefighters and (2) firefighters whose regular tour of duty includes a basic 40-hour workweek. The firefighter hourly rate of basic pay (computed by dividing the annual rate of basic pay by 2756 hours) is used for all nonovertime hours for 24-hour shift firefighters. For firefighters with a basic 40-hour workweek, the normal General Schedule hourly rate (using a 2087-hour factor), is used to compute pay for hours in the basic 40-hour workweek, and then the firefighter (2756-basis) hourly rate of basic pay is used to compute pay for nonovertime hours beyond the basic 40-hour workweek (or 80-hour biweekly pay period). This section also addresses the substitution of irregular hours for leave-without-pay hours in a firefighter's regular tour of duty. Such substituted hours are deemed to be part of the firefighter's regular tour of duty. (See the definition of ''regular tour of duty'' in § 550.1302.)

Section 550.1304—This section provides that the overtime hourly rate of pay for FLSA-covered firefighters is 1½ times the firefighter (2756-basis) hourly rate of basic pay, regardless of the type of work schedule. (See 5 U.S.C. 5545b(d)(2).)

Section 550.1305—This section addresses what pay is considered basic pay for various purposes. The sum of pay for regular nonovertime hours and the straight-rate portion of regular overtime pay (excluding the half-rate overtime premium) is treated as basic pay for purposes of retirement, life insurance, severance pay, nonforeign area cost-of-living allowances and post differentials, and advances in pay. (See 5 U.S.C. 5545b(b)(2) and (c)(2).) Also, the section makes clear that, while locality pay is considered part of basic pay in applying the provisions of this subpart (except § 550.1308), locality pay for firefighters is basic pay for other purposes only to the extent expressly provided in § 531.606(b) or other law.

For firefighters with a basic 40-hour workweek, basic pay consists of three components: (1) 40 hours of basic pay computed using the regular GS rate (2087 factor); (2) 13 hours of basic pay computed using the firefighter rate (2756 factor); and (3) the straight-rate portion of pay for overtime hours in the firefighter's regular tour computed using the firefighter rate. However, for these firefighters, any basic pay for nonovertime hours outside the basic 40-hour workweek is basic pay only for purposes of subpart M and the listed benefits. It is not basic pay for other purposes, such as pay retention.

Section 550.1306—This section addresses the relationship of various other entitlements to firefighter pay under subpart M. Firefighters compensated under subpart M are not entitled to any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay. (See 5 U.S.C. 5545b(d)(1).) All FLSA overtime pay requirements are satisfied by compliance with subpart M. (See 5 U.S.C. 5545b(d)(2).) Overtime pay for overtime hours in a firefighter's regular tour of duty (including the half-rate overtime premium) is used in computing a lump-sum payment for annual leave when a firefighter separates from Federal service if the firefighter's regular tour of duty is established as an uncommon tour of duty for purposes of leave accrual and usage at the time of separation. (OPM's regulations require agencies to establish such an uncommon tour of duty for 24-hour shift firefighters. See § 630.210.)

Section 550.1307—This section provides a procedure for agencies to establish methods of reducing or eliminating variation in the amounts of firefighter paychecks for firefighters whose regular tour of duty includes variable workweeks.

Section 550.1308—This section establishes certain transitional provisions designed to protect the pay of a relatively small number of firefighters who have shorter workweeks, some of whom would otherwise suffer a reduction in regular pay due to the change in the pay computation method. This implements subsections (f) and (g) of section 628 of section 101(h) of Public Law 105–277. Affected firefighters are employed primarily by the Department of Veterans Affairs (VA). A number of VA firefighters have 24-hour shifts, but generally work only 56 or 60 hours per week, on average. These firefighters would receive a one-time pay increase equal to two GS step increments of their grade at the time of conversion to the new pay computation method. (See paragraph (a).) Using the new boosted rate in the new pay computation method will result in small pay increases for almost all of these firefighters.

For any firefighter who might still face a small reduction in his or her regular pay, that regular pay will be protected under the special rules in paragraph (b). The employing agency will be required to calculate a ''protected rate of basic pay'' that, when used in the new pay computation method, produces approximately the same amount of ''annualized regular pay'' the firefighter would have received under the old computation method. (The term ''annualized regular pay'' is defined to mean total pay for hours in a firefighter's regular tour of duty. Since some firefighters have a cycle of variable workweeks within their regular tour of duty, it is necessary to make comparisons on an annualized basis.) This comparison is made as of the effective date of the new pay computation method, based on the firefighter's regular tour of duty in effect at that time. For comparison purposes, the annualized regular pay under the old method is based on the rates of pay that would otherwise be in effect at that time, including any changes in rates of pay (e.g., due to within-grade increases or promotions) taking effect on the effective date of the new method, but excluding the two-step adjustment made under § 550.1308(a).

The protected rate is not aligned to a step on the pay schedule, but is a special saved rate. Once established, the protected rate of basic of pay is a frozen dollar rate that is not subject to adjustment. Locality pay, as applicable, is paid on top of the protected rate. The protected rate will be terminated when the firefighter's actual rate is increased (e.g., due to a promotion or annual pay adjustment) to the point where it equals or exceeds the protected rate, or when

the employee ceases to be covered by subpart M.

Sections 551.501 and 551.541—We are making conforming changes in part 551, which deals with FLSA overtime pay entitlements.

Section 591.201—We are including firefighter straight-time pay for regular overtime hours in the definition of ''basic pay'' for the purpose of nonforeign area cost-of-living allowances and post differentials, consistent with § 550.1305(b).

Sections 630.201 and 630.210—In OPM's leave regulations, we are revising the definition of ''uncommon tour of duty'' in § 630.201 to incorporate a reference to firefighters compensated under subpart M of part 550 and to make other clarifying changes. We are adding a requirement in § 630.210 that agencies must establish uncommon tours of duty for firefighters compensated under § 550.1303(a)—that is, firefighters with regular tours of duty that generally consist of 24-hour shifts.

Section 870.204—We are including firefighter straight-time pay for regular overtime hours in the definition of ''annual pay'' for life insurance purposes, consistent with § 550.1305(b).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. Section 628 of the Treasury and General Government Appropriations Act, 1999 (which is incorporated in section 101(h) of Public Law 105–277), which changed the method for computing firefighter pay, was approved on October 21, 1998, and applies on the first day of the first pay period beginning on or after October 1, 1998. These regulations are being made effective retroactively to ensure that the new firefighter pay provisions are uniformly implemented in a timely manner.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Parts 410, 550, 551, 591, 630, and 870

Administrative practice and procedure, Claims, Education, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management,

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 410, 550, 551, 591, 630, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart D—Paying for Training

2. In § 410.402, paragraph (b)(6) is redesignated as paragraph (b)(7), and a new paragraph (b)(6) is added to read as follows:

§ 410.402 Paying premium pay.

* * * * *

(b) * * *

(6) *Firefighter overtime pay.* A firefighter compensated under part 550, subpart M, of this chapter must be paid basic pay and overtime pay for the firefighter's regular tour of duty (as defined in § 550.1302 of this chapter) in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter's regular tour of duty. This special pay protection does not apply to firefighters who voluntarily participate in training during non-duty hours, leave hours, or periods of excused absence.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

4. In § 550.103, the definition of *overtime work* is revised to read as follows:

§ 550.103 Definitions.

* * * * *

Overtime work has the meaning given that term in § 550.111 and includes irregular or occasional overtime work and regular overtime work.

* * * * *

5. In § 550.111, the introductory text of paragraph (a) is amended by removing the words ''paragraphs (d) and (f)'' and adding in their place ''paragraphs (d), (f), and (g)'', and a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(g) For firefighters compensated under subpart M of this part, overtime work means officially ordered or approved work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, in excess of 53 hours in an administrative workweek.

6. In § 550.113, a new paragraph (e) is added to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(e)(1) For firefighters compensated under subpart M of this part, the overtime hourly rate for all overtime hours is 1½ times the firefighter's hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, except as provided in paragraph (e)(2) of this section.

(2) For firefighters compensated under subpart M of this part who areexempt from the overtime provisions of the Fair Labor Standards Act and whose hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, exceeds the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours), the overtime hourly rate is equal to the greater of—

(i) One and one-half times the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours); or

(ii) The individual's own firefighter hourly rate of basic pay under § 550.1303(a) and (b)(2), as applicable.

Subpart B—Advances in Pay

7. The authority citation for part 550, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

§ 550.202 [Amended]

8. In § 550.202, the definition of *rate of basic pay* is amended by adding

''straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b)),'' immediately before the words ''night differential''.

Subpart G—Severance Pay

9. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

§ 550.703 [Amended]

10. The definition of *rate of basic pay* in 550.703 is amended by adding ''straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b)),'' before the words ''night differential''.

11. Section 550.707 is amended by removing ''or'' at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding a semicolon and the word ''and'' in its place, and by adding a new paragraph (b)(4) to read as follows:

§ 550.707 Computation of severance pay.

* * * * *

(b) * * *

(4) In which the employee's pay is computed under subpart M of this part (dealing with firefighter pay) when the employee has a recurring cycle of variable workweeks within his or her regular tour of duty (as defined in § 550.1302).

* * * * *

Subpart L—[Added and Reserved]

12. Subpart L is added and reserved, and a subpart M is added to read as follows:

Subpart M—Firefighter Pay

Sec.
550.1301 Purpose, applicability, and administration.
550.1302 Definitions.
550.1303 Hourly rates of basic pay.
550.1304 Overtime hourly rates of pay.
550.1305 Treatment as basic pay.
550.1306 Relationship to other entitlements.
550.1307 Authority to regularize paychecks.
550.1308 Transitional provisions.

Authority: 5 U.S.C. 5545b, 5548, 5553, and subsections (f) and (g) of section 628 as included in section 101(h) of Public Law 105–277.

Subpart M—Firefighter Pay

§ 550.1301 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations governing the pay of covered Federal firefighters. It implements sections 5542(f) and 5545b of title 5, United States Code, as added by section 628 of section 101(h) of Pub. L. 105–277, and must be read together with those sections of law.

(b) *Applicability.* This subpart applies to any firefighter as defined in § 550.1302.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 550.1302 Definitions.

In this subpart:

Annual rate of basic pay (except as otherwise provided in §§ 550.1305 and 550.1308) means the annual rate fixed under the rate schedule applicable to the position held by the firefighter, including a locality rate schedule established under 5 U.S.C. 5304 or a special rate schedule established under 5 U.S.C. 5305, before any deductions and exclusive of additional pay of any other kind.

Basic 40-hour workweek means—

(1) A standard 40-hour workweek consisting of five 8-hour workdays that is part of the firefighter's regular tour of duty; or

(2) A designated block of hours within a firefighter's regular tour of duty that, on a fixed and recurring basis, consists of 40 hours of actual work during each administrative week (or 80 hours of actual work in each biweekly pay period), excluding sleep and standby duty hours, provided the regular tour of duty does not consist primarily of 24-hour shifts.

Firefighter means an employee—

(1) Who is in a position covered by the General Schedule and classified in the GS–081 Fire Protection and Prevention classification series, consistent with standards published by the Office of Personnel Management; and

(2) Whose regular tour of duty, as in effect throughout the year, averages at least 106 hours per biweekly pay period.

Firefighter hourly rate of basic pay means an hourly rate computed by dividing the applicable annual rate of basic pay by 2756 hours, as described in § 550.1303.

Irregular hours means hours of work that are outside a firefighter's regular tour of duty.

Overtime hours means hours of work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, hours of work in excess of 53 hours in an administrative workweek.

Overtime pay means pay for overtime hours.

Regular tour of duty means a firefighter's official work schedule, as established by the employing agency on a regular and recurring basis (or on a temporary basis in cases where a temporary change in schedules results in a reduction in regular work hours or a change in the pay computation method used under § 550.1303). The tour of duty may consist of a fixed number of hours each week or a fixed recurring cycle of work schedules in which the number of hours per week varies in a repeating pattern. The regular tour of duty includes only those overtime hours that are part of the fixed recurring work schedule. However, irregular hours are deemed to be included in a firefighter's regular tour of duty if those hours are substituted for hours in the regular tour of duty for which leave without pay is taken, as provided in § 550.1303(d).

§ 550.1303 Hourly rates of basic pay.

(a) For firefighters with a regular tour of duty that does not include a basic 40-hour workweek (e.g., firefighters whose schedules generally consist of 24-hour shifts with a significant amount of designated standby and sleep time), the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2756 hours. The resulting firefighter hourly rate of basic pay is multiplied by all nonovertime hours to determine the pay for those hours.

(b) For firefighters with a regular tour of duty that includes a basic 40-hour workweek, the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by—

(1) 2087 hours, for hours within the basic 40-hour workweek (or 80-hour biweekly pay period); and

(2) 2756 hours, for any additional nonovertime hours.

(c) A firefighter's daily, weekly, or biweekly rate of basic pay must be computed using the applicable rates, as derived under paragraphs (a) and (b) of this section.

(d) If a firefighter takes leave without pay during his or her regular tour of duty, the agency must substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If the firefighter's overtime pay is computed on a weekly basis, the irregular hours must be worked in the same administrative workweek.) For firefighters whose regular tour of duty includes a basic 40-hour workweek, irregular hours must be substituted first for hours of leave without pay in the basic 40-hour workweek. Each substituted hour will be paid at the rate applicable to the hour in the regular tour for which substitution is made, consistent with this section and § 550.1304.

§ 550.1304 Overtime hourly rates of pay.

(a) For a firefighter who is covered by (i.e., nonexempt from) the overtime provisions of the Fair Labor Standards Act (FLSA), the overtime hourly rate of pay equals 1½ times the firefighter hourly rate of basic pay for that firefighter, as established under § 550.1303(a) and (b)(2).

(b) For a firefighter who is exempt from the FLSA, the overtime hourly rate is computed as provided in § 550.113(e).

(c) For any firefighter, overtime pay for any pay period is derived by multiplying the applicable overtime hourly rate by all overtime hours within that period.

§ 550.1305 Treatment as basic pay.

(a) The sum of pay for nonovertime hours that are part of a firefighter's regular tour of duty (as computed under § 550.1303) and the straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is treated as basic pay for the following purposes:

(1) Retirement deductions and benefits under chapters 83 and 84 of title 5, United States Code;

(2) Life insurance premiums and benefits under chapter 87 of title 5, United States Code;

(3) Severance pay under section 5595 of title 5, United States Code;

(4) Cost-of-living allowances and post differentials under section 5941 of title 5, United States Code; and

(5) Advances in pay under section 5524a of title 5, United States Code.

(b) The straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is derived by multiplying the applicable firefighter hourly rate of basic pay computed under § 550.1303(a) and (b)(2) by the number of overtime hours in the firefighter's regular tour of duty.

(c) Pay for any nonovertime hours outside a firefighter's regular tour of duty is computed using the firefighter hourly rate of basic pay as provided in § 550.1303(a) and (b)(2), but that pay is not considered basic pay for any purpose.

(d) For firefighters compensated under § 550.1303(b), pay for nonovertime hours within the regular tour of duty, but outside the basic 40-hour workweek, is basic pay only for the purposes listed in paragraph (a) of this section.

(e) Locality pay under 5 U.S.C. 5304 is basic pay for firefighters only to the extent provided in this subpart, § 531.606(b) of this chapter, or other specific provision of law.

§ 550.1306 Relationship to other entitlements.

(a) A firefighter who is compensated under this subpart is entitled to overtime pay as provided under this subpart, but may not receive additional premium pay under any other provision of subchapter V of chapter 55 of title 5, United States Code, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

(b) A firefighter who is subject to section 7(k) of the Fair Labor Standards Act (FLSA) and who is subject to this subpart is deemed to be appropriately compensated under section 7(k) of the FLSA if the requirements of § 550.1304(a) are satisfied.

(c) In computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552 for firefighters with an uncommon tour of duty established under § 631.210 of this chapter for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

§ 550.1307 Authority to regularize paychecks.

Upon a written request from the head of an agency (or designee), the Office of Personnel Management may approve an agency's plan to reduce or eliminate variation in the amount of firefighters' biweekly paychecks caused by work scheduling cycles that result in varying hours in the firefighters' tours of duty from pay period to pay period. Such a plan must provide that the total pay any firefighter would otherwise receive for regular tours of duty over the firefighter's entire work scheduling cycle must, to the extent practicable, remain the same.

§ 550.1308 Transitional provisions.

(a)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, a firefighter subject to this subpart who has a regular tour of duty that averages 60 hours or less per week during a year, and that does not include a basic 40-hour workweek, must be granted an increase in basic pay equal to two within-grade increases for the General Schedule grade applicable to the firefighter.

(2) An increase granted under paragraph (a)(1) of this section is not considered an equivalent increase in pay for within-grade increase purposes under 5 U.S.C. 5335 and subpart D of part 531 of this chapter.

(3) If an increase granted under paragraph (a)(1) of this section results in a longer waiting period for the firefighter's next within-grade increase, the firefighter must be credited with 52 weeks of service for the purpose of that waiting period.

(4) If an increase granted under paragraph (a)(1) of this section results in a rate of basic pay that is above the maximum rate of basic pay for the applicable grade, that resulting pay rate must be treated as a retained rate of basic pay consistent with 5 U.S.C. 5363 and part 536 of this chapter.

(b)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, an employing agency must temporarily establish a protected annual rate of basic pay that exceeds a firefighter's actual annual rate of basic pay (including any adjustment under paragraph (a) of this section), if necessary to ensure that the firefighter's annualized regular pay is not reduced on that date. For this purpose, *annualized regular pay* means total pay for hours in the firefighter's regular tour of duty, expressed as an annual rate based on the cycle of schedules under the firefighter's regular tour of duty. The annualized regular pay resulting from using the protected rate in applying the pay computation rules under this subpart must approximately equal (but be no less than) the annualized regular pay to which the firefighter would have been entitled on the effective date of this paragraph under the former pay computation method.

(2) The protected rate of basic pay is fixed and not subject to further adjustments. The protected rate is a scheduled rate of basic pay for purposes of computing locality payments under 5 U.S.C. 5304 and part 531, subpart F of this chapter.

(3) The protected rate of basic pay is terminated when it is equal to or less than the firefighter's actual rate of basic pay or when the employee is no longer covered by this subpart.

(c) For purposes of this section, the term basic pay excludes locality pay under 5 U.S.C. 5304 and part 531, subpart F, of this chapter.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

13. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 240f).

Subpart E—Overtime Pay Provisions

14. In § 551.501, paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives compensation for those hours of work under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

15. In § 551.541, paragraph (a) is amended by adding ''or 5545b'' immediately before the period at the end of the paragraph, and a new paragraph (d) is added to read as follows:

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

* * * * *

(d) A firefighter subject to section 7(k) of the Act who is compensated under part 550, subpart M, of this chapter is deemed to be appropriately compensated under section 7(k) of the Act and this part if the requirements of § 550.1304(a) of this chapter are satisfied. (See 5 U.S.C. 5545b(d)(2).)

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

16. The authority citation for part 591, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

17. In § 591.201, the definition of *rate of basic pay* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differential, except that straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b) of this chapter) is included as basic pay.

* * * * *

PART 630—ABSENCE AND LEAVE

18. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

19. In § 630.201, paragraph (b), the definition of *uncommon tour of duty* is revised to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and § 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

20. In § 630.210, a new paragraph (c) is added to read as follows:

§ 630.210 Uncommon tours of duty.

* * * * *

(c) An agency must require that firefighters compensated under § 550.1303(a) of this chapter accrue and use leave on the basis of the applicable uncommon tour of duty.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

21. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

Subpart B—Types and Amount of Insurance

22. Section 870.204 is amended by revising paragraph (a)(2)(ii), by removing the word ''and'' at the end of paragraph (a)(2)(ix), by removing the period at the end of paragraph (a)(2)(x) and adding ''; and'' in its place, and by adding a new paragraph (a)(2)(xi) to read as follows:

§ 870.204 Annual rates of pay.

(a) * * *

(2) * * *

(ii) Premium pay for standby duty under 5 U.S.C. 5545(c)(1);

* * * * *

(xi) Straight-time pay for regular overtime hours for firefighters, as provided in 5 U.S.C. 5545b and part 550, subpart M, of this chapter.

* * * * *

[FR Doc. 98–31258 Filed 11–20–98; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–062–2]

Tuberculosis Testing of Livestock Other than Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the tuberculosis regulations to include species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. The interim rule was necessary because such livestock could become infected with tuberculosis and, without testing, could spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. The testing of species of livestock other than cattle and bison in newly assembled herds on premises where a tuberculous herd has been depopulated will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

EFFECTIVE DATE: December 23, 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) 734–7727; or e-mail: James.P.Davis@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* The regulations in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis may be moved interstate without restriction if those cattle or bison are moved from a State designated as an accredited-free, accredited-free (suspended), or modified accredited State. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from a nonmodified accredited State.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document titled ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (referred to below as the UM&R), which, as explained in the definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication* in § 77.1, has been incorporated by reference into the regulations.

In an interim rule published in the **Federal Register** and effective on February 23, 1998 (63 FR 8837–8840, Docket No. 97–062–1), we amended the tuberculosis regulations to include species of livestock other than cattle and bison in the UM&R's requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. As part of that interim rule, we revised the definitions of *Accredited-free (suspended) State, herd,* and *Modified accredited State,* and added a definition of *livestock.*

Comments on the interim rule were required to be received on or before April 24, 1998. We received three comments by that date. The comments were from a State veterinarian, an association of zoo veterinarians, and an association of zoo and aquarium operators. All three commenters supported the testing requirements of the interim rule, but two of the commenters had concerns related to two of the definitions added or revised by the interim rule. Those comments are discussed below.

In the interim rule, we defined *livestock* as ''cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.'' We also defined *herd* as ''any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.'' As noted in the interim rule, these two definitions are the same as the definitions for those terms in § 50.1 of the tuberculosis indemnity regulations in 9 CFR part 50.

Two of the commenters were concerned about the potential impact that the interim rule's definitions of *livestock* and *herd* could have on animals maintained in zoos. First, the commenters were concerned that the inclusion of ''other hoofed animals'' in the definition of *livestock* might lead to a requirement that intradermal tuberculin skin testing be performed on animals like rhinoceroses and giraffes for which such testing has not been validated. The commenters recommended that the definition of *livestock* be modified to include only those animals for which there is clinical evidence that the intradermal tuberculin skin test is valid. With regard to the definition of *herd,* the commenters stated that it may be difficult to define precisely what constitutes a herd in a zoo environment, as hoofed animals of different species, housed in different areas, and under the care of different zoo professionals may or may not constitute a ''herd'' from an epidemiological perspective. In this case, the commenters suggested that the definition of *herd* be modified to take into account the unique character of the zoological environment.

The interim rule extended the testing requirements of the UM&R to livestock other than cattle or bison only under very limited circumstances, i.e., when those other animals are part of a newly assembled herd on a premises where a tuberculous herd has been depopulated. While it is true that certain zoo animals could fall within the categories of animals included in the interim rule's definition of *livestock,* and thus be included in the definition of *herd,* no new testing requirements have been extended to hoofed animals maintained in zoos by virtue of that inclusion. We fully appreciate the differences between the zoological environment and commercial livestock operations, and did not intend for the interim rule to alter the way animal health issues at zoos are currently addressed by the Animal and Plant Health Inspection Service, the States, and the zoos themselves. Because the interim rule's definitions of *livestock* and *herd* do not place any new requirements on hoofed animals maintained in zoos, we do not believe that it is necessary to make any changes to those definitions based on the comments.

However, the points raised by the commenters led us to review the provisions of part 77 to ensure that the interim rule's definitions of *livestock* and *herd* did not have any unintended effects. In that review, we noted that the definition of *Accredited-free state* in § 77.1 contains the sentence ''Detection of tuberculosis in two or more herds in the state within 48 months will result in revocation of accredited-free state status.'' Because the definition of *herd* is no longer limited to cattle and bison, that sentence could be misleading. To make it clear that it is the detection of tuberculosis in cattle and bison, and not in other livestock, that affects a State's tuberculosis status, we have amended that sentence so that it now reads: ''Detection of tuberculosis in cattle or bison in two or more herds in the state within 48 months will result in revocation of accredited-free state status.''

Therefore, for the reasons set forth in the interim rule and in this document, we are adopting the interim rule as a final rule with the change discussed in this document.

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

Further, this final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 9 CFR Part 77

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

Accordingly, we are adopting as a final rule, with the change set forth below, the interim rule that amended 9 CFR part 77 and that was published at 63 FR 8837–8840 on February 23, 1998.

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

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).

§ 77.1 [Amended]

2. In § 77.1, in the definition of *Accredited-free state*, paragraph (1)(i), the second-to-last sentence is amended by adding the words ''cattle or bison in'' immediately before the words ''two or more''.

Done in Washington, DC, this 17th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31215 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–71–AD; Amendment 39–10895; AD 98–24–09]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. This AD requires inspecting the elevator and trim tab for water, and assuring that the necessary drain holes are installed and existing drain holes are open. This AD also requires drilling any necessary drain holes and opening any existing drain holes that are closed; and, if a significant amount of water (more than ½ liter) is found in the elevator, assuring that the elevator's weight and residual momentum and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjusting the elevator's weight and residual momentum and the glider's C.G., as needed. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent water from penetrating the elevator and trim tab because of inadequate drainage, which could result in a delaminated elevator and trim tab structure with consequent elevator imbalance and flutter.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–71–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Model G 109B gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 1998 (63 FR 49673). The NPRM proposed to require inspecting the elevator and trim tab for water, and assuring that the necessary drain holes are installed and existing drain holes are open. The NPRM also proposed to require drilling any necessary drain holes and opening any existing drain holes that are closed; and, if a significant amount of water (more than ½ liter) is found in the elevator, assuring that the elevator's weight and residual momentum and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjusting the elevator's weight and residual momentum and the glider's C.G., as needed. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Grob Service Bulletin TM 817–35, dated July 20, 1992.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per glider to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,200, or $60 per glider.

If drain holes need to be added, the FAA estimates that it will take approximately 1 workhour per glider to accomplish the modification, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $60 per glider that will need drain holes installed.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The unsafe condition is not a result of the number of times the glider is operated. If the elevator and trim tab of the affected gliders have inadequate drainage, then water could penetrate the elevator and trim tab on the first flight, as well as subsequent flights. The delamination and imbalance that could then occur can happen in a very short period of time or happen over a long period of time. For these reasons, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–09 Burkhart Grob Luft-Und Raumfahrt GMBH: Amendment 39–10895; Docket No. 98–CE–71–AD.

Applicability: Model G 109B gliders, all serial numbers beginning with 6200, certificated in any category.

Note 1: This AD applies to each glider 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 gliders 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 in the body of this AD, unless already accomplished.

To prevent water from penetrating the elevator and trim tab because of inadequate drainage, which could result in a delaminated elevator and trim tab structure with consequent elevator imbalance and flutter, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the elevator and trim tab for water and to assure that the necessary drain holes are installed and that the existing drain holes are open. Accomplish these actions in accordance with the Actions section of Grob Service Bulletin TM 817–35, dated July 20, 1992. Prior to further flight after the inspection, accomplish the following as specified in the service bulletin:

(1) Drill any necessary drain holes and open any existing drain holes that are closed; and,

(2) If a significant amount of water (more than ½ liter) is found in the elevator, after removal of the water, assure that the elevator's weight and residual moment and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjust the elevator's weight and residual momentum and the glider's C.G., as needed.

(b) 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 glider to a location where the requirements of this AD can be accomplished.

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

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

(d) Questions or technical information related to Grob Service Bulletin TM 817–35, dated July 20, 1992, should be directed to Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspections and modifications required by this AD shall be done in accordance with Grob Service Bulletin TM 817–35, dated July 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 92–350 Grob, dated October 26, 1992.

(f) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30897 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–68–AD; Amendment 39–10894; AD 98–24–08]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob Luft-und Raumfahrt Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Burkhart Grob Luft-und Raumfahrt (Grob) Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes. This AD requires inspecting the area of the elevator trim tab hinges for cracks and a secure fit, and repairing any elevator trim tab hinges with cracks or where a proper secure fit is not found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent structural damage of the trim tab hinges caused by cracks, which could result in trim tab failure with consequent loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–68–AD, Room 1558, 601 E. 12th Street,

Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Grob Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 11, 1998 (63 FR 48653). The NPRM proposed to require inspecting the area of the elevator trim tab hinges for cracks and a secure fit, and repairing any elevator trim tab hinges with cracks or where a proper secure fit is not found. Accomplishment of the proposed inspection would be required in accordance with Grob Service Bulletin 1078–75, dated May 15, 1998. Accomplishment of the proposed repairs, if necessary, would be required in accordance with Grob Installation Instructions No. 1078–75, dated May 15, 1998.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 26 airplanes in the U.S. registry will be affected by the inspection, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,560, or $60 per airplane.

If any of the affected airplanes have trim tab hinges that are found cracked or where a proper secure fit was not found, the repair will take approximately 5 workhours per airplane at an average labor rate of $60 per hour. Parts will cost approximately $25 per airplane. Based on these figures, the cost to repair any trim tab hinges found cracked, or where a proper secure fit was not found, will be approximately $325 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–08 Burkhart Grob Luft-und Raumfahrt: Amendment 39–10894; Docket No. 98–CE–68–AD.

Applicability: Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes, all serial numbers, 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 in the body of this AD, unless already accomplished.

To prevent structural damage of the trim tab hinges caused by cracks, which could result in trim tab failure with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the area of the elevator trim tab hinges for cracks and a secure fit. Accomplish this inspection in accordance with the Action section of Grob Service Bulletin No. 1078–75, dated May 15, 1998.

(b) Prior to further flight, repair any elevator trim tab hinges with cracks or where a proper secure fit is not found. Accomplish these repairs in accordance with the Procedure section of Grob Installation Instructions No. 1078–75, dated May 15, 1998.

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

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

(e) Questions or technical information related to Grob Service Bulletin 1078–75, dated May 15, 1998, should be directed to

Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection required by this AD shall be done in accordance with Grob Service Bulletin 1078–75, dated May 15, 1998. The repair required by this AD shall be done in accordance with Grob Installation Instructions No. 1078–75, dated May 15, 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 Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–299, dated June 4, 1998.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30896 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–103–AD; Amendment 39–10896; AD 98–24–10]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Model S10 sailplanes. This AD requires replacing the flap drive rocker, part number (P/N) 10SW–RMW, with a modified flap drive rocker. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the flap drive rocker caused by the design of the original part, which could result in loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control.

DATES: Effective December 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme Model S10 sailplanes. The LBA reports that the flap drive rocker, P/N 10SW–RMW, is likely to fail due to fatigue. This was revealed following failure of a different part in the flight control system. The manufacturer then performed an analysis on other critical points, which revealed the flap drive rocker condition.

This condition, if not corrected, could result in failure of the flap drive rocker and loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control.

Relevant Service Information

Stemme has issued Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998, which specifies procedures for replacing the flap drive rocker, P/N 10SW–RMW, with a modified P/N 10SW–RMW flap drive rocker. This service bulletin also specifies obtaining this modified part from the manufacturer.

The LBA classified this service bulletin as mandatory and issued German AD 1998–324, dated July 30, 1998, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Model S10 sailplanes of the same type design, the FAA is issuing an AD. This AD requires replacing the flap drive rocker, P/N 10SW–RMW, with a modified P/N 10SW–RMW flap drive rocker. The actions are to be done in accordance with Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998.

Cost Impact

None of the Stemme Model S10 sailplanes affected by this action are on the U.S. Register. All sailplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject sailplanes are imported and placed on the U.S. Register.

Should an affected sailplane be imported and placed on the U.S. Register, accomplishment of the required action would take approximately 5 workhours at an average labor rate of $60 per workhour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of this AD would be

$500 per sailplane that would become registered in the United States.

The Effective Date of This AD

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

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 No. 98–CE–103–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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–10 STEMME GMBH & CO. KG: Amendment 39–10896; Docket No. 98–CE–103–AD.

Applicability: Model S10 sailplanes, serial numbers 10–03 through 10–26, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 in the body of this AD, unless already accomplished.

To prevent failure of the flap drive rocker caused by the design of the original part, which could result in loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control, accomplish the following:

(a) Prior to further flight after the effective date of this AD, replace the flap drive rocker, part number (P/N) 10SW–RMW, with a modified flap drive rocker, in accordance with Stemme Installation Instruction No. A34–10–017–E, Amendment-Index 01.a, dated August 10, 1998, as referenced in Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

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

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

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacement required by this AD shall be done in accordance with Stemme Installation Instruction No. A34–10–017–E, Amendment-Index 01.a, dated August 10, 1998, as referenced in Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 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 Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–324, dated July 30, 1998.

(f) This amendment becomes effective on December 9, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30895 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–83–AD; Amendment 39–10891; AD 98–24–05]

RIN 2120–AA64

Airworthiness Directives; HOAC-Austria Model DV–20 Katana Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HOAC-Austria (HOAC) Model DV–20 airplanes equipped with ROTAX 912 A3 engines. This AD requires replacing the engine electronic modules. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to prevent electromagnetic interference (EMI) on the engine electronic module, which could cause the airplane engine to stop due to the interruption of the airplane's ignition system and result in loss of control of the airplane.

DATES: Effective January 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener, Neustadt, Austria. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–83–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain HOAC Model DV–20 airplanes equipped with ROTAX 912 A3 engines was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 25, 1998 (63 FR 45189). The NPRM proposed to require replacing the electronic ignition module with one of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5,600 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $113,200 or $5,660 per airplane.

The manufacturer has informed the FAA that all of the affected airplanes registered in the U.S. have accomplished this action, therefore, the estimated cost impact of this AD on U.S. operators is eliminated.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–05 HOAC-Austria: Amendment 39–10891; Docket No. 97–CE–83–AD.

Applicability: Model DV–20 Katana airplanes, certificated in any category, equipped with ROTAX 912–A3 series engines having serial numbers 4,076.064 through 4,380.753.

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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent electromagnetic interference (EMI) on the engine electronic module, which could cause the airplane engine to stop due to the interruption of the airplane's ignition system and result in loss of control of the airplane, accomplish the following:

(a) Replace the engine electronic module, part number (P/N) 965 356 or an FAA-approved equivalent part number, with a new engine electronic module, P/N 965 358, in accordance with the Instructions section of the Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995.

(b) 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.

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

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

(d) Questions or technical information related to Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995, should be directed to HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener. Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995. 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 HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener. Neustadt, Austria. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austrian AD No. 84, dated October 4, 1995.

(f) This amendment becomes effective on January 4, 1999.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30894 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–53–AD; Amendment 39–10893; AD 98–24–07]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300, EA–300S, and EA–300L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300, EA–300S, and EA–300L airplanes. This AD requires repetitively inspecting the rudder pedal for proper alignment, the safety control stop for wear and proper clearance, the rudder cables for elongation, and the rudder pedal footrest for cracks. This AD also requires correcting or replacing any discrepant part, as applicable. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the rudder pedal footrest caused by overloading the rudder pedal safety control stop, which could result in loss of directional control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (01 49 28 58) 91 37–13; facsimile: (01 49 28 58) 91 37–30. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain EXTRA Models EA–300, EA–300S, and EA–300L airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 1998 (63 FR 49675). The NPRM proposed to require repetitively inspecting the rudder pedal for proper alignment, the safety control stop for wear and proper clearance, the rudder cable for proper alignment, and the rudder pedal footrest for cracks. The NPRM also proposed to require correcting or replacing any discrepant part, as applicable. Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,600, or $240 per airplane. These figures do not take into

account any corrective action that will be necessary after accomplishing the inspections.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–07 Extra Flugzeugbau GMBH: Amendment 39–10893; Docket No. 98–CE–53–AD.

Applicability: The following models and serial numbers, certificated in any category:

Model and Serial Number

EA–300 All serial numbers, if factory equipped or retrofitted with the electric actuated rudder pedal adjustment that was produced prior to November 1995.

EA–300S 001 through 028

EA–300L 001 through 015

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

Compliance: Required as follows:

1. Inspections specified in this AD are required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 50 hours TIS.

2. Replacements or other follow-on corrective actions specified in this AD are required prior to further flight after the inspection when the discrepancy was found.

To prevent failure of the rudder pedal footrest caused by overloading the rudder pedal safety control stop, which could result in loss of directional control of the airplane, accomplish the following:

(a) Inspect the rudder pedal alignment in accordance with Figure 1 and Figure 2 and the Instructions Part I.1 section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If not aligned, prior to further flight, accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Re-rig the rudder cables to attain proper alignment; or

(2) Replace the rudder cables if alignment cannot be attained.

(b) For all airplanes equipped at manufacture with a safety control stop (See **Note 2** of this AD), inspect the safety control stop for wear (rubbing, scrapes, etc.) in accordance with the Instructions Part I.2 section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If the safety control stop is worn, prior to further flight, replace the safety control stop and accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Re-rig the rudder cable if elongation of the cable is not evident; or

(2) Replace the rudder cable if elongation of the cable is evident.

Note 2: The Model EA–300/S airplanes, serial numbers 001 through 011, were not factory equipped with a safety control stop.

(c) Inspect the footrest flange in the area of the safety wire hole for cracks in accordance with the Instructions Part I.3 section of EXTRA Service Bulletin

No. 300–3–95, Issue: B, dated May 12, 1998. If cracks are found, prior to further flight, replace the rudder pedal in accordance with the applicable maintenance manual or instructions obtained from the Small Airplane Directorate at the address specified in paragraph (f) of this AD.

(d) For all airplanes equipped at manufacture with a safety control stop (See **Note 2** of this AD), inspect the safety control stop clearance in accordance with the Instructions Part I.4 and Instructions Part II section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If the clearance does not meet the minimum specified clearance, prior to further flight, accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Adjust the foot rest to meet the required clearance if elongation of the cable is not evident; or

(2) Replace the rudder cable if elongation of the cable is evident.

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

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

(g) Questions or technical information related to EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspections, modifications, or replacements required by this AD shall be done in accordance with EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 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 EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD No. 95–443 EXTRA, dated November 29, 1995.

(i) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31013 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–35–AD; Amendment 39–10898; AD 98–24–12]

RIN 2120–AA64

Airworthiness Directives; Ursula Hanle Model H101 ''Salto'' Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Ursula Hanle (Hanle) Model H101 ''Salto'' sailplanes. This AD requires replacing the airbrake lever with one of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the airbrake from deploying during high g maneuvers, which could result in an overstressing effect on the airframe with consequent reduced sailplane control.

DATES: Effective December 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany; telephone and facsimile: +49 (0) 33875–30389. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE–35-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Hanle Model H101 ''Salto'' sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 25, 1998 (63 FR 49307). The NPRM proposed to require replacing the airbrake lever made of sheet metal with one made of steel. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Ursula Hanle Technical Bulletin 101-25/2, dated January 21, 1998.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the airbrake lever will only come out during flight in high g maneuvers, the unsafe condition specified in this AD is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $295 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,240, or $655 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–12 Ursula Hanle: Amendment 39–10898; Docket No. 98–CE–35–AD.

Applicability: Model H101 ''Salto'' sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the airbrake from inadvertently deploying during high g maneuvers, which could result in an overstressing effect on the airframe with consequent reduced sailplane control, accomplish the following:

(a) Replace the airbrake lever in accordance with Ursula Technical Bulletin 101–25/2, dated January 21, 1998, and drawing No. 101–44–3(2), as referenced in the technical bulletin.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

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

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

(d) Questions or technical information related to Ursula Hanle Technical Bulletin 101–25/2, dated January 21, 1998, should be directed to Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany; telephone and facsimile: +49 (0) 33875–30389. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacement required by this AD shall be done in accordance with Ursula Technical Bulletin 101-25/2, dated January 21, 1998, and drawing No. 101–44-3(2), as referenced in the technical bulletin. 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 Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–108, dated February 26, 1998.

(f) This amendment becomes effective on December 24, 1998.

Issued in Kansas City, Missouri, on November 12, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31012 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–20–AD; Amendment 39–10897; AD 98–24–11]

RIN 2120–AA64

Airworthiness Directives; Mooney Aircraft Corporation Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Mooney Aircraft Corporation (Mooney) Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes. This AD requires inspecting the aileron control links for the installation of a reinforcing gusset; and, if no gusset is installed, repetitively inspecting the aileron control links (left-hand and right-hand) for cracks. If cracks are found, this AD requires replacing the aileron control links with parts of improved design. This AD is the result of service difficulty reports (SDR's) on the aileron control links and reported failures of the aileron control links. The actions specified by this AD are intended to detect and correct cracked aileron control links, which could result in loss of aileron control with consequent loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Mooney Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 22, 1998 (63 FR 39254). The NPRM proposed to require inspecting the aileron control links for the installation of a reinforcing gusset; and, if a gusset is not installed, repetitively inspecting the aileron control links (left-hand and right-hand) for cracks using a magnetic particle method. If a crack is found, the NPRM proposed to require replacing the aileron control links with parts of improved design. Replacing the aileron control links would be considered a terminating action for the repetitive inspections. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Mooney Engineering Design Service Bulletin No. M20–264, dated February 1, 1998.

The NPRM was the result of service difficulty reports (SDR's) on the aileron control links and reported failures of the aileron control links.

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

Comment Disposition

The commenter requests that the FAA reference Lake Aero Styling & Repair aileron control links. Lake Aero Styling & Repair holds a parts manufacturer approval (PMA) for parts that are equivalent to the improved design Mooney aileron control links.

The FAA does not concur. FAA policy is to not reference PMA parts in AD's, unless the FAA determines that the unsafe condition applies to the PMA parts. However, the FAA generally includes a statement of ''or FAA-approved equivalent part number(s)''

after the referenced part number to account for PMA equivalent parts. The FAA inadvertently left this phrase out of the NPRM, and will add it to the final rule accordingly. If these Lake Aero Styling & Repair PMA parts are installed, then the actions of this AD would not apply because the parts are an FAA-approved equivalent to the improved design Mooney aileron control links.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 7,500 airplanes in the U.S. registry will be affected by the initial inspections, that it will take approximately 2 workhours per airplane to accomplish the initial inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections specified in this AD on U.S. operators is estimated to be $900,000, or $120 per airplane.

The above figures do not take into account the cost of repetitive inspections or aileron control link replacements. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or the number of aileron control links that will be found cracked during the required inspections and need replacement.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–11 Mooney Aircraft Corporation: Amendment 39–10897; Docket No. 98–CE–20–AD.

Applicability: The following airplane models and serial numbers, certificated in any category.

Models and Serial Numbers

M20B all serial numbers
M20C all serial numbers
M20D all serial numbers
M20E all serial numbers
M20F all serial numbers
M20G all serial numbers
M20L all serial numbers
M20J 24–0001 through 24–3359
M20K 25–0001 through 25–1999
20M 27–0001 through 27–0197
M20R 29–0001 through 29–0042

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracked aileron control links, which could result in loss of aileron control and loss of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, visually inspect the aileron control links (left-hand and right-hand) at the second 90-degree angle joint from the Heim bearing for the installation of a reinforcement gusset. Accomplish this inspection in accordance with the Instructions section of Mooney Engineering Design Service Bulletin (SB) No. M20–264, Issue Date: February 1, 1998.

(b) If a reinforcement gusset is installed, this AD requires no further action.

(c) If a reinforcement gusset is not installed, prior to further flight after the inspection required in paragraph (a) of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect, using magnetic particle methods, the aileron control links for cracks. Accomplish this inspection in accordance with the Instructions section of Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(1) If cracks are found, prior to further flight, replace the cracked aileron control link with an aileron control link of improved design (part numbers as specified in the referenced service information or FAA-approved equivalent numbers). Accomplish this replacement in accordance with the Instructions section of Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(2) Replacing both aileron control links with aileron control links of improved design (part numbers as specified in the referenced service information or FAA-approved equivalent numbers) may be accomplished at any time as terminating action for the repetitive inspection requirement of this AD, but must be accomplished prior to further flight on any aileron control link found cracked.

(3) If one aileron control link is replaced prior to further flight when a crack is found, the other aileron control link must still be repetitively inspected every 100 hours TIS until replacement with an improved design part.

(d) Replacing the aileron control links in accordance with Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998, is considered terminating action for the repetitive inspection requirement of this AD.

(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) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(g) The inspections and replacements required by this AD shall be done in accordance with Mooney Engineering Design Service Bulletin No. M20–264, Issue Date: February 1, 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 the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 12, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31011 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–137–AD; Amendment 39–10892; AD 98–24–06]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This AD requires repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–137–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier Model Do 27 Q–6 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 1998 (63 FR 49048). The NPRM proposed to require repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The initial compliance time of this AD is presented in calendar time in order to assure that any rivets that are already loose are detected and corrected in a timely manner. The FAA has determined that 3 calendar months is a reasonable time for all owners/operators of the affected airplanes to comply with the initial inspection and possible replacement specified in this AD.

The repetitive inspection interval is at 100 hours time-in-service (TIS). After examining the information related to this subject, the FAA has determined that the rivets should not become loose within 100 hours TIS if they were not found loose or replaced during the last inspection. This will not put an undue burden on low usage airplanes of having to repetitively inspect every 3 calendar months if the airplanes had been rarely or never utilized.

Cost Impact

The FAA estimates that 13 airplanes in the U.S. registry will be affected by the initial inspection, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $780, or $60 per airplane. These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplanes.

If loose rivets are found and replacement is necessary, the FAA estimates that it will take approximately 8 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Replacement rivets will be supplied by Dornier at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $480 per airplane where loose rivets are found.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–06 Dornier-Werke G.M.B.H.: Amendment 39–10892; Docket No. 97–CE–137–AD.

Applicability: Model Do 27 Q–6 airplanes, all serial numbers, 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 in the body of this AD, unless already accomplished.

To prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service (TIS), inspect the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness. Accomplish these inspections in accordance with the PROCEDURE section of Dornier Service Bulletin (SB) No. 1140–0000, Date of Issue: September 29, 1995.

(b) If loose rivets are found during any inspection required in paragraph (a) of this AD, prior to further flight, replace any loose rivets in accordance with the PROCEDURE section of Dornier SB No. 1140–0000, Date of Issue: September 29, 1995.

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

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

(e) Questions or technical information related to Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995, should be directed to Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D-82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection and replacement required by this AD shall be done in accordance with Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995. 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 Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 96–271 Daimler-Benz Aerospace/Dornier, Effective Date: October 10, 1996.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31009 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–299–AD; Amendment 39–10903; AD 98–24–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102 and –103 series airplanes, that currently requires a one-time inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. This amendment establishes repetitive intervals for the inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer. This amendment also revises the applicability of the existing AD to include certain additional airplanes, and to exclude certain other airplanes. 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 strength capability and consequent failure of the horizontal stabilizer, which could result in loss of controllability of the airplane.

DATES: Effective December 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–299–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 5, 1998, the FAA issued AD 98–05–03, amendment 39–10389 (63 FR 11987, March 12, 1998), applicable to certain Bombardier (formerly de Havilland) Model DHC–8–102 and –103 series airplanes, to require a one-time inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane.

Actions Since Issuance of Previous Rule

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that, during the one-time inspection performed in accordance with AD 98–05–03 and the parallel Canadian airworthiness directive CF–98–01, disbonding of doublers and stringers from the upper and lower skin of the horizontal stabilizer was detected on several Model DHC–8–102 and –103 series airplanes. Because these airplanes were close together in serial number, the problem of disbonding was attributed to discrepancies in the bonding process on a single batch of skin panels installed on certain Bombardier Model DHC–8–102 and –103 series airplanes.

As a result of these findings, TCA issued Canadian airworthiness directive CF–98–24, dated August 19, 1998, to require repetitive ultrasonic inspections to detect disbonding of the upper and lower skin panels of the horizontal stabilizer. During repeat inspections performed in accordance with that airworthiness directive, disbonding was detected on several airplanes on which no disbonding was detected during the initial inspection.

Based on the information provided by TCA, the FAA has determined that the one-time inspection required by AD 98–05–03 may not be adequate to detect disbonding of the upper and lower skin panels of the horizontal stabilizer and, therefore, may not be providing an adequate level of safety for the transport airplane fleet.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 98–05–03 to require repetitive ultrasonic inspections to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. In addition, this AD also revises the applicability of the existing AD to include certain additional airplanes, and to exclude certain other airplanes. This AD also requires that operators report inspection results, both positive and negative findings, to Bombardier.

Interim Action

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

Differences Between This Rule and the Foreign Airworthiness Directive

Operators should note that the parallel Canadian airworthiness directive CF–98–24 specifies that any disbonding that is detected that is beyond the local disbonding limits specified in de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996, shall be repaired prior to further flight. However, this AD requires that all disbonding, whether it is within or beyond the limits, be repaired prior to further flight. This AD also specifies that disbonding that exceeds the limits specified in the PSM must be repaired in accordance with a method approved by the FAA.

Explanation of Applicability

Operators should note that AD 98–05–03 and parallel Canadian airworthiness directive CF–98–01, dated February 19, 1998, are applicable to Model DHC–8–102 and –103 series airplanes having serial numbers 003 through 050 inclusive. Since the issuance of AD 98–05–03, TCA has advised the FAA that the serial numbers of the airplanes may differ from the Canadian Aviation Products (CAP) serial number of the horizontal stabilizer. Therefore, it may be necessary for operators to check the data plate located on the left side of the horizontal stabilizer to determine the serial number of the horizontal stabilizer. Also, the applicability of Canadian airworthiness directive CF–98–24 includes additional airplanes. For these reasons, this AD (and parallel Canadian airworthiness directive CF–98–24) is applicable to Model DHC–8–100 and –300 series airplanes equipped with a CAP horizontal stabilizer having serial numbers CAP 003 through CAP 214 inclusive.

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–299–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 removing amendment 39–10389 (63 FR 11987, March 12, 1998), and by adding a new airworthiness directive (AD), amendment 39–10903, to read as follows:

98–24–18 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10903. Docket 98–NM–299–AD. Supersedes AD 98–05–03, Amendment 39–10389.

Applicability: Model DHC–8–100 and –300 series airplanes, equipped with Canadian Aviation Products (CAP) horizontal stabilizers having Serial Numbers CAP 003 through CAP 214 inclusive, certificated in any category.

Note 1: It may be necessary to check the data plate on the left side of the horizontal stabilizer to determine the serial number of the horizontal stabilizer, because the serial number of the horizontal stabilizer may not be the same as the airplane serial number.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(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 reduced strength capability and consequent failure of the horizontal stabilizer, which could result in loss of controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–05–03

Note 3: Accomplishment of the actions required by paragraph (a) of this AD is not intended to supersede the ongoing requirements of the Airworthiness Limitation identified in the Maintenance Review Board (MRB) report as Task 5500/01.

(a) For Model DHC–8–102 and –103 series airplanes having Serial Numbers 003 through 050 inclusive: Perform a one-time ultrasonic bond inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996.

(1) For airplanes having Serial Numbers 010 through 040 inclusive: Inspect within 20 flight cycles or 7 days after March 17, 1998 (the effective date of AD 98–05–03, amendment 39–10389), whichever occurs first.

(2) For airplanes having Serial Numbers 003 through 009 inclusive and 041 through 050 inclusive: Inspect within 60 flight cycles or 7 days after March 17, 1998, whichever occurs first.

(b) If any disbonding is found during the inspection required by paragraph (a) of this AD: Prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) If the disbonding is below (smaller than) the limits specified in the PSM, no further action is required by this paragraph.

(2) If the disbonding is within the limits specified in the PSM, repair the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3.

(3) If the disbonding exceeds the limits specified in the PSM or if a repair is not provided by the PSM, repair the disbonded area in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Note 4: Where differences between this AD and the parallel Canadian airworthiness directive exist, this AD prevails.

(c) Within 2 days after performing the inspection required by paragraph (a) of this AD: Submit a report of inspection findings, regardless of the results, to the Manager, New York ACO, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; fax (516) 568–2716. The report must include the airplane serial number, the stringer number, and the extent (length or surface area) of disbonding. For inspections performed after the effective date of this AD, reports also must include the horizontal stabilizer CAP number. (Operators may follow the guidelines provided in Figure 2 of de Havilland PSM 1–8–7A for reporting requirements.) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

(d) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 003 through CAP 214 inclusive: Perform an ultrasonic bond inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, in accordance with de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 003 through CAP 050 inclusive: Inspect within 1 month after the effective date of this AD, unless accomplished within 1 month prior to the effective date of this AD.

(i) If no disbonding is detected, repeat the inspection one time within 14 months after the most recent inspection, but no earlier than 12 months after the most recent inspection. Thereafter, repeat the inspection at intervals not to exceed 2 years after the most recent inspection.

(ii) If any disbonding is detected, prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Repair of the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3 constitutes terminating action for the repetitive inspection requirements specified in paragraph (d)(1)(i) of this AD.

(2) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 051 through CAP 214 inclusive: Inspect at the next regularly scheduled maintenance period, but no later than 90 days after the effective date of this AD, unless the inspection was accomplished within 10 months prior to the effective date of this AD.

(i) If no disbonding is detected, repeat the inspection thereafter at intervals not to exceed 2 years. For airplanes that were inspected within 10 months prior to the effective date of this AD, repeat the inspection at an interval not to exceed 2 years after the most recent inspection, and thereafter at intervals not to exceed 2 years.

(ii) If any disbonding is detected, prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Repair of the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3 constitutes terminating action for the repetitive inspection requirements specified in paragraphs (d)(2)(i) of this AD for the repaired area.

(e) For any inspection performed in accordance with paragraph (d) of this AD, submit a report of inspection findings, regardless of the results, to Bombardier Aerospace Regional Aircraft Technical Services, phone (416) 375–4000, fax (416) 375–4539. Submit the report at the time specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable. The report must include the airplane serial number, horizontal stabilizer CAP number, and the extent (length or surface area) of disbonding. (Operators may follow the guidelines provided in Figure 2 of de Havilland PSM 1–8–7A for reporting requirements.) Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection performed after the effective date of this AD: Submit a report within 7 days after the inspection.

(2) For inspections performed within 1 month prior to the effective date of this AD, as specified in paragraph (d)(1) of this AD: Submit a report within 7 days after the effective date of this AD.

(3) For inspections performed within 10 months prior to the effective date of this AD, as specified in paragraph (d)(2) of this AD: Submit a report within 7 days after the effective date of this AD.

(f)(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, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(f)(2) Alternative methods of compliance, approved previously in accordance with AD 98–05–03, amendment 39–10389, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–98–24, dated August 19, 1998.

(h) This amendment becomes effective on December 8, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31178 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–20–AD; Amendment 39–10900; AD 98–24–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Model 204B, 205A, 205A–1, 205B, and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron Model 204B, 205A, 205A–1, and 212 helicopters, that currently establishes a retirement life for the main rotor masts (masts) and main rotor trunnions (trunnions) based on time-in-service (TIS) and types of operations. This amendment adds Model 205B helicopters to the applicability; requires creation of component history cards or equivalent records using a Retirement Index Number (RIN) system; establishes a system for tracking increases to the accumulated RIN; and establishes a maximum accumulated RIN for certain masts and trunnions. This amendment is prompted by an accident involving a Model 205A–1 helicopter, in which a mast failure caused a separation of the main rotor from the helicopter. The actions specified by this AD are intended to prevent fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter.

DATES: Effective December 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles C. Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On December 28, 1988, the FAA issued AD 89–02–07, Amendment 39–6112 (54 FR 1338, January 13, 1989) and on September 19, 1989, issued revised AD 89–02–07 R1, Amendment 39–6339 (54 FR 40381, October 2, 1989), to establish a retirement life for certain masts and trunnions based on TIS and types of operations. Those actions were prompted by results of fatigue stress tests and fatigue analysis of the mast and trunnion under ground-air-ground (GAG) and repeated heavy lift (RHL) loading conditions. On June 27, 1997, the FAA issued priority letter AD 97–14–12 to supersede AD 89–02–07 as revised by AD 89–02–07 R1 to establish retirement lives for certain masts and trunnions that utilize a Retirement Index Number (RIN) system. Exceeding the retirement life of the mast or

trunnion could result in fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter.

Since the issuance of AD 89–02–07 and AD 89–02–07 R1, the manufacturer has issued the following service bulletins to establish retirement lives for certain masts and trunnions:

- Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, which is applicable to Model 205A–1 helicopters;
- Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, which is applicable to Model 205B helicopters; and
- Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, which is applicable to Model 212 helicopters.

Also, since the issuance of the earlier AD's, there has been one accident involving a Model 205A–1 helicopter, in which a mast failure caused a separation of the main rotor from the helicopter. The helicopter, which had been utilized in external load lift operations, was performing an external load lift operation at the time of the accident. A subsequent metallurgical examination revealed that the mast had fractured as a result of fatigue. Analyses and fatigue testing has confirmed that the retirement lives of the mast and trunnion are more accurately assessed by monitoring the number of torque events and time-in-service (TIS) incurred by the helicopter rather than by monitoring only TIS. Exceeding the retirement life of the mast or trunnion could result in fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter. Additionally, the FAA has determined that Model 205B helicopters should be added to the applicability.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 204B, 205A, 205A–1, 205B, and 212 helicopters of the same type design, this AD supersedes AD 89–02–07 as revised by AD 89–02–07 R1 and AD 97–14–12 to require, before further flight, creation of component history cards or equivalent records using a RIN system for certain masts and trunnions; to establish a system for tracking increases to the accumulated RIN; and to establish retirement lives for the mast and trunnion for each of the affected model helicopters. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the aircraft. Therefore, the actions are required before further flight, and this AD must be issued immediately.

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–20–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 that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6112 (54 FR 1338, January 13, 1989), Amendment 39–6339 (54 FR 40381, October 2, 1989) and by adding a new airworthiness directive (AD), Amendment 39–10900, to read as follows:

AD 98–24–15 Bell Helicopter Textron: Amendment 39–10900. Docket No. 97–SW–20–AD. Supersedes AD 89–02–07, Amendment 39–6112, Docket No. 87–ASW–63; AD 89–02–07 R1, Amendment 39–6339, Docket No. 87–ASW–63; and priority letter AD 97–14–12, Docket No. 97–SW–20–AD.

Applicability: Model 204B, 205A, 205A–1, 205B, and 212 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority

provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent fatigue failure of the main rotor mast (mast) or main rotor trunnion (trunnion), and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 204B helicopters:

(1) Create component history cards or equivalent records for the mast, part number (P/N) 204–011–450–001, –007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion as follows:

(i) For mast, P/N 204–011–450–001, multiply the total time-in-service (TIS) on the mast to-date by 50 (if result contains a decimal point, round-off to the next higher whole number).

(ii) For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the total TIS on the part to-date by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (a)(1) and (a)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs that were performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external load lift, or increase the RIN by 2 for each external load lift operation in which the load is picked up at one elevation and released at another elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–001, on or before attaining 6,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(5) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(b) For Model 205A and 205A–1 helicopters:

(1) Create component history cards or equivalent records for the mast, part numbers (P/N) 204–011–450–007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion. For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, or 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (b)(1) and (b)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs that were performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 2 for each takeoff performed.

(ii) Increase the RIN by 2 for each external load lift, or increase the RIN by 4 for each external load lift operation in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(c) For Model 205B helicopters:

(1) Create component history cards or equivalent records for the mast, P/N 204–011–450–007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion. For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraph 1, 2, or 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (c)(1) and (c)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed, and at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(i) Increase the RIN by 5 for each takeoff performed.

(ii) Increase the RIN by 5 for each external load lift, or increase the RIN by 10 for each external load lift in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(d) For Model 212 helicopters:

(1) Create component history cards or equivalent records for the mast, P/N 204–011–450–007, –105, –113, or –119 and trunnion, P/N 204–011–105–001 or –103.

(2) Determine and record on the component history card or an equivalent record the accumulated RIN to-date on the mast and trunnion as follows:

(i) For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(ii) For mast, P/N 204–011–450–113 or –119, and trunnion, P/N 204–011–105–103, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, or 3 of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, by 21.2 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (d)(1) and (d)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 5 for each takeoff performed.

(ii) Increase the RIN by 5 for each external load lift, or increase the RIN by 10 for each external load lift in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(5) Remove the mast, P/N 204–011–450–113 or –119, or trunnion, P/N 204–011–105–103, on or before attaining 13,000 hours TIS or an accumulated RIN of 275,000, whichever occurs first.

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

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

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

(g) This AD revises the Airworthiness Limitations sections of the maintenance manuals by establishing a new retirement life for the affected masts and trunnions as follows:

Masts: P/N 204–011–450–001—6,000 hours TIS or 300,000 RIN whichever occurs first.

P/N 204–011–450–007 or P/N 204–011–450–105—15,000 hours TIS or 300,000 RIN, whichever occurs first.

P/N 204–011–450–113 or P/N 204–011–450–119—13,000 hours TIS or 275,000 RIN, whichever occurs first.

Trunnions: P/N 204–011–105–001—15,000 hours TIS or 300,000 RIN, whichever occurs first.

P/N 204–011–105–103—13,000 hours TIS or 275,000 RIN, whichever occurs first.

(h) The actions shall be done in accordance with:

- Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, which is applicable to Model 205A and 205A–1 helicopters;
- Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, which is applicable to Model 205B helicopters; and
- Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, which is applicable to Model 212 helicopters.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 8, 1998.

Issued in Fort Worth, Texas, on November 13, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31195 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–17]

Amendment of Class E Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Grand Junction, CO, Class E airspace by providing additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at Walker Field Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–17, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On September 14, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Grand Junction, CO, Class E airspace area (63 FR 49052). This revision provides the additional airspace necessary to encompass the new GPS Runway 11 and the GPS Runway 29 SIAPs to the Walker Field Airport, Grand Junction, CO. This amendment adds a small Class E area extension to the present airspace in order to accommodate a slightly larger flying area for the SIAPs. In the notice of proposed rulemaking action, the coordinates for the Grand Junction Localizer were inadvertently left out of the legal description for Grand Junction. This error is corrected herein. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Grand Junction, CO, by providing the additional airspace necessary to fully contain new flight procedures at Walker Field Airport. This modification of airspace adds a small Class E area extension to the present airspace in order to accommodate a slightly larger flying area for the SIAPs. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Walker Field Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM CO E5 Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07′21″N, long. 108°31′36″W)
Grand Junction VORTAC
(Lat. 39°03′34″N, long. 108°47′33″W)
Grand Junction Localizer
(Lat. 39°07′04″N, long. 108°30′48″W)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.3 miles northeast of the VORTAC, and within 1.8 miles south and 9.2 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast; that airspace extending upward from 1,200 feet above the surface within a 30.5 mile radius of the Grand Junction VORTAC, within 4.3 miles each side of the Grand Junction VORTAC 166° radial

extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within 4.3 miles northeast and 4.9 miles southwest of the Grand Junction ILS localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course and the Grand Junction VORTAC 318° radial.

* * * * *

Issued in Seattle, Washington, on November 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–31214 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On April 16, 1998, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Navistar International Transportation Corporation. The Commission now grants the petition and determines that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Navistar International Transportation Corporation.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Myra Howard, Attorney, PC–H–238, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission

Order Granting Exemption In the Matter of a Petition for Exemption from the Trade Regulation. Rule Entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' Filed by Navistar International Transportation Corporation.

On April 16, 1998, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Navistar International Transportation Corporation (''Navistar''). Navistar manufactures heavy-duty and medium-duty trucks, truck parts, and military tractors, and enters into distributorship agreements with businesspeople throughout the United States to sell and service Navistar's trucks and parts. The petition sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'').

In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, and invited public comment during a 60-day period ending June 15, 1998. No comments were received. After reviewing the petition, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is ''necessary to prevent the unfair or deceptive act or practice to which the rule relates.'' If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor has a relative lack of business experience and sophistication;

(2) The investor has inadequate time to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance exists in which the prospective franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule requires franchisors to provide investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for a pattern or practice of abuse are absent; thus, there is no likelihood of unfair or deceptive acts or practices in the appointment of its truck dealership franchises.

The petition demonstrates that potential Navistar dealers are and will continue to be a select group of highly sophisticated and experienced businesspeople; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We not in particular that Navistar has only about 450 dealers; that prospective Navistar dealers usually have years of experience in truck or other heavy duty equipment sales; that investment costs for Navistar dealerships are approximately $1 million; and that prospective dealers participate in an extensive application and approval process, lasting anywhere from four months to a year, during which time a good deal of information is exchanged between the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on eight prior occasions since 1980, and found no evidence or likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new truck dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of Navistar dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of truck dealer

franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Navistar International Transportation Corporation.

It is so ordered.

By the Commission.

Issued: November 10, 1998.

List of Subjects in 16 CFR Part 436

Trade practices and franchising.

Donald S. Clark,

Secretary.

[FR Doc. 98–31203 Filed 11–20–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 98N–0394]

RIN 0910–ZA14

Medical Devices; Investigational Device Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the Investigational Device Exemptions (IDE) regulation. The regulatory changes are intended to reflect amendments to the Federal Food, Drug, and Cosmetic Act (the act) by the FDA Modernization Act of 1997 (FDAMA). These amendments provide that the sponsor of an IDE may modify the device and/or clinical protocol, without approval of a new application or supplemental application, if the modifications meet certain criteria and if notice is provided to FDA within 5 days of making the change. The rule also defines the credible information to be used by sponsors to determine if the criteria are met.

EFFECTIVE DATE: February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

Experience has shown that during the course of a clinical investigation, the sponsor of the study will often want or need to make modifications to the investigational plan, including changes to the device and/or the clinical protocol. These changes may be simple modifications, such as clarifying the instructions for use, or they may be significant changes, such as modifications to the study design or device design.

The IDE supplement regulation that has been effect since 1985 (hereinafter referred to as the ''existing regulation''), § 812.35(a) (21 CFR 812.35(a)), states in part:

A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan that may affect its scientific soundness or the rights, safety, or welfare of subjects and (2) obtain FDA approval under § 812.30(a) of any such change, and IRB approval when the change involves the rights, safety, or welfare of subjects (see §§ 56.110 and 56.111), before implementation. * * *

Under § 812.25 *Investigational plan* (21 CFR 812.25), the investigational plan includes: (1) The purpose of the study, (2) the clinical protocol, (3) a risk analysis, (4) a description of the investigational device, (5) monitoring procedures, (6) labeling, (7) informed consent materials, and (8) institutional review board (IRB) information. Although written guidance on the types of modifications that can be made without prior FDA approval has not previously been developed, the agency has permitted changes to all parts of the investigational plan, without new or supplemental IDE application approvals, if the changes did not affect the scientific soundness of the plan or the rights, safety, or welfare of the subjects, and if such changes were reported to FDA in the upcoming annual report under § 812.150(b)(5) (21 CFR 812.150(b)(5)).

On November 21, 1997, the President signed into law FDAMA. Section 201 of FDAMA (Pub. L. 105–115) amended the act by adding new section 520(g)(6) to the act (21 U.S.C. 360j(g)(6)). Section 520(g)(6) of the act permits, upon issuance of a regulation, certain changes to be made to either the investigational device or the clinical protocol without prior FDA approval of an IDE supplement. Specifically, this section of the statute permits:

(i) developmental changes in the device (including manufacturing changes) that do not constitute a significant change in design or in the basic principles of operation and that are made in response to information gathered during the course of an investigation; and

(ii) changes or modifications to clinical protocols that do not affect—

(I) the validity of the data or information resulting from the completion of an approved protocol, or the relationship of likely patient risk to benefit relied upon to approve a protocol;

(II) the scientific soundness of an investigational plan submitted [to obtain an IDE]; or

(III) the rights, safety, or welfare of the human subjects involved in the investigation.

The existing IDE regulation and the new statute both permit certain changes to be made to the investigational plan without prior agency approval. FDA views the changes and modifications allowed under section 520(g)(6) of the act as consistent with the way the agency has previously interpreted existing § 812.35(a).

Section 520(g)(6) of the act, as added by FDAMA, also specifies that the implementing rule provide that such changes or modifications may be made without prior FDA approval if the IDE sponsor determines, on the basis of credible information (as defined by the Secretary of Health and Human Services (the Secretary)) that the previous conditions are met and if the sponsor submits, not later than 5 days after making the change or modification, a notice of the change or modification. Lastly, section 520(g)(6) of the act requires that FDA issue a final regulation implementing this section no later than 1 year after the date of enactment of FDAMA.

On July 15, 1998 (63 FR 38131), FDA issued a proposal to implement section 520(g)(6) of the act. FDA provided interested persons an opportunity to comment on the proposed rule by September 28, 1998. FDA received comments from five entities; one medical device manufacturer's association, two medical device manufacturers, one law firm, and one consumer. Most of the comments stated that the proposed regulation increased the economic and regulatory burden and lacked flexibility compared to the existing regulation. FDA has revised the proposed regulation in several significant respects to address these concerns. The following is a summary of the comments and FDA's response to them.

II. Summary and Analysis of Comments and FDA's Responses

A. General Comments

1. Several comments objected to FDA's proposal because it would require that notices be submitted within 5 days of implementing protocol and device changes that had previously been

submitted in annual reports under the existing § 812.35(a)(1). Comments stated that the regulation should instead have required 5-day notices for changes that were formerly submitted as IDE supplements. These comments asserted that the proposed rule was not consistent with the intent of the statute which was to reduce the burden on industry by decreasing the number of submissions requiring prior agency approval. Another comment contended that submitting a notice within 5 days of implementation of a change rather than in an annual report would pose a regulatory and economic burden for industry.

FDA recognizes that some of the protocol and device changes that were previously submitted in IDE annual reports will now need to be submitted in a 5-day notice under the new regulation. For the reasons described in the following paragraphs, however, FDA believes that the language in new section 520(g)(6) of the act clearly requires this, but does not believe that the new regulation will impose any appreciable additional burden.

Prior to the enactment of section 520(g)(6) of the act, the criteria that had been used to determine whether a change to an investigational plan required approval of an IDE supplement were described in existing § 812.35(a)(1). This section of the IDE regulation required a supplement if the change to the investigational plan ''may affect its scientific soundness or the rights, safety, or welfare of such subjects.'' All changes that were deemed not to affect scientific soundness or the rights, safety, or welfare of the subjects could be implemented without FDA approval of an IDE supplement, and instead were reported to the agency in an annual report under § 812.150(b)(5).

As stated in the preamble to the proposed rule, the agency has permitted changes to all parts of the investigational plan, including the device, manufacturing process, and clinical protocol, without new or supplemental IDE application approvals if the changes were made in compliance with existing § 812.35(a)(1) and if the changes were reported to FDA in the upcoming annual report. Because written guidance specifying the types of modifications that could be made without prior approval has never been issued, there was some inconsistency in the determination of which types of changes could be permitted without the submission of a supplement. Therefore, some changes which may have met the criteria for submission in an annual report were submitted for prior approval in an IDE supplement.

Section 520(g)(6) of the act, in describing the types of protocol changes that were to be subject to 5-day notices, incorporated verbatim the ''scientific soundness'' and ''rights, safety, or welfare'' criteria in existing § 812.35(a)(1) that distinguished those changes that required prior approval from those that could have been submitted in an annual report. This section of the act also sets forth additional criteria for changes that would qualify for implementation with a 5-day notice. These additional criteria are consistent with the criteria in the existing regulation that have been used to determine the effect of a change on the scientific soundness of the investigational plan and the rights, safety, and welfare of subjects. Thus, the language in section 520(g)(6) of the act requires that some changes that had previously been submitted in annual reports will now need to be submitted within 5 days of implementation.

FDA disagrees that the new regulation will be more burdensome for industry. Section 520(g)(6) of the act and the new implementing regulation reduce the burden on industry in two important ways. First, section 520(g)(6) of the act makes mandatory FDA's previous practice of permitting certain changes to be made to the investigational plan without prior agency approval. Secondly, this regulation provides clarification of the types of changes that could be implemented without prior agency approval, thus eliminating the submission of IDE supplements that are not needed. For example, prior to this implementing regulation, an IDE supplement may have been submitted for any materials change to an investigational device. The new regulation, however, clarifies that approval of a supplement would only be needed if the materials change represents a significant change in design (e.g., new risks) or basic principles of operation.

Finally, FDA disagrees that notifying the agency of a change within 5 days of implementation, rather than in an annual report, will pose a regulatory and economic burden on industry. FDA is aware that submitting a notice within 5 days, as required by section 520(g)(6)(B)(ii) of the act, represents a much shorter response time compared to submission in an annual report. FDA does not believe, however, that this reduced timeframe will impose any appreciable additional burden to industry as the evidence used to determine whether a change may be made under an annual report or the 5-day notice provision is the same, and in both cases, would need to be generated and evaluated before the change is implemented.

2. One comment stated that section 520(g)(6) of the act should be interpreted to allow a sponsor to make device changes that significantly improve safety or effectiveness, yet do not constitute significant changes in design or in the basic principles of operation under the 5-day notice provision.

FDA agrees that section 520(g)(6) of the act allows a sponsor to make device changes intended to enhance significantly safety or effectiveness without submitting an IDE supplement, if the developmental changes in a device do not constitute significant changes in design or in the basic principles of operation. Although the comment was not entirely clear, it also seems to suggest that any change intended to enhance safety or effectiveness should not require an IDE supplement. If this were the suggestion, FDA does not agree. Consistent with all other device statutory and regulatory product approval provisions, section 520(g)(6) of the act does not condition the submission of an IDE supplement on whether a change will enhance safety or effectiveness. Section 520(g)(6) of the act conditions the use of the 5-day notice provision only on whether the change is a significant change in the design or basic principles of operation. An interpretation that 5-day notices are allowed any time a sponsor intends a change to enhance safety or effectiveness would not only be contrary to the language in section 520(g)(6) of the act, it would constitute a drastic change in FDA's longstanding position that the statute and regulations require either a new premarket notification, new premarket approval application, or new IDE for certain types of device modifications regardless of whether the sponsor believes the changes enhance safety or effectiveness. Manufacturers make most modifications with the intention and belief that the change will make a safer and/or more effective product. This factor does not obviate the need for FDA to review changes to ensure that there is scientific support to show that safety and effectiveness have not been compromised.

3. One comment asked that an open public meeting be convened to discuss the proposed rule with knowledgeable representatives of all affected entities.

FDA disagrees that such a meeting is necessary. Detailed comments were received on virtually every aspect of the proposed regulation, and the agency has significantly revised the rule in accordance with the concerns that were expressed in the comments. As

discussed in detail in the following paragraphs, the final rule provides for more flexibility than the proposed rule and addresses the concerns regarding the economic and regulatory burden posed by the proposed regulation.

B. Proposed § 812.35(a)(1) Changes Requiring Prior Approval

4. One comment stated that the first sentence of this proposed section is awkward and suggested that it be revised to read:

Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must receive approval of a supplemental application under § 812.30(a), and IRB approval when appropriate under 21 CFR Part 56, prior to implementing a change to an investigational plan for a device which is subject to an approved IDE.

FDA agrees that the proposed sentence could be simplified and more clearly stated. Therefore, the agency has revised the sentence to read:

Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must obtain approval of a supplemental application under § 812.30(a), and IRB approval when appropriate (see §§ 56.110 and 56.111 of this chapter), prior to implementing a change to an investigational plan.

5. One comment objected that proposed § 812.35(a)(1) would require IDE supplements for changes where only annual reports had been required under the existing regulation. Specifically, the comment objected to the language in proposed § 812.35(a)(1) which states that a supplement is required when ''the sponsor or an investigator proposes a change in the investigational plan.'' The comment stated that the language in the existing regulation only required supplements for changes in an investigational plan that ''may affect its scientific soundness or the rights, safety, or welfare of subjects.''

FDA does not intend new § 812.35(a)(1) to require the submission of an IDE supplement for changes that would have been submitted in an annual report under the existing regulation. Proposed and final § 812.35(a)(1) states ''Except as described in paragraphs (a)(2) through (a)(4) of this section, * * *.'' Section 812.35(a)(3) and (a)(4) provide that sponsors do not have to submit an IDE supplement for changes to an investigational plan that do not affect the scientific soundness, rights, safety, or welfare of subjects, risk to benefit relationship relied upon to approve the protocol, or validity of the data. As stated in the preamble to the proposed rule, FDA considers the two additional criteria, i.e., risk to benefit relationship and validity of the data, to be consistent with the agency's general criteria under the existing regulation that permits changes to the investigational plan as long as the changes do not compromise patient rights, safety, or welfare or the integrity of the clinical trial.

C. Proposed § 812.35(a)(3)(i) Developmental Changes

6. In the proposed rule, the first sentence of § 812.35(a)(3)(i) stated ''The requirements in paragraph (a)(1) of this section regarding FDA and IRB approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) * * *.'' FDA has modified this sentence to remove the phrase ''and IRB.'' Therefore, the sentence now reads ''The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) * * *.''

The agency has modified the regulation in this manner as the proposed language indicated that IRB approval and/or notification to the IRB of device/manufacturing changes in an annual report was not required. This language not only conflicted with the language in proposed § 812.35(a)(3)(iv), but also conflicted with 21 CFR 56.108(a)(4) which indicates that IRB's may require review of changes to approved research. FDA would like to clarify that while developmental changes that are made in accordance with section 520(g)(6) of the act do not need FDA approval, they must still be reported to the IRB in the sponsor's annual report. Moreover, the changes may be subject to IRB review under § 56.110 (21 CFR 56.110).

D. Proposed § 812.35(a)(3)(iii)(A) Definition of Credible Information (Device/Manufacturing Changes)

7. In this section of the proposed regulation, FDA defined ''credible information,'' upon which sponsors are to rely in assessing device/manufacturing changes, as the information generated under the design control provisions § 820.30 (21 CFR 820.30) of the Quality System (QS) Regulation. (The QS regulation implements FDA's good manufacturing practice (GMP) authority of section 520(f) of the act.) One comment contended that the agency does not have the authority to require IDE sponsors to comply with design controls. Specifically, the comment said that while § 812.1(a) (21 CFR 812.1(a)) states that ''investigational devices are exempt from section 520(f) of the Act, except for the requirements under 21 CFR 820.30, most device counsels advise their clients that this regulation does not take precedence over the explicit exemption from section 520(f) found in section 520(g)(2)(A) of the statute.''

FDA does not agree. It interprets the act as authorizing it to require IDE sponsors to comply with the design control procedures, as stated in § 812.1(a). Contrary to the comment's assertion, section 520(g)(2)(A) of the act does not categorically exempt investigational devices from all GMP requirements. Section 520(g)(2)(A) of the act states that FDA shall issue regulations that ''prescribe procedures and conditions under which devices intended for human use *may* upon application be granted an exemption from the requirements of * * * subsection (f) of this section * * *'' (Emphasis added). Section 520(g)(2)(A) of the act does not mandate that FDA issue regulations that exempt investigational devices from the act's other requirements, but rather it allows FDA discretion in issuing IDE's from other statutory requirements. Under this discretionary authority, FDA has chosen to retain design control requirements for investigational devices as stated in § 812.1(a). The agency believes that it would be illogical to exclude investigational devices used in clinical trials from the design control provision of the QS regulation because clinical trials are an integral part of the device development process.

8. Other comments generally supported the use of design controls but stated that, while design controls may be one acceptable method of supporting developmental changes in a device, sponsors should not be limited to or required to use design controls to support this type of change. Two comments suggested that FDA should follow more closely the definition of ''credible information'' in the legislative history, namely: '''credible information' shall mean information upon which a reasonable person in a manufacturer's position would rely upon in making a decision to change or modify an investigational device'' (Food and Drug Administration Modernization and Accountability Act of 1997, S. Rept. No. 105–43, at 32 (July 1, 1997)). One comment suggested that the definition be revised to include ''any other reasonable and reliable means,'' while a second comment recommended ''literature, design controls, validation studies, or other appropriate means.''

FDA agrees that limiting the definition of credible information for developmental changes for a device to the information generated under design

controls procedures is overly restrictive and recognizes that other information may serve as the credible information. Therefore, rather than limit the definition of credible information for device/manufacturing changes to design controls, the agency has revised the definition to also include information such as preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during the trial or from marketing experience gained in other countries. FDA believes this new definition is consistent with the legislative history discussing the term ''credible information,'' but provides more specific guidance to IDE sponsors.

9. Several other comments questioned specific aspects of the design control process, such as the need for the completion of all verification and validation testing prior to implementation of the change, the apparent requirement that a device's original design input requirements cannot be modified, and FDA's definition of ''new types of risks.''

FDA agrees, in part, with the comments. With regard to the assertion that FDA is requiring that all verification and validation testing be completed before a device/manufacturing change is implemented, the agency recognizes that verification and validation testing depends upon the type of change that is made, and that for some minor changes, no such testing may be needed. In addition, the agency acknowledges that the clinical trial itself may be part of the validation testing. Thus, it would be impractical to require that this testing, or other verification or validation testing that would reasonably occur after the clinical trial, be completed before a device/manufacturing change is implemented. In response to the comments, the regulation has been modified to state ''verification and validation testing, as appropriate.''

FDA believes that the comment that asserted that the proposed regulation requires that a device's original design input requirements remain unchanged, reflects a misunderstanding of the proposed regulation. FDA recognizes that if a sponsor is modifying the device design and/or the manufacturing process, the design input requirements would need to be modified until the design is finalized. Thus, the sponsor should conduct the appropriate verification and validation testing and this testing should indicate that the design outputs meet the modified design input requirements. The agency believes that this explanation will serve to clarify the issue and no change to the regulation is necessary.

With respect to the agency's interpretation of the term ''new types of risks,'' FDA is providing the following clarification. In the preamble to the proposed rule, FDA stated that if a sponsor determined that no new types of risks were introduced by the device/manufacturing change and the subsequent verification and validation testing demonstrated that the design outputs met the design input requirements, then the change could be made without prior agency approval. An example of two materials changes in a catheter was provided to illustrate this. One change, from polyvinylchloride (PVC) to silicone, would be permitted under a 5-day notice because no new types of risks resulted from the change; and one, from PVC to latex, would require prior approval because a new type of risk, i.e., possible latex sensitivity, would result from the change. A comment stated that the example was unclear because changing from PVC to silicone and from PVC to latex presented the same two types of risks (biocompatibility and materials sensitivity). The comment requested that a definition of ''new types of risks'' be provided since, in the example, the agency failed to recognize materials sensitivity in the PVC to silicone change as a new type of risk.

FDA acknowledges that this example was not clear and that for both materials changes, materials sensitivity should have been identified as a new type of risk. The agency agrees with the comment's assessment of ''new types of risks'' in the previous example. Because the evaluation of whether new types of risks are presented will vary depending on the type of device and the type of change, FDA does not believe that this term should be defined in the regulation.

10. One comment objected to a statement in the preamble that indicated that manufacturers should also conduct other testing that addresses concerns that may have been identified to the IDE sponsor in a ''recognized standard.'' The comment stated standards are strictly voluntary and FDA should not require manufacturers to conform with them.

FDA agrees that standards are voluntary and thus, FDA cannot require IDE sponsors to conform to them. FDA did not state, however, that the sponsor is required to conform to a voluntary standard, instead FDA stated only that a sponsor ''*should* conduct any other performance testing that addresses a safety or performance concern that may have been identified to the IDE sponsor in a recognized standard or other agency correspondence.'' (Emphasis added). Although FDA recognizes that compliance with a voluntary standard is not required to address safety or performance concerns, compliance with standards may be one way, among others, of addressing those concerns. It should be noted, however, that if a manufacturer chooses a recognized standard as a device input requirement, the device output should meet that standard.

11. Comments were received both in support of and in opposition to the agency's reference to the guidance document entitled ''Deciding When to Submit a 510(k) for a Change to an Existing Device.'' Two comments agreed that this guidance would be helpful to sponsors when deciding what types of changes could be made under the 5-day notice provision. One comment questioned the relevance of the guidance to the proposed rule as changes that can be made to marketed devices without affecting their safety and effectiveness may not be appropriate types of changes for investigational devices. Lastly, one comment appears to have misunderstood the agency's intent in referring to the guidance. It was asserted that the document would be helpful in determining the significance of a change, but would be overly restrictive in the types of changes that would be permitted under the 5-day notice provision.

In response to the comments which opposed the agency's reference to the guidance document, FDA is offering the following clarification. As stated in section 520(g)(6)(A)(i) of the act, only those changes to the investigational device that do not constitute a significant change in design or basic principles of operation are eligible for implementation under this provision. In an effort to describe the types of device and manufacturing changes that may be eligible for implementation without FDA approval, reference was made to the 510(k) guidance document. This guidance was referenced only for its list of generic types of device and manufacturing changes that the agency believes apply to all devices, marketed or investigational. The list includes the control mechanism, principle of operation, energy type, environmental specifications, performance specifications, ergonomics of patient-user interface, dimensional specifications, software or firmware, packaging or expiration dating, sterilization, and the manufacturing process (including the manufacturing site). In referencing these types of changes, the agency was not indicating

that any specific change within a particular type would or would not be appropriate under the 5-day notice provision because changes in each of these categories could range from minor to significant depending upon the particular device, the type of modification, and the extent of the modification. FDA maintains that IDE sponsors should refer to the list as a starting point for the types of changes which may qualify for implementation under this provision. The impact of the change, however, would still need to be determined by information generated by design controls or other appropriate means to assess the significance of the change to the device design or manufacturing process and the appropriateness of a 5-day notice submission.

FDA notes, however, that it believes one type of change should be submitted in an IDE supplement. In the preamble to the proposed rule, the agency stated that it would consider any change to the basic principles of operation of a device to be highly likely to constitute a significant change requiring prior approval and solicited comments on this premise. FDA received no comments on this issue. The agency advises that it considers all changes to the basic principles of operation of a device to be significant changes that should be submitted in an IDE supplement.

E. Proposed § 812.35(a)(3)(iii)(B) Definition of Credible Information (Protocol Changes)

12. Several comments questioned the agency's definition of credible information for protocol changes as defined in proposed § 812.35(a)(3)(iii)(B). In general, the comments stated that the requirement to obtain the approval of an IRB chairperson (or designee) or of a data safety monitoring board (DSMB) will result in considerable expense, is unduly burdensome and time consuming, and is less flexible than the current regulation. The comments asserted that FDA did not adequately consider the cost of imposing such a requirement. In addition, the comments contended that section 520(g)(6)(B)(i) of the act identifies the sponsor as the party responsible for determining whether a protocol change needs FDA approval, not a third party. In addition to the general concerns, specific concerns were raised regarding the use of DSMB's. It was asserted that since DSMB's are neither required nor recognized in the IDE regulation and FDA has no regulatory authority over them, DSMB's should not be included in the agency's definition of credible information for protocol changes.

Upon further consideration of this statutory provision, the agency agrees that requiring approval of the IRB chairperson (or designee) and/or concurrence of a DSMB in the definition of credible information for protocol changes could prove more burdensome than Congress intended. FDA also agrees that the act indicates that the sponsor is responsible for initially determining if the change meets the statutory criteria. Therefore, FDA has modified the regulation to state that credible information to support changes to the clinical protocol is defined as the sponsor's documentation supporting its conclusion that the change does not have a significant impact on the study design or planned statistical analysis, and that the change does not affect the rights, safety, or welfare of the subjects. Such a determination should be made by the person in the company responsible for such decisions and should be based upon information such as peer reviewed published literature, the recommendation of the clinical investigator(s), and or data collected during the clinical trial or marketing in other countries.

As an example of this, consider a case in which preliminary information gathered during the clinical trial indicates that the inclusion/exclusion criteria should be modified to better define the target patient population. This change could be made after the sponsor concludes and documents that the change would not have a significant impact on the study design or planned statistical analysis and that the change does not affect the rights, safety, or welfare of the study subjects. Similarly, if the clinical investigators recommended that the protocol be modified to lengthen the subject followup, this change could be implemented after the previous assessments are performed that support a determination that the change is not significant.

As discussed in the preamble to the proposed rule, other examples of protocol modifications that could be made under the 5-day notice provision include: Increasing the frequency at which data or information is gathered, modifying the protocol to include additional patient observations/measurements, and modifying the secondary endpoints. Alternatively, FDA believes that the following types of protocol changes would not generally be appropriate for implementation without prior agency approval because they are likely to have a significant effect on the scientific soundness of the trial design and/or validity of the data resulting from the trial: Change in indication, change in type or nature of study control, change in primary endpoint, change in method of statistical evaluation, and early termination of the study (except for reasons related to patient safety).

FDA notes that, contrary to statements in the proposed rule (63 FR 38131 and 38134), protocol changes involving study expansions should not be made without prior agency approval. In the proposed rule, FDA stated that sponsors could increase either the number of investigational sites or study subjects participating in a clinical investigation without approval of an IDE supplement. Upon reconsideration, the agency believes that expanding the study in either manner affects the rights, safety, and welfare of the subjects. Thus, FDA believes that this type of protocol change does not meet the statutory criteria and may not be implemented without submission and approval of an IDE supplement.

Finally, it should be noted that while FDA is not requiring IRB approval or DSMB concurrence to be used as the credible information to support protocol changes, sponsors may use this information if they so wish. In addition, depending upon the type of protocol change being considered, approval by the IRB may be required under § 56.110.

F. Proposed § 812.35(a)(3)(iv) Notice of IDE Change

13. Several comments suggested that FDA should make it clear that the 5-day timeframe consists of 5-working days and not 5-calendar days, because 5-calendar days is unreasonably short and could consist of as few as 2-working days. Another comment suggested that the rule should state that the notice need only be mailed within 5 days and not necessarily received by FDA within that time.

The agency agrees with the comments regarding working rather than calendar days and has modified the regulation to indicate that the notices shall be submitted within 5-working days. FDA also agrees that sponsors have 5 days from the time a change is implemented to mail the notice. The agency disagrees, however, that the regulation should be modified because unless otherwise specified, agency timeframes already generally indicate the time to mailing rather than the time to receipt.

14. One comment suggested that the requirements for the contents of a notice of IDE change were unduly burdensome in that the statute required a notice and not a detailed description of the changes. The comment further

suggested that FDA should require only a notice of the change, while the detailed description would be reported in the annual report.

FDA disagrees with the comment. As modified in the final rule, the information to be submitted to the agency in the notice is the same information that the sponsor would have submitted in the annual report and therefore, should not represent an increased burden. The recommendation that sponsors should be permitted to submit a simple notice of the change in 5 days, followed by a full description in the annual report, would not allow the agency to review the notices in a timely fashion, as other comments asserted was critical to this provision (see section II.G of this document).

G. Proposed § 812.35(a)(3)(v) Review of the Notices

15. Several comments objected that the proposed rule did not contain any procedures or timeframes within which FDA would review and respond to the notices. The comments stated that this omission was unfair to manufacturers and would result in uncertainty that could lead to the submission of more supplements by manufacturers who wanted certainty that the data could be used in support of a premarket application. It was also asserted that the proposed approach does not serve the public health and recommended that the provision be revised to include an appropriate timeframe within which the agency would respond to the IDE sponsor if additional information to support the change is needed. Comments suggested various time periods in which FDA should respond to the notices, ranging from 5 days to 30 days.

FDA agrees, in part, with the comments. Upon reconsideration, the agency agrees that procedures should be identified for the review of the IDE notices. FDA intends to review the notices in the same timeframe and manner in which it has customarily reviewed other IDE submissions of this type, i.e, progress/annual reports. In keeping with its practice for other submissions of this type, the agency will only notify the sponsor if questions arise or additional information is needed.

FDA disagrees that a specific timeframe for review, such as a 5 or 10-day period, should be established in the final rule. The statute does not require that FDA conduct its review of the notices within a specific period of time. As stated previously, the agency will make every effort to review the notices in the same timeframe and manner as it does other IDE submissions. FDA believes that with the majority of the notices, it will be readily apparent whether the notice meets the applicable criteria. In those instances in which questions arise, the agency will address the issue as expeditiously as possible, thereby ensuring the protection of public health.

It should be noted that FDA reserves the right to request additional information if, during the course of the investigation, information becomes available (e.g., adverse events) that would cause the agency to question whether the change(s) made in accordance with § 812.35(a)(3)(i) or (a)(3)(ii) met the applicable criteria. FDA would normally only take such action if the agency believes that the modification to the device, manufacturing process, or protocol could jeopardize patient safety, the scientific soundness of the investigation, or the validity of the data resulting from the trial.

H. Proposed § 812.35(a)(4) Changes Submitted in an Annual Report

16. One comment stated that proposed § 812.35(a)(4) was difficult to understand and suggested that it be rewritten to express in the regulation the preamble's discussion of annual report requirements.

FDA agrees, in part, with the comment. The agency agrees that this section of the regulation could be simplified and has revised § 812.35(a)(4) in the final rule to more clearly indicate the types of changes to the investigational plan that are suitable for submission in an annual report. The agency disagrees, however, that the regulation should include all of the text from the preamble of the proposed rule. The discussion from the preamble of the types of changes that would be appropriate for submission in an annual report is too detailed to be included in a regulation. Furthermore, this list was intended to be illustrative rather than all inclusive; including it in the regulation would be overly restrictive.

17. One comment noted that the proposed rule failed to include a provision that would assure manufacturers that their data could be used in support of a premarket application as suggested in the legislative history. Specifically, the comment noted that the proposed rule did not reference section 515(d)(B)(iii) of the act (21 U.S.C. 360e(d)(B)(iii)), and stated that the agency should modify the regulation to state: ''FDA will accept and review all data and information that are derived in accordance with this section in determining whether to clear or approve a device for commercial distribution.'' The comment maintains that this addition to the regulation would clarify that FDA will accept and review the data if the IDE sponsor determines that no new original or supplemental IDE application was necessary prior to implementing the change.

FDA agrees that it will accept and review statistically valid and reliable data and any other information from an investigation that is conducted under section 520(g) of the act, provided that the data or information meets the conditions prescribed in section 515(d)(B)(iii). The comment suggests, however, that the decision about whether the change meets the criteria of sections 515(d)(B)(iii) and 520(g)(6) of the act rests solely with the IDE sponsor. FDA does not agree with this premise. Although section 520(g)(6) of the act states that the sponsor shall determine whether the device/manufacturing or protocol change meets the criteria for submitting a notice for FDA review and acceptance under this provision, the statute does not state that the sponsor determines whether the data resulting from the clinical trial meets the criteria for acceptance or review under section 515(d)(B)(iii) of the act. Consistent with FDA's decisions on all other clearance and approval submissions, the final determination regarding whether the application contains statistically valid and reliable information, in accordance with these sections, rests with FDA.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

IV. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Executive Order 12866 directs agencies to assess all costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the head of the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act

requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate or by the private sector, in any 1 year. The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order, and these two statutes.

FDAMA added new section 520(g)(6) of the act to permit certain changes to a device, manufacturing processes, or clinical protocols during the course of a clinical investigation without having to obtain prior FDA approval of a new IDE or an IDE supplement. In addition to specifying the types of changes to clinical studies allowed without prior approval, section 520(g)(6) of the act provides that the sponsor must provide notice within 5 days of making the change, and that the agency define, by regulation, the term ''credible information'' that the sponsor must use as a basis to decide that the types of changes meet the criteria for implementation without prior FDA approval. This final rule amends existing regulations to implement section 520(g)(6) of the act.

Several comments objected that FDA underestimated the economic effects of the proposed rule and that the proposed requirements were unduly burdensome. These comments generally stated: (1) FDA misinterpreted the statute by requiring 5-day reports for changes that previously were reported in annual reports, thereby making the reporting requirements more burdensome than those under the existing regulation; (2) FDA created an unnecessary burden by requiring IRB approval or DSMB concurrence as ''credible information'' for protocol changes, and did not take into account in its analysis the costs of requiring IRB approval or DSMB concurrence; (3) FDA created an unnecessary burden by requiring solely design control information as ''credible information'' for design and manufacturing modifications to a device; (4) FDA should allow 5-working days to mail the notice, instead of 5-calendar days, and (5) the requirements for the contents of a 5-day notice were unduly burdensome by requiring too much detail in the description of the changes.

FDA has adopted most of the comments' suggestions on ways to reduce regulatory burden and provide flexibility and believes that the resulting final rule is significantly less burdensome and more flexible than the proposed rule. The responses to the comments related to burden are discussed in detail in both sections II and V of this document, but are also described briefly in the following paragraphs.

FDA disagrees with the comment stating the 5-day notice provision should only be used for changes that were previously filed as IDE supplements. FDA believes that the statute clearly requires 5-day notices for some changes that were filed previously as annual reports, but does not believe that this presents any appreciable additional burden on manufacturers. The evidence used to determine whether a change may be made under an annual report or the 5-day notice provision is the same, and in both cases, would need to be generated and evaluated before the change is implemented. Moreover, the regulation should reduce burden by clarifying to sponsors what types of changes require prior approval, thereby eliminating the submission of unnecessary IDE supplements.

FDA agrees with comments that stated there were less burdensome ways of providing credible information for protocol changes than IRB approval or DSMB concurrence. In response to these comments, the final rule has removed IRB approval or DSMB concurrence as a basis for credible information, and instead requires documentation such as peer reviewed published literature, the recommendation of clinical investigator(s), and/or a summary of the data gathered during the clinical trial that supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. These types of information are already generated and evaluated at the time a sponsor changes a device protocol. Therefore, FDA's definition in the final rule of credible information provides flexibility and negligible additional burden in that it requires the submission of already existing evidence.

FDA also agrees with comments that suggested allowing more flexibility in the credible information required for design changes. In response to comments, the final rule allows information, other than information generated by design controls, to be used as a basis for credible information to support a design change.

FDA also agrees with the suggestion to allow 5-working days to mail the notice, instead of 5-calendar days. This will reduce burden by allowing sponsors more time to submit the notice.

FDA does not agree with the comment that the contents of the notice were unduly burdensome, and that most of the information should be submitted subsequently in an annual report. The information that is in the notice will have already been generated and evaluated at the time of the change. There is no appreciable burden in submitting information that is already on hand within a 5-day timeframe. Moreover, many comments stated that it was important that FDA advise them, within a short time of the change, if FDA did not believe that the data could be used to support a premarket application. The comment that suggested providing FDA with limited information in the notice would preclude FDA from giving such timely advice.

FDA believes that the revisions in the final rule substantially reduced the regulatory burden. The information that is now required by the final rule as a basis for credible information is the type of information that sponsors should have already generated and evaluated to fulfill their previous reporting requirements under the existing IDE and QS regulations. The only additional burden is the shortened reporting timeframe. As discussed previously, this reporting timeframe should present no appreciable burden because the contents of the submission should have been generated and evaluated before a change is made.

FDA estimates that it will receive 300 5-day reports annually, and that 200 to 300 manufacturers will submit these notices annually. FDA believes that this rule will affect a substantial number of small entities. For the reasons stated previously, however, FDA does not believe that this rule will have a significant impact on a substantial number of small entities. FDA believes that there will be some small additional cost associated with mailing, and training the persons responsible for submissions about the requirements of this rule. FDA believes that training the responsible employees will only take a few hours, and that additional mailing costs are minimal.

Accordingly, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the

aggregate or by the private sector, in any 1 year.

V. Paperwork Reduction Act of 1995

This rule contains information collection provisions which are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Medical Devices; Investigational Device Exemptions; Supplemental Applications.

Description: Section 201 of FDAMA amended the act by adding new section 520(g)(6) to the act, which permits a sponsor, based on ''credible information,'' as defined by the Secretary, to implement certain changes to an investigational device or to a clinical protocol without prior approval of an IDE supplement if the modifications meet certain criteria and if notice is provided to FDA within 5-working days of making the change. In order to implement this provision, FDA is amending § 812.35(a) to describe which types of changes may be made without prior approval and to describe the credible information to be included in a notice to FDA under this provision.

For developmental or manufacturing changes, sponsors would be required to submit credible information that consists of a summary of the information generated from the design control procedures under § 820.30, preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during the trial or from marketing. For a protocol change, the sponsor must submit credible information that consists of documentation such as peer reviewed published literature, the recommendation of the clinical investigator(s), and/or a summary of the data gathered during the clinical trial which supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. FDA will review the notices to determine whether they meet the criteria of section 520(g)(6) of the act or whether additional action is necessary to assure the protection of the public health.

Description of Respondents: Businesses or other for profit organizations.

FDA notes that it receives approximately 3,000 supplements annually for changes to IDE's. As discussed in the Analysis of Impacts in section IV of this document, FDA anticipates that it will receive approximately 300 5-day reports annually. In accordance with the statute, which requires that this rule's procedures be established 1 year from the date of enactment of FDAMA, FDA is requiring that all changes in investigational studies, including ongoing studies, that meet the criteria described in this rule, be reported in 5-day notices if those changes are implemented on or after the effective date of this rule.

FDA published the proposed rule (63 FR 38131), submitted the information collection requirements in the proposed rule to the Office of Management and Budget (OMB) for review, and invited interested persons to submit comments on the information collection requirements to OMB. Most comments discussed have an impact, directly or indirectly, on the information collection requirements. FDA has responded to these comments in detail in section II of this document.

Several comments stated that 5-day notices should be submitted only for changes that had been submitted previously in IDE supplements. These comments stated that the requirement of 5-day notices was more burdensome if it was required for changes that had been submitted previously as annual reports.

For the reasons described more fully earlier in this preamble, FDA believes that the language in section 520(g)(6) of the act clearly requires that certain changes that previously were submitted as annual reports now be submitted as 5-day notices. Nonetheless, FDA believes that the final regulation will reduce burden on industry in two ways. First, section 520(g) of the act makes mandatory, FDA's previous practice of allowing certain changes to be implemented by notification to FDA in an annual report. Second, this regulation provides clarification on the types of changes that could be implemented without prior agency approval, thus eliminating the submission of IDE supplements that are not needed.

Finally, FDA believes that the submission of a 5-day report for certain changes that previously were submitted in annual reports will not impose any appreciable additional burden on industry because both the evidence used to determine whether a change may be made under an annual report and a 5-day notice provision is the same, and would need to be generated and evaluated before the change is implemented. Accordingly, a requirement to send information that is available before the change is made within 5 days of the change, as opposed to a later time after the change, is not an appreciable additional burden.

Several comments stated that the proposed definitions of credible information necessary to support a 5-day notice were unduly burdensome. For design changes, the proposed rule stated that credible information would consist of information generated by design controls. For protocol changes, the proposed rule stated that credible information would consist of approval of an IRB, concurrence of a DSMB, or peer reviewed literature.

Many comments objected to the concurrence of IRB's and DSMB's as credible information because they stated that third party review for changes that previously had not required such review was burdensome. Some of the reasons specifically stated that FDA had not adequately considered the costs to sponsors to obtain this type of review.

In response to these comments, the final rule has eliminated the requirement for IRB approval or DSMB concurrence as evidence of credible information, and instead requires documentation such as peer reviewed published literature, the recommendation of clinical investigator(s), and/or a summary of the data gathered during the clinical trial that supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. At the time a sponsor changes a device protocol, this type of evidence is already generated and evaluated. Therefore, FDA's definition of credible information in the final rule provides flexibility and negligible additional burden in that it requires the submission of already existing evidence.

Other comments objected to the lack of flexibility in the requirement for credible evidence for design changes. These comments supported the proposal to use information generated by design controls, but stated that FDA should also allow other information. FDA has addressed these concerns in the final rule by allowing other information to be used as a basis for credible information to support a design change.

Some comments requested that FDA allow more time for the submission of reports by allowing reports to be made within 5-working days of the change instead of 5-calendar days. FDA has

stated in the preamble to this final rule that 5-working days from the change is the appropriate timeframe for submissions. This policy should allow sponsors to reduce costs by allowing them additional time to prepare notices.

One comment suggested that the requirements for the contents of a 5-day notice were unduly burdensome in that the statute required a notice and not a detailed description of the changes. The comment further suggested that FDA should require only a notice of the change while the detailed description would be reported in the annual report.

As discussed more fully earlier in the preamble of this document, FDA does not agree with this comment. As modified in the final rule, the information submitted to the agency in the 5-day notice is the same information that the sponsor would have submitted in the annual report, and therefore, should not represent an increased burden. Moreover, the submission of less information would not allow FDA to notify sponsors that changes require a full supplement until the time of the annual report, and therefore may result in sponsors wasting resources gathering data that ultimately may not be used to support a premarket application.

One comment stated that FDA's estimate of IDE changes that would be submitted each year was underestimated. This comment stated that there were 297 original IDE's filed in 1997 and it was conceivable that as many as 10 changes for each of these original IDE's could occur per year. Based on these figures, the comment stated the estimate should be 2,900 responses, instead of 300 responses stated in the proposed rule. FDA does not agree with these estimates. FDA receives approximately three supplemental filings per original submission per year. One of these submissions should always be an annual progress report. Only a small subset of the two remaining submissions, which FDA estimates as 300 for reasons described herein, would be types of changes reported in 5-day notices.

One comment stated that the annual reporting burden in the proposed rule did not take into consideration ongoing studies. FDA did take such ongoing studies into account in arriving at the estimates reported.

FDA estimates the burden for 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
812.35(a)(3)	300	1	300	10	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon a review of IDE's submitted in recent years, FDA estimates that approximately 300 notices of IDE changes will be submitted each year. Of these IDE changes, FDA estimates that 100 of these changes were previously submitted as supplements and 200 of these changes would have been submitted in annual reports. Based upon discussions with sponsors of IDE's and FDA's own experience in reviewing these types of documents, FDA estimates that it will take approximately 10 hours for a sponsor to prepare a notice of IDE change. Although this was the estimate offered in the proposed rule, FDA received comments indicating that the burden hours in the proposal were underestimated. As a result of the changes made in this final rule, the burden has decreased significantly. Thus, FDA believes that the estimate of 10 hours per submission is now accurate. FDA therefore estimates that the total annual burden for preparation of these notices will be 3,000 hours.

The information collection provisions of this final rule have been submitted to OMB for review.

Prior to the effective date of this final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and, under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 812 is amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

2. Section 812.35 is amended by revising paragraph (a) to read as follows:

§ 812.35 Supplemental applications.

(a) *Changes in investigational plan*—(1) *Changes requiring prior approval.* Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must obtain approval of a supplemental application under § 812.30(a), and IRB approval when appropriate (see §§ 56.110 and 56.111 of this chapter), prior to implementing a change to an investigational plan. If a sponsor intends to conduct an investigation that involves an exception to informed consent under § 50.24 of this chapter, the sponsor shall submit a separate investigational device exemption (IDE) application in accordance with § 812.20(a).

(2) *Changes effected for emergency use.* The requirements of paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply in the case of a deviation from the investigational plan to protect the life or physical well-being of a subject in an emergency. Such deviation shall be reported to FDA within 5-working days after the sponsor learns of it (see § 812.150(a)(4)).

(3) *Changes effected with notice to FDA within 5 days.* A sponsor may make certain changes without prior approval of a supplemental application under paragraph (a)(1) of this section if the sponsor determines that these changes meet the criteria described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, on the basis of credible information defined in paragraph (a)(3)(iii) of this section, and the sponsor provides notice to FDA within 5-working days of making these changes.

(i) *Developmental changes.* The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) that do not constitute a significant change in

design or basic principles of operation and that are made in response to information gathered during the course of an investigation.

(ii) *Changes to clinical protocol.* The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to changes to clinical protocols that do not affect:

(A) The validity of the data or information resulting from the completion of the approved protocol, or the relationship of likely patient risk to benefit relied upon to approve the protocol;

(B) The scientific soundness of the investigational plan; or

(C) The rights, safety, or welfare of the human subjects involved in the investigation.

(iii) *Definition of credible information.* (A) Credible information to support developmental changes in the device (including manufacturing changes) includes data generated under the design control procedures of § 820.30, preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during a trial or marketing.

(B) Credible information to support changes to clinical protocols is defined as the sponsor's documentation supporting the conclusion that a change does not have a significant impact on the study design or planned statistical analysis, and that the change does not affect the rights, safety, or welfare of the subjects. Documentation shall include information such as peer reviewed published literature, the recommendation of the clinical investigator(s), and/or the data gathered during the clinical trial or marketing.

(iv) *Notice of IDE change.* Changes meeting the criteria in paragraphs (a)(3)(i) and (a)(3)(ii) of this section that are supported by credible information as defined in paragraph (a)(3)(iii) of this section may be made without prior FDA approval if the sponsor submits a notice of the change to the IDE not later than 5-working days after making the change. Changes to devices are deemed to occur on the date the device, manufactured incorporating the design or manufacturing change, is distributed to the investigator(s). Changes to a clinical protocol are deemed to occur when a clinical investigator is notified by the sponsor that the change should be implemented in the protocol or, for sponsor-investigator studies, when a sponsor-investigator incorporates the change in the protocol. Such notices shall be identified as a ''notice of IDE change.''

(A) For a developmental or manufacturing change to the device, the notice shall include a summary of the relevant information gathered during the course of the investigation upon which the change was based; a description of the change to the device or manufacturing process (cross-referenced to the appropriate sections of the original device description or manufacturing process); and, if design controls were used to assess the change, a statement that no new risks were identified by appropriate risk analysis and that the verification and validation testing, as appropriate, demonstrated that the design outputs met the design input requirements. If another method of assessment was used, the notice shall include a summary of the information which served as the credible information supporting the change.

(B) For a protocol change, the notice shall include a description of the change (cross-referenced to the appropriate sections of the original protocol); an assessment supporting the conclusion that the change does not have a significant impact on the study design or planned statistical analysis; and a summary of the information that served as the credible information supporting the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects.

(4) *Changes submitted in annual report.* The requirements of paragraph (a)(1) of this section do not apply to minor changes to the purpose of the study, risk analysis, monitoring procedures, labeling, informed consent materials, and IRB information that do not affect:

(i) The validity of the data or information resulting from the completion of the approved protocol, or the relationship of likely patient risk to benefit relied upon to approve the protocol;

(ii) The scientific soundness of the investigational plan; or

(iii) The rights, safety, or welfare of the human subjects involved in the investigation. Such changes shall be reported in the annual progress report for the IDE, under § 812.150(b)(5).

* * * * *

Dated: October 27, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31245 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 2910]

Visas: Grounds of Ineligibility

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim rule published December 29 1997 (62 FR 67564) and implements sections of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA added new grounds of inadmissibility for: certain aliens who have not been inoculated against infectious diseases designated by statute or by the Advisory Committee for Immunization Practices (ACIP); aliens who have been subject to certain civil penalties; alien student visa abusers; aliens present in the United States without admission or parole; aliens who fail to attend removal proceedings; unlawful alien voters; and former citizens who renounced United States citizenship in order to avoid paying taxes. Some of these sections also provide for waivers of grounds of inadmissibility. The rule also incorporates in the Department's regulations a delegation of authority from the Immigration and Naturalization Service pertaining to waivers of inadmissibility under the Immigration and Nationality Act. Finally, the rule makes a technical correction. Generally, these rules are necessary to ensure that consular officers properly enforce the above-mentioned grounds of ineligibility when adjudicating visa applications.

EFFECTIVE DATES: The effective dates are as follows: for §§ 40.11, 40.52, 40.66, 40.104, and 40.105 the effective date is September 30, 1996; for § 40.67 the effective date is November 30, 1996; for §§ 40.61, 40.62, 40.91, 40.92, 40.93, the effective date is April 1, 1997; and for § 40.22, the effective date is September 30, 1997.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Washington, DC 20520–0106 (odomhe@sa1wpoa.us-state.gov).

SUPPLEMENTARY INFORMATION: The Department published an interim rule, Public Notice 2666 at 62 FR 67564, December 29, 1997, with a request for comments, for numerous sections of Title 22, Part 40 of the Code of the Federal Regulations. The rules were primarily proposed to implement provisions of the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208 (IIRIRA), though they also make a technical correction. The rules were discussed in detail in Public Notice 2666, as were the Department's reasons for the regulations. The rules incorporate changes to those sections of Part 40 shown in the table below. A minor wording change now will be made to § 40.91(a).

22 CFR part affected	Heading	IIRIRA section No.
§ 40.11	Medical Grounds of Ineligibility	§ 341
§ 40.22	Suspended Sentences	§ 322
§ 40.52	Unqualified Physicians	N/A (typographic correction)
§ 40.61	Aliens Present Without Admission or Parole	§ 301
§ 40.62	Failure to Attend Removal Proceedings	§ 301
§ 40.66	Aliens Subject of Civil Penalty	§ 345
§ 40.67	Student Visa Abusers	§ 346
§ 40.91	Certain Aliens Previously Removed	§ 301
§ 40.92	Aliens Unlawfully Present	§ 301
§ 40.93	Aliens Unlawfully Present After Previous Immigration Violations	§ 301
§ 40.104	Unlawful voters	§ 347
§ 40.105	Former Citizens Who Renounced Citizenship to Avoid Taxation	§ 352

Analysis of Comments

The interim rules were published for comment at 62 FR 67564. The commenting period was closed on February 27, 1998. The Department received three timely comments in response to the interim rule. As the interim rule contained numerous regulations, each commentator made a variety of comments. Many of the comments received proposed clarifications of terminology used in the published rules. Others asked for specific changes in the regulations to meet perceived inadequacies.

The Department received two comments regarding the waiver clause of 22 CFR 40.92(c). The commentators were concerned that the waiver standards, as provided for in INA section 212(a)(9)(B)(v) lack specificity and are therefore inadequate to assure proper visa application adjudication. The Attorney General is responsible for the approval of such waivers, and the INS has issued guidance as to situations where visa applicants may qualify for a waiver (see 8 CFR 207.3(b)). The Department, and Consular Officers more specifically, are not participants in the Attorney General's decision to consent to an alien's application for a waiver. Clarification of the waiver standards in the Department's regulations, therefore, while ostensibly desirable, would not be appropriate. The Department must defer to the Attorney General for such standards.

Similarly, two commentators remarked that the term 'unlawfully present' as used in 22 CFR 40.92 was inadequately defined. As above, the Department must defer to the Attorney General, and more specifically to the INS, to promulgate the regulations surrounding that term. While awaiting such regulations, however, the Department, with INS approval, issued interim guidance on April 4, 1998, to aid posts in making determinations of unlawful presence. At such time as regulations are put forward by INS, the Department will provide further guidance as appropriate.

Regarding 22 CFR 40.104, Unlawful Voters, one comment suggested that a ''good faith error exception'' for an alien who votes illegally should be added. This comment stemmed from the sometimes confusing circumstances surrounding who is eligible to vote in certain elections. For example, noncitizens may be eligible to vote in some local school board elections. As the laws of the several states address this problem differently, however, it would be impractical to attempt to cover all situations in the Department's regulations. Instead, the Department's guidance on the subject will reflect that, to the extent that the constitutional provision, statute, regulation, or ordinance in question provides that violations occur only as the result of knowing acts, an alien will not be held ineligible if the alien establishes to the satisfaction of the Consular Officer that the alien did not knowingly violate the provision, statute, regulation or ordinance.

With respect to 22 CFR 40.62, Failure to Attend Removal Proceedings, one commentator expressed a concern with the lack of specificity surrounding the term ''reasonable cause.'' Owing to the gravity of the sanctions for a failure to attend removal proceedings, the commentator argued, a more illuminating definition of ''reasonable cause'' should be put forward. While the commentator's concern is well founded, the term ''reasonable cause'' is not without interpretation. The Board of Immigration Appeals (BIA) has decided many cases giving guidance to the meaning of this term (*see, e.g., Matter of Rivera,* 19 I&N Dec. 688, *Matter of Patel,* 19 I&N Dec. 260N (*aff'd Patel* v. *I.N.S.,* 803 F.2d 804 (5th Cir. 1986)); *Matter of Marallag,* 13 I&N Dec. 775; *Matter of Haim* 19 I&N Dec. 641N; *Matter of Ruiz* 20 I&N Dec. 91). With such a foundation, in those instances where a Consular Officer will have to make a ''reasonable cause'' determination, his/her decision will be informed to the extent possible by BIA decisions. Further, the Consular Officer will rely on interpretive material provided to him or her both in the Foreign Affairs Manual and other sources. With this guidance, therefore, the Consular Officer will be well informed and will be in the best position to exercise discretion to make such a determination. Any further explication of the term in the CFR may interfere with and confuse those efforts.

Several comments focused on the interim regulations' effect on the Violence Against Women's Act of 1994 (VAWA). Particularly, the commentators noted that the regulation and the preamble thereto were unclear as to the interpretation of IIRIRA 301(c)(2), which exempts any battered spouse or child who otherwise qualifies as a self-petitioner and who first arrived in the United States before April 1, 1997 from having to demonstrate a ''substantial connection'' between the battering or extreme cruelty and the applicant's unlawful entry into the United States. According to IIRIRA, these applicants need only show that they qualify under the VAWA provisions, which is accomplished if the applicant has an approved petition from INS. This is an important distinction that will be brought to consular officers' attention through the interpretive materials of the

Foreign Affairs Manual associated with aliens unlawfully present and also through future changes to the regulations associated with the immediate relative visa categories.

Finally, one commentator expressed a concern that a battered spouse who has to leave the country may face protracted delays in his or her visa processing if the Consular Officer ''readjudicates'' the INS approved petition that is part of the application. While the concern of the commentator is appreciated, such petitions for battered spouses must be treated in accord with other petitions used by applicants. To that end, 22 CFR 42.41 states that a Consular Officer is authorized to grant the status requested upon receipt of an approved petition, but that the applicant still has ''the burden of establishing to the satisfaction of the Consular Officer that the [applicant] is eligible in all respects to receive a visa.'' The Consular Officer will not readjudicate the petition, therefore, but still must consider and report to INS any information which leads the Consular Officer to believe that the petition was approved in error.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office and Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been coordinated with INS and reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Immigration, Nonimmigrants, Passports and visas.

In view of the foregoing, the interim rule amending 22 CFR 40 which was published at 62 FR 67564 on December 29, 1997, is adopted as a final rule with the following change:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104, Pub. L. 104–208, 110 Stat. 3009, 22 U.S.C. 26512.

2. Section 4091(a) is revised as follows:

§ 40.91 Certain aliens previously removed.

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following such alien's first removal from the United States.

* * * * *

Dated: October 5, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–30858 Filed 11–20–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–071]

Drawbridge Operation Regulation; St. Croix River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR Part 117.667 governing the operation of the Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin. This deviation allows the bridge to open upon receipt of 24 hours advance notice from 12:01 a.m. on November 15, 1998, to 11:59 p.m. on December 15, 1998. This action will facilitate maintenance work on the bridge.

DATES: The deviation is effective from 12:01 a.m. on November 15, 1998, to 11:59 p.m. on December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone number (314) 539–3900, ext. 378.

SUPPLEMENTARY INFORMATION: The Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin provides a vertical clearance of 20.4 feet above normal pool in the closed to navigation position. Navigation on the waterway is a mixture of recreational boats and commercial tows. A temporary deviation has been requested from the normal operation of the bridge in order to accommodate maintenance work. The work is essential for the continued safe operation of the drawbridge. The deviation was coordinated with waterway users and no objections to the deviation have been made.

This deviation allows the Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin to remain closed to navigation from 12:01 a.m. on November 15, 1998 to 11:59 p.m. on December 15, 1998, with openings provided upon receipt of 24 hours advance notice.

The deviation will be effective from 12:01 a.m. on November 15, 1998 until 11:59 p.m. on December 15, 1998. Presently, the draw is required to open on signal when drawbridge operation regulations are not amended by a deviation.

Dated: November 2, 1998.

A.L. Gerfin, Jr.,

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

[FR Doc. 98–31212 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL173–1a; FRL–6191–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Illinois; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the Illinois State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan was submitted to USEPA on July 21, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The state plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The USEPA finds that Illinois' Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting

comments on, this approval. If adverse written comments are received on this action, the USEPA will withdraw this final rule and address the comments received in response to this action in a final rule based on the related proposed rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: This ''direct final'' rule is effective on January 22, 1999, unless USEPA receives adverse written comments by December 23, 1998. If an adverse written comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the plan and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (CAA), USEPA established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the CAA) or hazardous air pollutants (HAPs) regulated under section 112 of the CAA.

As required by section 111(d) of the CAA, USEPA established a process, at 40 CFR part 60, subpart B (similar to the process required by section 110 of the CAA regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever USEPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, USEPA establishes emissions guidelines in accordance with title 40 of the Code of Federal Regulations, part 60.22 (40 CFR 60.22) which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan applying to the type of designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, USEPA published emissions guidelines for existing MSW landfills (EG) at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759) (See 61 FR 9905–9929.). The NSPS and EG regulate MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs.

To determine if emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (i.e. by December 12, 1996). If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

On July 21, 1998, the State of Illinois submitted its ''Section 111(d) Plan for MSW Landfills'' for implementing USEPA's MSW Landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and USEPA's review of Illinois' submittal with respect to those requirements. More detailed information on the requirements for an approvable plan and Illinois' submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available from USEPA upon request.

II. Review of Illinois' MSW Landfill Plan

USEPA has reviewed Illinois' section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the EG

The regulation at 40 CFR 60.24(a) requires that the section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.''

The State of Illinois, through the Illinois Pollution Control Board (IPCB), has adopted State rules to control air emissions from existing landfills in the State. The Illinois rules for Municipal Solid Waste Landfills are primarily found in Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter C: Emission Standards and Limitations for Stationary Sources; Part 220: Nonmethane Organic Compounds of the Illinois Administrative Code (35 IAC). Part 220 was adopted by the IPCB on June 17, 1998 and filed in the principal office on that day. Part 220 was published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11790 and became effective on July 31, 1998. As part of the same rulemaking action, the IPCB amended 35 IAC Part 201: Permits and General Provisions; Subpart A: Definitions; Section 201.103 a) by adding the following abbreviations: Mg = megagrams, M(3) = cubic meters, NMOC = nonmethane organic compounds, and yr = year. In Section 201.103 b) the conversion factor for 1000 gal was changed from 3.785 cubic meters to 3.785 M(3). In Subpart C: Prohibitions, Section 201.146 was amended by adding paragraph ggg) which states that municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million M(3) are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the [Illinois Environmental Protection] Act. These amendments were published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11824 and became effective on July 31, 1998. Thus, Illinois has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules.

The State has demonstrated that the IPCB has sufficient authority to adopt rules governing MSW landfills and that the Illinois Environmental Protection Agency (IEPA) has sufficient legal authority to enforce these rules and to develop and administer this MSW landfill plan. The State statutes providing such authority are sections 4, 9.1, and 10 of the Environmental Protection Act.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

The regulation at 40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987, or that have additional capacity for future waste deposition.

A list of the existing MSW landfills in Illinois and an estimate of NMOC emissions from each landfill have been submitted as part of the State's landfill 111(d) plan.

D. Inventory of Emissions from Existing MSW Landfills in the State

The regulation at 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which in the case of MSW landfills is NMOC. Illinois included as attachment 2 of its section 111(d) plan an estimation of NMOC emissions for all of the landfills in the State using testing performed by the company or Landfill Air Emissions Estimation Model and AP–42 default emission factors.

E. Emission Limitations for MSW Landfills

The regulation at 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills.

The state regulation at 35 IAC 220.220 requires existing MSW landfills to comply with the same equipment design criteria and level of control as prescribed in the NSPS. The controls required by the NSPS are the same as those required by the EG. Thus, the emission limitations/standards are ''no less stringent than'' subpart Cc, which meets the requirements of 40 CFR 60.24(c).

The regulation at part 60.24(f) allows States, in certain case-by-case situations, to provide for a less stringent standard. To account for this provision, in order to seek a less stringent standard, or longer compliance schedule, the Illinois Rule requires an owner/operator to submit a written request to the IPCB.

Thus, Illinois' plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The provision of the EG at 40 CFR 60.33c(b) requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems.

Illinois rules regulating landfill gas emissions from MSW landfills essentially make the Federal NSPS applicable to existing MSW landfills. The design criteria and the design specifications for active collection systems specified in the NSPS also apply to existing landfills, unless a request pursuant to 40 CFR 60.24(f) has been approved by the State. The process for State review and approval of site specific gas collection and control systems are specified in the State's preconstruction permit review process at 35 IAC 201 and 35 IAC 220.280 entitled Reporting Requirements.

Thus, Illinois' section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. The regulation at 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. Under 40 CFR 60.24(e)(1) any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

Sources are required to submit applications for a construction permit by 35 IAC 220.280. Completion of installation and performance are required within 30 months. Thus, the State's rule satisfies the requirement of 40 CFR 60.36c.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

The regulation at 40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include (60.34c specifically refers to the requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (60.35c refers to the requirements found in 40 CFR 60.757 and 60.758). The following sections of the Illinois rule satisfy these requirements: Section 220.280 Reporting Requirements and Section 220.290 Recordkeeping Requirements. Thus, the State's rule satisfies the requirements of 40 CFR 60.34c.

I. A Record of Public Hearings on the State Plan

The regulation at 40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. Additional guidance is found in USEPA's ''Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfill Emission Guidelines (EPA–456R/96–005, October 1996).'' Illinois included documents in its plan submittal demonstrating that these procedures, as well as the State's administrative procedures, were complied with in adopting the State's plan. Therefore, USEPA finds that Illinois has adequately met this requirement.

J. Submittal of Annual State Progress Reports to USEPA

The regulation at 40 CFR 60.25(e) and (f) requires States to submit to USEPA annual reports on the progress of plan enforcement. Illinois committed in its section 111(d) plan to submit annual progress reports to USEPA. The first progress report will be submitted by the State one year after USEPA approval of the State plan. Therefore, USEPA finds that Illinois has adequately met this requirement.

III. Final Action

Based on the rationale set forth above, and discussed in further detail in the associated TSD, USEPA is approving Illinois' July 21, 1998 section 111(d) plan for the control of landfill gas from existing MSW landfills. As provided by 40 CFR 60.28c, any revisions to Illinois' section 111(d) plan or associated regulations will not be considered part of the applicable plan until properly submitted by the State in accordance with 40 CFR 60.28(a) or (b), and approved by USEPA in accordance with 40 CFR part 60, subpart B.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by December 23, 1998. Should USEPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1999.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, USEPA must provide to the OMB a description of the extent of USEPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires USEPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, USEPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, USEPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires USEPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

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

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids USEPA to base its actions such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

The USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart O—Illinois

2. A new center heading and sections 62.3330, 62.3331, and 62.3332 are added to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.3330 Identification of plan.

The Illinois Plan for implementing the Federal Municipal Solid Waste Landfill Emission Guidelines to control air emissions from existing landfills in the State was submitted on July 21, 1998. The Illinois rules for Municipal Solid Waste Landfills are primarily found in Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter C: Emission Standards and Limitations for Stationary Sources; Part 220: Nonmethane Organic Compounds of the Illinois Administrative Code (35 IAC). Part 220 was adopted by the IPCB on June 17, 1998 and filed in the principal office on that day. Part 220 was published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11790 and became effective on July 31, 1998. As part of the same rulemaking action, the IPCB amended 35 IAC Part 201: Permits and General Provisions; Subpart A: Definitions; Section 201.103 (a) by adding the following abbreviations: Mg = megagrams, M(3) = cubic meters, NMOC = nonmethane organic compounds, and yr = year. In Section 201.103 (b) the conversion factor for 1000 gal was changed from 3.785 cubic meters to 3.785 M(3). In Subpart C: Prohibitions, Section 201.146 was amended by adding paragraph (ggg) which states that municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million M(3) are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the [Illinois Environmental Protection] Act. These amendments were published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11824 and became effective on July 31, 1998.

§ 62.3331 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as consistent with 40 CFR part 60.

§ 62.3332 Effective date.

The effective date of the plan for municipal solid waste landfills is January 22, 1999.

[FR Doc. 98–31074 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MI49–01(a); FRL–6189–8]

Approval of Section 112(l) Program of Delegation; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, through a ''direct final'' procedure, a request for a program for delegation of the Federal air toxics program contained within 40 CFR Parts 61 and 63 pursuant to Section 112(l) of the Clean Air Act (Act) of 1990. The State's mechanism of delegation involves the straight delegation of all existing and future Section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except for standards addressed specifically in this action, will be in the form of a letter from EPA to the Michigan Department of Environmental Quality (MDEQ). This request for approval of a mechanism of delegation encompasses all sources not covered by the Part 70 program. In the proposed rules section of this **Federal Register**, the EPA is proposing approval of, and soliciting comments on, this approval. If adverse comments are received on this action, the EPA will withdraw this final rule. It will then address the comments received in response to this action in a final rule based on the related proposed rule being published in the ''Proposed Rules'' section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: The ''direct final'' is effective on January 22, 1999, unless EPA receives adverse or critical written comments by December 23, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Robert B. Miller, Chief, Permits and Grants Section, Air

Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following locations:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604

Air Quality Division, Michigan Department of Environmental Quality, 106 West Allegan Street, Lansing, Michigan 48909

Please contact Laura Gerleman at (312) 353–5703 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Laura Gerleman, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5703.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the Act enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in Section 112 of the Act pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) is ''no less stringent'' than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

On October 12, 1995, Michigan submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under Section 112 of the CAA. On January 8, 1996, EPA found the State's submittal complete. In this notice EPA is taking final action to approve the program of delegation for Michigan.

II. Review of State Submittal

A. Program Summary

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under Part 70 (40 CFR 70.4). On January 10, 1997, EPA promulgated a final interim approval under Part 70 of the State of Michigan's Operating Permit Program. The **Federal Register** rulemaking included the approval of a mechanism for delegation of all Section 112 standards for sources subject to the Part 70 program. Sources subject to the Part 70 program are those sources that are required to operate pursuant to a Part 70 permit issued by the State, local agency or EPA. Sources not subject to the Part 70 program are those sources that are not required to obtain a Part 70 permit from either the State, local agency or EPA (see 40 CFR 70.3). This action supplements the Part 70 rulemaking in that Michigan will have the authority to implement and enforce the Section 112 air toxics program as provided by the approved mechanism of delegation regardless of a source's Part 70 applicability.

The Michigan program of delegation for sources not subject to Part 70 will not include delegation of Section 112(r) authority or radionuclide emissions standards. The program will, however, include the delegation of the 40 CFR Part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State.

As stated above, this document constitutes EPA's approval of Michigan's program of straight delegation of all existing and future air toxics standards as they pertain to non-Part 70 sources, except for Section 112(r) standards or radionuclide emissions standards. Straight delegation means that the State will not promulgate individual State rules for each Section 112 standard promulgated by EPA, but will implement and enforce without changes the Section 112 standards promulgated by EPA. The Michigan program of straight delegation will operate as follows: For a future Section 112 standard for which MDEQ intends to accept delegation, EPA will automatically delegate the authority to implement a Section 112 standard to the State by letter unless MDEQ notifies EPA differently within 45 days of EPA final promulgation of the standard. MDEQ will incorporate non-part 70 standards by reference into the State code of regulations as expeditiously as practicable, and if possible, within 12 months of promulgation by EPA. Upon completion of regulatory action, MDEQ will submit to EPA proof of incorporation by reference for that standard. EPA will respond with a letter delegating enforcement authority to the State.

Michigan will assume responsibility for the timely implementation and enforcement required by the standard, as well as any further activities agreed to by MDEQ and EPA. Some activities necessary for effective implementation of the standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to the standard are aware of its existence. When deemed appropriate, MDEQ will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism are set forth in a memorandum of agreement between EPA and MDEQ, copies of which are located in the docket associated with this rulemaking.

B. Criteria for Approval

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under Section 112(l) of the Act. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval, pursuant to Section 112(l)(5) of the Act, of a program to implement and enforce Federal Section 112 rules as promulgated without changes are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of Section 63.91. A more detailed analysis of the State's submittal pursuant to Section 63.91 is contained in the Technical Support Document included in the official file of this rulemaking.

Under Section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that it: (1) is ''no less stringent'' than the corresponding Federal program, (2) that the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

C. Analysis

EPA is approving Michigan's mechanism of delegation for non-part 70 sources because the State's submittal meets all requirements necessary for approval under Section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Michigan program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards. Second, the State has

shown that it has adequate authority and resources to implement the program. Michigan's Natural Resources and Environmental Protection Act authorizes MDEQ to issue construction and operating permits to Part 70 and non-Part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. 55 MCL 324.5503(b). The authority to issue permits includes the authority to incorporate permit conditions that implement Federal Section 112 standards. Furthermore, Michigan has the authority to implement each Section 112 regulation, emission standard or requirement (regardless of Part 70 applicability), perform inspections, request compliance information, incorporate requirements into permits and to bring civil and criminal enforcement actions to recover penalties and fines. As for non-part 70 sources, Michigan will have the authority to enforce each Section 112 regulation, emission standard or requirement applicable to non-part 70 sources upon its incorporation into the State code of regulations. Adequate resources will be obtained through both State funding and Section 105 grant monies awarded to States by EPA to implement the program for non-Part 70 sources and through monies from the State's Title V program to fund acceptable Title V activities with respect to Part 70 sources.

Third, upon promulgation of a standard, Michigan will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Also, upon promulgation of a standard, Michigan will expeditiously incorporate by reference the standard into the State code of regulations. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Michigan program for straight delegation is contrary to Federal guidance.

D. Michigan's Audit Privilege and Immunity Law

On March 18, 1996, Michigan Governor John Engler signed the State's Environmental Audit Privilege and Immunity Law (Michigan's Privilege and Immunity Law of 1996), Part 148 of Michigan's Natural Resources and Environmental Protection Act. This law provides that sources can hold confidential broad categories of information contained in a voluntary environmental audit report. The law also provides sources immunity from certain State civil and criminal penalties for violations discovered through an environmental self audit, provided the violations are promptly reported and corrected. EPA believes that Michigan's Privilege and Immunity Law of 1996 affected the State's authority to assure compliance with and enforce Section 112 standards. In a letter dated July 1, 1997, to Russell Harding, Director of MDEQ, EPA stated what changes would need to be made to Michigan's Privilege and Immunity Law of 1996 in order to have sufficient enforcement authorities to meet, inter alia, the approval criteria in Part 63. On November 13, 1997, Michigan Governor John Engler signed into law Public Acts 133 and 134 of 1997 (Michigan's Privilege and Immunity Law of 1997), which is Part 148 of Michigan's Natural Resources and Environmental Protection Act, amending Michigan's Privilege and Immunity Law of 1996. Michigan's Privilege and Immunity Law of 1997 was submitted to EPA on November 21, 1997, in order to address EPA's concerns. In a letter dated December 12, 1997, EPA stated that with the newly enacted Michigan's Privilege and Immunity Law of 1997, along with MDEQ's commitment in a July 1, 1997 letter on the use of confidentiality agreements and the interpretations by the Attorney General, EPA's concerns have been addressed and the audit privilege issues have been resolved. With Michigan's Privilege and Immunity Law of 1997, Michigan now has adequate authority to assure compliance by all sources with each applicable standard.

E. Determinations

In approving this mechanism of delegation, EPA expects that the State will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Clean Air Act or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

III. Final Action

The EPA is promulgating final approval of the October 12, 1995, request by the State of Michigan of a mechanism for straight delegation of Section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and Section 112(l) of the Act. Upon the effective date of this action, the implementation and enforcement authority of all existing Section 112 standards pertaining to non-part 70 sources, excluding Section 112(r) and radionuclide emissions standards, which have been incorporated by reference into the State code of regulations are delegated to the State of Michigan (specifically 40 CFR Part 63 Subpart M, Dry Cleaning, and 40 CFR Part 63 Subpart T, Halogenated Solvent Cleaning). As for the existing Section 112 standards which have not yet been incorporated by reference into the State code of regulations, the implementation authority of these standards are delegated to the State of Michigan upon the effective date of this action, and the enforcement authority will be delegated according to the procedures in the MOA. Future delegation of the Section 112 standards to the State will occur according to the procedures outlined in the MOA upon EPA's promulgation of the standard.

Effective immediately, all notifications, reports and other correspondence required under Section 112 standards should be sent to the State of Michigan rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to the supervisor of the appropriate District office. For sources located in Wayne County, send this information also to the Director of Compliance and Enforcement of the Wayne County Department of the Environment. For information on the District offices or Wayne County office, contact: Michigan Department of Environmental Quality, Air Quality Division, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909–7760, 517–373–7023.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by December 23, 1998. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1999.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875 (E.O. 12875), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. Accordingly the requirements of section 1(a)of E.O. 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084 (E.O. 13084), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. It imposes no new requirements. Accordingly the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because Straight delegation of the Section 112 standards unchanged from the Federal standards does not create any new requirements, but simply allows the State to administer requirements that have been or will be separately promulgated. Therefore, because this delegation approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids EPA to base its actions concerning State plans on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action merely approves delegation to a State of pre-existing requirements under Federal law, and imposes no new requirements on the private sector. The cost to the state, local, or tribal government, of implementing this program will be less than $100 million. The State also voluntarily requested this delegation under Section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by Part 70. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,

Air pollution control, Hazardous substances, Intergovernmental relations.

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

Dated: August 26, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–31076 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1625

Termination and Debarment Procedures; Recompetition; Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule rescinds the Corporation's rule on denial of refunding and removes it from the Code of Federal Regulations. It also substantially revises the Corporation's rule governing the termination of financial assistance. These revisions are intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. The termination rule now includes new provisions authorizing the Corporation to recompete service areas and to debar recipients for good cause from receiving additional awards of financial assistance.

DATES: This rule is effective on December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC or Corporation) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rules governing procedures for the termination of funding, 45 CFR Part 1606, and denial of refunding, 45 CFR Part 1625. The Committee made several changes to the draft rule and adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 30440 (June 4, 1998). On September 11, 1998, during public hearings in Chicago, Illinois, the Committee considered public comments on the proposed rule. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on September 12, 1998.

This final rule is intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with Sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a ''timely, full and fair hearing'' before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.[1] Accordingly, this rule rescinds 45 CFR part 1625, the Corporation's regulation on the denial of refunding, and removes it from the Code of Federal Regulations as no longer consistent with applicable law.

Comments expressed concern about the effect of the removal of this rule in the new competitive environment. The concern was that, rather than providing a new grant to an applicant, the Corporation might use month-to-month or short term grants within the competitive process to avoid providing hearing rights to recipients. One comment urged the Corporation to refrain from using repeated short term grants to troubled programs about which it has questions about future funding as a means to obviate the need for a due process hearing. According to the comment, short term funding should be used only in those situations where the Corporation fully intends to make a grant for the remainder of the grant term once a specific identified issue is resolved.

The Board requested that the preamble clarify that short term funding is not intended by the Corporation as a means to avoid hearing rights. It is a means to ensure continued legal representation in a service area when the Corporation determines no applicants in a competitive process warrant a long term grant. This could occur for a variety of reasons. For example, in a particular competition, one applicant may not be viable and the other, a current recipient, may be under investigation by the Corporation. Short term funding until the investigation is final is warranted in such a situation. The Corporation would not want to foreclose giving a long term grant to the program if the investigation reveals no substantive noncompliance issues. On the other hand, if the investigation reveals substantive noncompliance by the recipient, the Corporation would have been derelict in its duty if it had made a long term grant to a recipient it had reason to believe could not provide quality legal assistance or comply with grant terms and conditions.

Congress clearly intended the competition process to be a means for the Corporation to ensure that the most qualified programs receive LSC grants. Accordingly, the Corporation's competition rule provides discretion to the Corporation to take all practical steps to ensure continued legal assistance in a service area when the Corporation determines no applicants are qualified for a long term grant. See § 1634.8(c). Short term grants provide one means to that end. Nevertheless, it is not the intent of the Corporation that short term grants be used to avoid applicable hearing rights. They should only be used when they are warranted and appropriate, as discussed above.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 504 provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Section 501(c) authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated. Finally, Section 501(b) of the appropriations act provides that the hearing rights prescribed by Sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This rule implements Section 501(b) as it applies to terminations and denials of refunding. Also in this publication of the **Federal Register** is a related final rule, 45 CFR Part 1623, which implements Sec. 501(b) as it applies to the suspension of financial assistance to recipients.

The change in the law on hearing rights does not mean that grant recipients have no rights to a hearing before the Corporation may terminate funding or debar a recipient. Sections 501(b) and 501(c) of the FY 1998

[1] It is well established that absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, Federal Grants and Cooperative Agreements, § 3.28; Stein, J., Administrative Law, § 53.02[3][a] (1998); and *Legal Services Corporation of Prince Georges County* v. *Ehrlich*, 457 F. Supp. 1058, 1062–64 (D. Md. 1978).

appropriations act require the Corporation to provide a recipient with ''notice and an opportunity for the recipient to be heard'' before it can terminate a grant or debar a recipient from future grants. In addition, constitutional due process generally requires that a discretionary grant recipient is entitled to ''some type of notice'' and ''some type of hearing'' before its grant funding can be suspended or terminated during the term of the grant period. Stein, Administrative Law at § 53.05[4]. However, the new law in the appropriations act emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations and other applicable law. See H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures in part 1606 have been streamlined. The changes are intended to emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance. At the same time, the Corporation intends that recipients be provided notice and a fair opportunity to be heard before any termination or debarment action is taken.

The Corporation received three comments on the proposed rule. The commenters generally agreed that the proposed rule represented an appropriate implementation of statutory requirements. However, they also raised several due process concerns and made suggestions for clarification of the terms of certain provisions in the rule. An analysis of the comments and the Corporation's response is set out in the section-by-section analysis below.

Section-by-Section Analysis of Part 1606

Section 1606.1 Purpose

One purpose of this rule is to ensure that the Corporation is able to terminate grants or debar recipients from receipt of future grants in a timely and efficient manner when necessary to meet its obligation to ensure compliance by recipients with the terms of their LSC grants or contracts. Another purpose of the rule is to ensure that scarce LSC funds are provided to recipients who can provide the most effective and economical legal assistance to the poor. Finally, the rule is also intended to ensure that a recipient is provided notice and an opportunity to be heard before it may be debarred or before its grant may be terminated by the Corporation.

Section 1606.2 Definitions

Paragraph (a) of this section defines ''debarment'' as an action to prohibit a recipient from receiving another grant award from the Corporation or from entering into a future agreement with another recipient for LSC funds. Thus, for the period of time stated in the debarment decision, a recipient would not be permitted to participate in future competitions for LSC grants or contracts. Nor could the debarred recipient enter into any future subgrant, subcontract or similar agreement for LSC funds with another recipient for the time set out in the debarment decision. The definition is similar to those used in various Federal agency debarment regulations.

A definition of *knowing and willful* has been added to clarify one of the criteria included to determine whether there has been a substantial violation for the purposes of § 1606.3(b)(5). See discussion of § 1606.3(b)(5) for the Corporation's interpretation and the effect of using the term.

Paragraph (c) defines ''recipient'' as any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(A) of the LSC Act, which generally refers to recipients who provide direct legal assistance to eligible clients.

Termination. Paragraph (d) defines ''termination.'' The proposed rule defined a termination as a permanent reduction of funding to distinguish it from a temporary withholding of funds under a suspension. The definitions of termination and suspension were intended to clarify that when funds are suspended, they are returned to the recipient at the end of the suspension period, either because the issue has been or is in the process of being cured, or the Corporation initiates a termination process; whereas, in a termination, it was intended that the funds taken or withheld by the Corporation would not be returned to the recipient at a later date.

One comment pointed out that the use of ''permanently'' in the definition caused confusion in that the term, as applied to a partial termination, could be interpreted as meaning that the termination should be applied to every year of a multi-year grant period. The proposed rule attempted to preclude such an erroneous interpretation by including in the definition a statement that a partial termination will affect only the recipient's current year's funding unless provided otherwise in the termination decision. However, the commenter suggested that the word ''permanently'' be deleted from the definition and instead, a direct statement be added to the definition that clarifies that funds withheld in a termination will not be restored to the recipient. The Board agreed to include language on this point but placed it in § 1606.13(b) rather than the definition of ''termination.'' In addition, the Board deleted the word ''permanently'' from the definition of ''termination.''

A termination may be ''in whole or in part.'' A termination ''in whole'' means that the recipient's grant with the Corporation is completely terminated and the recipient no longer receives LSC funds under the grant. A partial termination or a termination ''in part'' means that only a percentage of the recipient's grant with the Corporation is terminated. The recipient is still a grantee of the Corporation but receives less funding under the grant. The definition of termination also includes language that clarifies that partial terminations will reduce only the amount of the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

Reprogramming. A partial termination does not affect the amount of funding required by statute to be allocated in competition to the affected recipient's service area. The Corporation's appropriations act currently requires that such funding be provided to service areas based on the census count in the area.

This statutory requirement, however, does not mean that the Corporation cannot recover funds awarded under a grant when it sanctions a recipient for cause. The legislative history of the funding provision makes it clear that the Corporation may withhold or recover grant funds for good cause. According to relevant law and Corporation policy, when funds are recovered, they may be reprogrammed and used for similar purposes. The preamble to the proposed rule requested comments on the use of funds recovered by the Corporation. Two comments stated the view that recovered funds should generally stay in the same service area following a recovery. One comment stated that the Corporation should be required to seek another grantee or provide interim contracts in the same service area with the recovered funds.

Applicable law allows the Corporation to reprogram appropriated funds under certain circumstances. See Pub. L. 105–119; See Principles of Federal Appropriations Law, United States General Accounting Office (GAO Redbook) at 2–25. According to the

GAO, the authority to reprogram is implicit in an agency's fiscal responsibilities and exists even absent express statutory authority. Section 605 of the Corporation's FY 1998 appropriations act, permits reprogramming but requires notice to the Corporation's congressional oversight committees for certain types of reprogrammings.

Reprogramming is the utilization of funds within an appropriation for purposes other than those contemplated at the time of the appropriation; it is the shifting of funds from one object to another within an appropriation. GAO Redbook at 6–26. However, reprogrammed funds must be used for activities or uses within the general purposes of the appropriation and may not be used for any purposes in violation of any other specific limitation or prohibition. *Id.* at 2–25; 31 U.S.C. § 1301(a). Basic field funds are appropriated under strict limitations and are thus generally not available for reprogramming before they are used for grant awards. They must be used for basic field grants, allotted to service areas according to a statutory formula and must be awarded pursuant to the Corporation's competition regulations. Once such grants are made, however, it is clear in the legislative history of the Corporation's appropriations acts that the Corporation may recover basic field funds for good cause, see, e.g., 129 Cong. Rec. S14448 (Oct. 21, 1983), and reprogram the recovered funds.

Because it is not feasible or practical to use the recovered funds in exact accordance with all of the strict limitations governing their original allocation, the Corporation may reprogram such funds for other uses as long as the funds are used within the general purposes of the original appropriation. For example, a recovery of basic field funds from a recipient pursuant to a termination certainly cannot be returned to the same grantee and there may not be another grantee in the same service area.

The Board determined that the Corporation should have discretion to determine the best use of recovered funds and not be required to use them for activities it determines are fiscally or programmatically unsound, as long as the Corporation's actions are consistent with the law on reprogramming. The Corporation's current policies provide for reprogramming discretion and are consistent with applicable law as discussed above. The LSC Board's Consolidated Operating Budget Guidelines provide authority variously to the Board and the LSC President to reprogram or reallocate recovered funds for basic field purposes, such as when, pursuant to the competition process, a new recipient replaces another recipient as the recipient of the LSC grant for a particular service area, or when there is a need for emergency relief to particular grantees due to flood or fire damage. To implement this policy, the Board added a provision in § 1606.13 stating that funds recovered by the Corporation pursuant to a termination shall be used in the same service area from which they were recovered or will be reprogrammed by the Corporation for basic field purposes.

Actions that do not constitute a ''termination.'' Paragraph (d)(2)(i) through (d)(2)(v) clarify what is not intended to be included within the definition of termination. Paragraph (d)(2)(i) provides that a reduction or rescission of a recipient's funding required by law is not a termination for the purposes of this part. For example, in 1995, the Corporation was required to reduce its recipients' funding pursuant to Congressional legislation that rescinded the amount of appropriations for Corporation grants and required the termination of a category of recipients.

Paragraphs (d)(2)(ii) and (d)(2)(iii) provide that a recovery of funds pursuant to § 1628.3(c) of the Corporation's rule on fund balances or § 1630.9(b) of the Corporations's regulations on costs standards and procedures do not constitute a termination. The Board added another provision to the list that was not included in the proposed rule to clarify that a withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR Part 1614 is not a termination. See § 1606.2(d)(2)(iv).

Lesser Sanctions. Finally, paragraph (d)(2)(v) provides that a reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance does not constitute a termination. The preamble to the proposed rule explained that administrative hearings are costly and time-consuming for all parties involved and, for certain compliance issues, the Corporation may wish to utilize sanctions less drastic than suspensions or termination, such as less than 5% funding reductions, hereinafter referred to as ''lesser sanctions.'' A policy to utilize lesser sanctions has been implicit in the Corporation's regulations since the early days of the Corporation as indicated in 45 CFR Parts 1618 (in addition to defunding actions, the Corporation may take other actions) and Part 1625 (a denial of refunding does not include a reduction of less than 10% of annualized funding).

The preamble to the proposed rule stated the policy preferred by the Committee that the Corporation should promulgate regulations setting out standards and procedures for applying lesser sanctions before such actions could be taken by the Corporation. One comment expressed agreement with this policy. No change has been made to the policy in the final rule; however, the Board decided to state the policy in the text of the rule by including a provision that states that no lesser sanction shall be imposed except in accordance with regulations promulgated by the Corporation. See § 1606.2(c)(2)(v).

One comment also recommended including a statement in the rule that a lesser reduction of funding should be treated as a dissallowed cost under Part 1630. The Board did not agree. Part 1630 is already available to the Corporation when an action falls within its terms but a questioned cost action is limited to recovering costs identified as specific disallowed expenditures and does not provide authority to impose a fine, for example.

The preamble to the proposed rule asked for comments on whether 5% was the appropriate cutoff to distinguish between a termination and a lesser sanction or whether a dollar amount was appropriate. Two comments stated that a 5% reduction for a large grantee would constitute a substantial reduction of funding and urged the Corporation to adopt a cutoff of 5% or $25,000, whichever is less. Part of the concern of the commenters was that large amounts of funds would be taken from grantees without any due process hearings.

The Board did not agree that 5% is too high a cutoff for large grantees or that the rule should include a dollar amount as a cutoff. It is difficult to state a dollar amount that would be equitable to all recipients, because of the varying sizes of the services areas and the grant amounts provided to recipients. In addition, the 5% was determined to be a level that would not cripple a program but would be sufficient to get the program's attention.

Section 1606.3 Grounds for a Termination

This section sets out the grounds for a termination. Paragraph (a)(1) permits termination for a substantial violation by a recipient of applicable law or the terms or conditions of its grant with the Corporation.

Criteria for substantial violation. Paragraph (b) of this section includes the criteria the Corporation will consider to determine whether there has been a *substantial violation* under paragraph (a)(2). The prior rules on

termination and denial of refunding included two different undefined standards. Terminations were undertaken for *substantial violations* and a denial of refunding for *significant violations*. There has been some confusion over the years about the scope of the meaning of the two standards.

The proposed rule set forth five criteria. One comment criticized certain of the criteria as too vague to be consistent with the fundamental precepts of due process and another comment indicated that the rule attempted to define unclear terms with other unclear terms. One criterion in the proposed rule was ''the importance and number of restrictions or requirements violated.'' One comment suggested deleting this criterion.

In response to the comment the Board revised the criterion in part. Reference to the ''importance'' of the restriction or requirement was taken out as too vague to be useful but the reference to the number of restrictions or requirements violated was retained. How many violations occurred is important to determine the scope of noncompliance and the scope of noncompliance would help determine whether a partial or full termination would be appropriate.

Although not always the case, the number of violations may be distinguished from a pattern of noncompliance in § 1606.3(b)(3), in that a pattern of noncompliance refers to a habit of noncompliance over a period of time while a number of violations may occur as the result of an action taken in one particular case or during a short period of time.

Another criterion in the proposed rule was ''the seriousness of the violation.'' Two comments challenged this standard as too vague. The Board agreed and replaced it with a consideration of ''whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement.'' Recipients should refer to the list of statutory restrictions and requirements listed in § 1610.2(a) and (b) which generally constitute substantive restrictions and requirements while a failure to meet a deadline to submit a report would be a non-substantive requirement.

Another criterion addressed by the comments was ''whether the violation was intentional.'' The proposed rule specifically asked for comments on whether this was the appropriate standard and, based on comments, the Board changed the standard to ''knowing and willful'' and included a definition of the term in the rule. It was felt that a definition was necessary because research indicated that there are many variances to the definitions of ''willful and knowing.'' *Knowing and willful* is defined in the rule to mean that the recipient had actual knowledge of the fact that its action or failure to take a required action would constitute a violation and, despite such knowledge, undertook or failed to undertake the action. An example of an application of this standard would be the following. If a recipient has been provided a copy of the Corporation's eligibility regulation which requires that the recipient execute a retainer agreement with each client who receives legal assistance from the recipient and the recipient consistently fails to execute retainer agreements for its clients, then the failure to comply would be knowing and willful. A recipient cannot claim lack of knowledge because its management failed to read the LSC grant requirements and restrictions or properly train recipient staff. Recipients are presumed to have read and agreed to the requirements and restrictions when they sign the terms of the grant awards. On the other hand, if the recipient takes an action where there is arguably insufficient guidance in a rule and the recipient took action based on a good faith interpretation of the rule, and the Corporation subsequently determines the recipient's action to be a violation, it would be reasonable to find that the action was not knowing and willful. When in doubt whether an action may be a violation, recipients should seek guidance from the Corporation prior to taking such an action.

The Corporation will also consider whether the instance of noncompliance is part of a pattern of practice by the recipient and whether the recipient took appropriate action to correct the problem when it became aware of the violation.

Finally, the application of the criteria in this final rule to a particular set of circumstances would permit the Corporation to take action for a single violation or a number of violations.

Retroactive application. The prior rule expressly stated that action would be taken against a recipient only for a substantial violation that occurred at a time when the law violated by the recipient was in effect. This final rule deletes such language as unnecessary. Retroactive application of law is strongly disfavored in the law, and the Corporation may not sanction recipients for violations of a law that was not in effect at the time of the violation.

Violations by staff. Finally, one comment urged that language should be added distinguishing between a violation committed by a member of the recipient's management or board and a violation by a staff member without the knowledge of the board or management. The Board did not agree. The distinction is already implicated in both the fourth and fifth criteria which consider the knowledge of the recipient of the action and the extent to which the recipient took action to cure a problem upon its discovery. However, the recipient has a responsibility to ensure that its staff are fully informed of and act in accordance with the LSC grant requirements and restrictions.

Criteria for a Substantial Failure. Paragraph (a)(2) includes as a ground for termination the substantial failure of the recipient to provide high quality, economical, and effective legal assistance. This provision was in the prior rule. Although the Corporation's competition process provides another method for making quality judgments about and eliminating recipients that perform poorly, this provision has been retained so that the Corporation may act when necessary during the term of a grant or contract to terminate a recipient that has substantially failed to provide high quality, economical, and effective legal assistance.

The preamble to the proposed rule asked for comments on what criteria should be considered for determining ''a substantial failure.'' One comment suggested that, at a minimum, the Corporation should clarify the meaning of ''generally accepted professional standards'' by including references to specific standards, such as the ABA Standards for Providers of Civil Legal Assistance (ABA Standards''), LSC's Performance Measures or other appropriate indicators of quality legal services. Another comment, on the other hand, not only opposed using ''generally accepted professional standards,'' because the term is too vague, it also stated that it would be inappropriate to rely on the ABA Standards because they are somewhat outdated and are aspirational and not intended to state the minimum expectations of a quality program. Thus, it would be inappropriate to rely on the standards as a basis to deny funding to a provider.

After extensive discussion, the Board revised § 1606.3(a)(2) to include reference to § 1634(a)(2) which lists a criterion used by the Corporation to select a grantee under its competition process. This criterion includes consideration of the quality, feasibility and cost-effectiveness of a recipient's

legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. This ground for terminating funding complements the competition process by providing another method for acting on judgments regarding recipients that perform badly. Unlike its use in the competition process where the Corporation would choose the best among competitors, its use in this rule requires a showing that the recipient has *substantially failed* to meet the standards. The Board did not agree that the reference to ''generally accepted professional standards'' is too vague to meet due process requirements. The term has a well understood meaning that can be determined by reference to the various audit, accounting or other performance guidelines to which LSC recipients are subject.

Opportunity to cure. The prior rule required that a recipient be given notice of a violation by the Corporation and an opportunity to take effective corrective action before the Corporation initiated a termination action. The proposed rule eliminated a recipient's right to take corrective action, but left it within the discretion of the Corporation to permit the recipient an opportunity to cure the problem. The comments urged the Corporation to provide some opportunity or a recipient to take corrective action before terminating a grant. One comment urged that, absent unusual circumstances, a decision to terminate a grant should only be made after a recipient has been made aware of problems through such actions as investigations or questioned cost proceedings, has been given ample time to correct the problem and has failed to take the necessary corrective action.

The Board decided to retain the language of the proposed rule which leaves it within the discretion of the Corporation whether to give a recipient an opportunity to cure. The legislative intent underlying Sections 501(b) and (c) of the Corporation's FY 1998 appropriations act was to enable the Corporation to streamline its due process procedures in order to ensure that recipients are in full compliance with LSC grant requirements and restrictions. To provide an opportunity to cure in all instances would slow down the process and tie the Corporation's hands when there is a need to act more quickly. A recipient that has substantially violated the terms of its grant is not entitled to a second chance as a matter of right. Nevertheless, nothing in this rule prohibits the Corporation from giving a recipient an opportunity to cure before acting to terminate. If the Corporation identifies a problem where there is potential for easy correction pursuant to a corrective action plan, the Corporation has discretion to work with the recipient to resolve the matter. In addition, one of the factors considered by the Corporation when determining whether there is a substantial violation is whether the recipient, upon learning of the violation, took prompt corrective action.

Section 1606.4 Grounds for Debarment

Section 504 of the Corporation's FY 1998 appropriations act provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Debarments are common in the Federal government for both procurement contracts and assistance grants. Causes for debarment range from fraud, embezzlement, and false claims, to a Federal grantee's longstanding unsatisfactory performance or the failure to pay a substantial debt owed to the Federal government. *Principles of Federal Appropriations Law* at 10–28, United States Government Accounting Office (GAO); Grants Management Advisory Service at § 558 (1995).

This section implements Section 501(c) of the Corporation's appropriations act and sets out the grounds for debarment in paragraph (b). The grounds include a prior termination of a recipient for violations of Federal law related to the use of Federal funds, such as Federal law on fraud, bribery, or false claims against the government; or substantial violations by a recipient of the terms of its grant with the Corporation. Also, similar to Federal practice, recipients may also be debarred for knowingly entering into any subgrant or similar agreement with an entity debarred by the Corporation. Clarifying revisions were made to this provision.

Section 1606.4(a)(5), which implements Section 504(c)(5) of the Corporation's appropriations act, permits the Corporation to debar a recipient if the recipient seeks judicial review of an agency action taken under any Federally-funded program for which the recipient receives Federal funds, regardless of the source of funding used by the recipient for the litigation. This provision applies when the recipient files a lawsuit on behalf of the recipient and the lawsuit is related to a program for which the recipient receives Federal funds. It does not apply when the recipient files a lawsuit on behalf of a client of the recipient which seeks judicial review of an agency action that affected the client.

Comments on this ground for debarment expressed serious concerns about the constitutionality of the rule's interpretation of the provision. In response to comments and the legal analysis set out below, the Board revised this ground for debarment to be consistent with constitutional and other applicable law.

It is well-settled in law that Congress has authority to immunize agency decision-making from judicial review, as long as the intent is clear in the law. Where judicial review is precluded, a court has no jurisdiction to hear a dispute over an agency action. Nevertheless, courts are not thereby precluded from conducting a limited review to consider whether the agency acted *ultra vires*, that is, outside of its statutory limits, or violated the Constitution. *Schneider* v. *United States*, 27 F. 3d 1327, 1332 (8th Cir. 1994); *Carlin* v. *McKean*, 823 F.2d 620, 622 (DC Cir. 1987); *Morazsan* v. *United States*, 852 F. 2d 1469, 1477 (7th Cir. 1988). See also *Magana-Pizano* v. *INS*, 1998 WL 550111, 152 F.3d 1213 (9th Cir. 1998).

This law is reflected in the final rule which now provides that recipients will be subject to debarment for seeking judicial review of any agency action under any of their Federally-funded programs, except for limited constitutional or *ultra vires* claims.

Comments also suggested that the language setting out this ground for a debarment be revised for clarity. The Board agreed and the language has been revised.

Section 1606.5 Termination and Debarment Procedures

This section states the due process requirement that, before a recipient's grant or contract may be terminated or a recipient may be debarred, the recipient will be provided notice and an opportunity to be heard according to the procedures in this part.

Section 1606.6 Preliminary Determination

This section sets out the requirements for providing notice to the recipient of the Corporation's preliminary determination to terminate a recipient's funding or to debar a recipient. Under this section the Corporation may simultaneously take action to terminate and debar a recipient in the same proceeding.

The term proposed decision used in this section in the proposed rule has been changed to *preliminary*

determination to be consistent with changes made to the burden of proof provisions, as discussed below.

Paragraph (a) of this section requires that the notice of the preliminary determination be in writing and that it provide the grounds for termination or debarment in a manner sufficiently detailed to inform the recipient of the charges against it, the legal and factual bases of the charges, and the proposed sanctions. Paragraph (b) requires that the recipient be told of its right to request an informal conference and a hearing. Paragraph (c) sets out the circumstances in which a preliminary determination becomes final.

Section 1606.7 Informal Conference

This section is generally the same as § 1606.5 in the prior rule, but has been renumbered and restructured for clarity. It allows the Corporation and recipient to have an informal conference either to resolve the matter at issue through compromise or settlement or to narrow the issues and share information so that any subsequent hearing might be rendered shorter or less complicated.

Language in the proposed rule dropped language from the prior rule stating that the preliminary conference may be adjourned for deliberation or consultation. One comment urged the Corporation to return the adjournment language to the rule stating that adjournments can be of great importance to a recipient that has learned of allegations during the conference that require further investigation before a response can be formulated.

The deletion of the adjournment language was not intended to preclude an adjournment if one is deemed appropriate by the Corporation. It was deleted as unnecessary. Nothing in this section requires that the conference must be completed under any particular time frame and, indeed, the language in this section emphasizes the informality of the conference, thus providing the Corporation a large measure of discretion in determining how the conference will be conducted. Accordingly, the Board did not revise the proposed rule to include adjournment as a matter of right.

This proposed rule has also eliminated the provisions providing a right for the recipient or the Corporation to request a pre-hearing conference. The intent is to simplify and shorten the hearing procedures available for terminations. The informal conference section already provides an opportunity for the parties in the dispute to narrow and define issues and to determine whether compromise or settlement is possible.

Section 1606.8 Hearing

This section delineates the procedures for the due process hearing that will be provided to a recipient before it may be debarred or before its grant may be terminated. The prior process has been simplified by deleting provisions permitting third party participation in the hearing and other unnecessary provisions. The deletion is not intended to mean that third parties may never participate in a hearing. However, the proposed rule would no longer provide a recipient with the right to demand such participation.

Impartial hearing officer. Paragraph (c) provides for an impartial hearing officer who will be appointed by the President or designee. Reference to a designee is included because, occasionally, the President may be disqualified from choosing a hearing officer. Delegation would be appropriate, for example, if the President has had prior involvement in the matter under consideration.

Under the prior rule, which was promulgated to implement Section 1011 of the LSC Act, an independent hearing examiner was required to preside over the hearing. The independent hearing examiner was required to be someone who was not employed by the Corporation or who did not perform duties within the Corporation. Because Section 1011 no longer applies to hearing procedures under this part, recipients no longer have a right to an independent hearing examiner.[2]

Constitutional due process, however, requires that, before funding for a recipient of Federal grants may be terminated during the grant term, the recipient must be provided a hearing before an impartial decision maker. Stein, Administrative Law at § 53.05[4]. An impartial decision maker may be an employee of the Corporation as long as that employee has not prejudged the adjudicative facts and has no pecuniary interest or personal bias in the decision. *Id.; Spokane County Legal Services* v. *Legal Services Corporation,* 614 F. 2d 662, 667–668 (9th Cir. 1980). In order to ensure against such prejudgment, this rule requires that a hearing officer be a person who has not been involved in the pending action.

Comments expressed concern about the elimination of the recipient's right to have an independent hearing examiner, who was required to be a person not employed by the Corporation. Noting that LSC staff is substantially smaller than it has been in previous years, comments stated that there may often be no staff available that would qualify as an impartial hearing officer. One comment suggested that the rule should explicitly state that, in such a case, a person outside of the Corporation could be appointed to preside over the hearing. Two comments urged the Corporation to go beyond what is required by law to provide recipients with a right to an independent hearing examiner.

The Board did not agree that the Corporation should provide a right to an independent hearing examiner in the rule. The rule already permits the Corporation to use an outside hearing officer because it states that the hearing officer ''may'' be an employee of the Corporation. There is also nothing in the rule that requires that the President must first determine if any employee of the Corporation is available before designating an outside person. To require an outside hearing examiner would suggest that the Corporation has ignored the statutory changes adopted by Congress. It is the view of the Corporation that the hearing procedures in the final rule comply with the requirements of due process, in part because it permits the Corporation to appoint a person not employed by the Corporation when necessary to ensure that the hearing officer is impartial.

Open hearings. Comments on paragraph (f) of this section urged that the hearing proceedings should not be closed to the public except for extraordinary circumstances. The standard for closing a meeting in the prior and proposed rules was ''for good cause and the interests of justice.'' In addition, the proposed rule provided that a decision to close a hearing would be made by an impartial hearing officer. One comment viewed this standard as too broad and subject to abuse, but provided no practical or factual reasons why the standard should be higher. The Board made no revisions to this paragraph since experience has not indicated any problems with the current standard.

Burden of proof. The Corporation had the burden of proof under the prior rule. Section 1606.8(l) of the proposed rule placed the entire burden of proof on the recipient. Comments urged the Corporation to place the burden on the Corporation. Comments also pointed out that various statements on the burden in

[2] Section 501(b) of the Corporation's FY 1998 appropriations act provides that Section 1011 of the LSC Act is no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. Section 1011 has provided recipients with a right to an independent hearing examiner since 1977.

the preamble and the text appeared to be inconsistent with other provisions of the text of the proposed rule. While § 1606.8(l) put the burden on the recipient, the grounds for debarment required the Corporation to show ''good cause'' before it could debar a recipient, suggesting that the Corporation at least has the initial burden of proof.

The Board decided to revise the rule to place the initial burden on the Corporation to show it has grounds for initiating a termination or debarment action in order to ensure that an action by the Corporation would be based on sufficient evidence to establish grounds for the action. The burden would then shift and the recipient would have to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred based on the alleged grounds. Shifting the burden in this manner is consistent with the emphasis in current law on strengthening the Corporation's ability to sanction recipients and recompete service areas, see H. Rep. No. 207, 105th Cong., 1st Sess. 140 (1997) and the statutory language that authorizes the Corporation to debar a recipient upon a showing of ''good cause.''

The Board made other revisions to the rule to be consistent with the change to the burden of proof. As noted above, the term ''proposed decision'' was changed to ''preliminary determination.'' The change in this term means that, based on the evidence before it, the Corporation has made an initial determination that it has grounds to take action against the recipient. It does not mean that the recipient could not have a fair hearing because the Corporation has already made up its mind. It simply means that the Corporation employee designated to bring such actions has made a preliminary decision that grounds exist for taking the action. The recipient will have the opportunity to rebut the evidence before an impartial hearing officer who was not involved in making the preliminary decision and to present any legal, factual or equitable arguments it wishes to state its case. The recipient could also appeal the hearing officer's decision to the President of the Corporation.

Section 1606.9 Recommended Decision

Only minor changes have been made to this section, which sets out the requirements for the recommended decision issued by the hearing officer. A reference to the informal conference in paragraph (b) was deleted when an objection was raised to including discussions or documents of the informal conference in the hearing record. Including such discussions and documents would mean that offers of settlement, conditional admissions and other information could then be included in the findings of fact. This is not consistent with standard procedures for settlement conferences and would risk undercutting the ability of parties to negotiate and discuss matters informally in order to avoid a full hearing.

Section 1606.10 Final Decision

Mostly technical revisions are made to this section, which delineates the process by which a party to the termination proceeding may request a review of the recommended decision by the President. Language has been added, however, requiring that the President's review be based solely on the record of the hearing below and any additional submissions requested by the President. A decision by the President is a final decision.

Additional submissions and administrative record. The rule requires that the recommended decision contain findings of significant and relevant facts and state the reasons for the decision. It also requires that all findings of fact be based solely on the record of the hearing or on matters of which official notice was taken. When the recommended decision is appealed to the President, or in a separate debarment proceeding, the rule permits additional submissions to supplement the record.

Comments pointed out that recipients should be able to respond to any additional submissions, especially if such submissions become part of the administrative record. The Board agreed and added additional language to do so in Paragraph (c) in this section. A similar revision was also made to Paragraph (c)(2) in § 1606.11 which includes qualifications to the hearing procedures.

Section 1606.11 Qualifications on Hearing Procedures

The primary intent of this section is to clarify that, if a recipient has already been provided a termination hearing on the underlying grounds for the debarment, the recipient is not due a second full termination hearing under this part. Rather, the recipient will be given a brief review process set out in paragraph (c) of this section. In many cases, the Corporation may utilize the procedure delineated in paragraph (b) of this section, which permits the Corporation to take action simultaneously to terminate and debar a recipient within the same hearing procedure.

One comment noted that provision was not made in this section for circumstances where a debarment action is not based on a prior termination and suggests that the Corporation clarify in the rule that, where debarment is not based on a prior termination hearing, the recipient will receive the full hearing procedures provided for termination actions. Because this was the intent of the proposed rule, the Board revised the rule by adding a new paragraph (a) which provides that the full hearing rights set out in this rule apply to any debarment or termination actions unless the action is based on a prior termination. Thus, in any debarment action where the recipient has not already been provided a termination hearing, the recipient will be provided the same hearing procedures set out in this rule for terminations.

Paragraph (d) permits the Corporation to reverse a debarment decision if there has been a reversal of the conviction or civil judgment upon which the debarment was based, new material evidence has been discovered, there has been a bona fide change in the ownership or management of the recipient, the causes for the debarment have been eliminated, or for other reasons the Corporation finds appropriate. This paragraph is patterned after Federal debarment regulations. See, e.g., 29 CFR § 1471.320.

One comment suggested that a similar reversal provision should also be included in the rule for terminations. The Board did not agree. If a debarment decision is reversed, it permits the recipient to take part in the next competition. However, if a termination is reversed, the funds may no longer be available to return to the recipient. Either the funds may have been reprogrammed or a new recipient may have been awarded the grant for the applicable service area. The Corporation should not bind itself by regulation to a commitment it might not have the means to keep.

Section 1606.12 Time and Waiver

With two exceptions, paragraph (a) is essentially the same as in the prior rule. Paragraph (b) in the prior rule has been deleted in this rule because it implemented a time limit to the proceedings required under law that no longer has effect. Also, paragraph (c) in the prior rule is not included because it provides for the waiver or modification of any provision in this part. Such a sweeping waiver provision has the potential to undo the due process rights of recipients that are required under the

Constitution. The rule already provides sufficient discretion and flexibility.

The only change made to this section from the proposed rule is the addition of paragraph (b) which is moved from § 1606.13 in the proposed rule. Paragraph (b) provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from terminating funding or debarring a recipient from receiving additional funding. *See Brock* v. *Pierce County*, 476 U.S. 253 (1986).

Section 1606.13 Interim and Termination Funding; Preprogramming

Paragraph (a) of this section requires the Corporation to continue funding the recipient at its current level until the termination proceeding set out in this part is completed. This is consistent with the prior rule and the due process requirement that funding not be terminated until a fair hearing has been provided. It also assures the continuance of service to clients in the affected service area.

Paragraph (b) clarifies that when a recipient's funds are terminated, the recipient loses all rights to the terminated funds. See discussion on definition of termination.

Paragraph (c) was not in the proposed rule and has been added in response to a comment that recommended that the rule explicitly provide for termination funding when the Corporation terminates financial assistance to a recipient in whole. Termination funding is contemplated for some circumstances in § 1606.14 which provides that after a termination, until a new recipient is awarded a grant, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area. This could include termination funding so that the outgoing recipient could finish or transfer pending cases. Transitional funding is also contemplated in the competition rule in § 1634.10 and in the rule on cost standards and procedures in § 1630.5(b)(1).

Paragraph (d) is also new and has been added in response to comments. It provides that funds recovered pursuant to a termination will be used in the same service area from which they are recovered or will be reprogrammed by the Corporation for basic field purposes. See discussion of reprogramming in discussion of § 1606.2.

Section 1606.14 Recompetition

Section 501(c) of Public Law 105–119 authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated after notice and an opportunity to be heard. Accordingly, this section authorizes the Corporation to recompete any service area where a final decision has been made under this part to terminate in whole a recipient's grant for any service area. It also provides that until a new recipient has been awarded a grant for the service area pursuant to the competition process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11 of the Corporation's rule on competition procedures.

List of Subjects in 45 CFR Parts 1606 and 1625

Administrative practice and procedures, Legal services.

For reasons set out in the preamble, LSC revises 45 CFR part 1606 to read as follows:

PART 1606—TERMINATION AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.

1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for a termination.
1606.4 Grounds for debarment.
1606.5 Termination and debarment procedures.
1606.6 Preliminary determination.
1606.7 Informal conference.
1606.8 Hearing.
1606.9 Recommended decision.
1606.10 Final decision.
1606.11 Qualifications on hearing procedures.
1606.12 Time and waiver.
1606.13 Interim and termination funding; reprogramming.
1606.14 Recompetition.

Authority: 42 U.S.C. 2996e (b)(1) and 2996f(a)(3); Pub. L. 105–119, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, or to debar a recipient from receiving future LSC awards of financial assistance; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(b) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(c) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(d)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR Part 1614; or

(v) A reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with regulations promulgated by the Corporation. No such reduction shall be imposed except in accordance with regulations promulgated by the Corporation.

§ 1606.3 Grounds for a termination.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract, and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section will be based on consideration of the following criteria:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, ''good cause'' means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2 (a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) A subgrant, subcontract, or other similar agreement with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(ii) An agreement for professional services with an IPA debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after the effective date of this rule.

§ 1606.5 Termination and debarment procedures.

Before a recipient's grant or contract may be terminated or a recipient may be debarred, the recipient will be provided notice and an opportunity to be heard as set out in this part.

§ 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated and/or that a recipient should be debarred, the Corporation employee who has been designated by the President as the person to bring such actions (hereinafter referred to as the ''designated employee'') shall issue a written notice to the recipient and the Chairperson of the recipient's governing body. The notice shall:

(1) State the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed sanctions;

(4) Advise the recipient of its right to request:

(i) An informal conference under § 1606.7; and

(ii) a hearing under § 1606.8; and

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13.

(b) If the recipient does not request an informal conference or a hearing within the time prescribed in § 1606.7(a) or § 1606.8(a), the preliminary determination shall become final.

§ 1606.7 Informal conference.

(a) A recipient may submit a request for an informal conference within 30 days of its receipt of the proposed decision.

(b) Within 5 days of receipt of the request, the designated employee shall notify the recipient of the time and place the conference will be held.

(c) The designated employee shall conduct the informal conference.

(d) At the informal conference, the designated employee and the recipient shall both have an opportunity to state their case, seek to narrow the issues, and explore the possibilities of settlement or compromise.

(e) The designated employee may modify, withdraw, or affirm the preliminary determination in writing, a copy of which shall be provided to the recipient within 10 days of the conclusion of the informal conference.

§ 1606.8 Hearing.

(a) The recipient may make written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

(b) Within 10 days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure

that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be disbarred.

§ 1606.9 Recommended decision.

(a) Within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

(1) Terminate financial assistance to the recipient as of a specific date; or

(2) Continue the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; and/or

(3) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 calendar days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the termination or debarment proceedings and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record.

(d) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.9(b).

(e) The President's decision shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommendation shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommendation within 10 days of receipt of the recommended decision, the decision shall become final.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in § 1606.11(c), any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the designated employee who issued the preliminary decision until a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued;

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation.

§ 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract, the recipient loses all rights to the terminated funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize termination funding if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) Funds recovered by the Corporation pursuant to a termination shall be used in the same service area from which they were recovered or will be reallocated by the Corporation for basic field purposes.

§ 1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11.

PART 1625—[REMOVED AND RESERVED]

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2996g(e), 45 CFR part 1625 is removed and reserved.

Dated: November 18, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–31251 Filed 11–20–98; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1623

Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule substantially revises the Legal Services Corporation's rule on procedures for the suspension of financial assistance to recipients to implement changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes.

DATES: This rule is effective on December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rule on procedures for suspending funding to LSC recipients. The Committee made several changes to the draft rule and adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 30446 (June 4, 1998). On September 11, 1998, during public hearings in Chicago, Illinois, the Committee considered public comments on the proposed rule. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on September 12, 1998.

This final rule is intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with Sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For suspensions, the Corporation could not suspend financial assistance unless the recipient had been provided reasonable notice and an opportunity to show cause why the action should not be taken. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a ''timely, full and fair hearing'' before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 501(b) of the appropriations act provides that a recipient's hearing rights under Sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This rule implements this new law as it applies to suspensions. Another final rule, also in this publication of the **Federal Register**, deals with the new law as it applies to terminations and denials of refunding. See final rule 45 CFR part 1606, which would revise the Corporation's policies and procedures for terminations and adds provisions dealing with debarments and recompetition.

The change in the law regarding suspensions does not mean that grant recipients have no hearing rights before their funds are suspended. Constitutional due process generally requires that a discretionary grant recipient is entitled to ''some type of notice'' and ''some type of hearing'' before its grant funding can be suspended or terminated during the grant period. Stein, Administrative Law at § 53.05[4]. However, the new law emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations. See H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures for suspensions have been streamlined. The changes emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance but, at the same time, to provide recipients with notice and a fair opportunity to be heard before any suspension action is taken.

The Corporation received three comments on the proposed rule. The commenters generally agreed that the proposed rule represented an appropriate implementation of statutory requirements, but made recommendations for clarifications or revisions for policy changes. An analysis of comments and recommendations for changes to the proposed rule is provided below.

Section-by-Section Analysis

Section 1623.1 Purpose

This section is revised from the prior rule to clarify the purpose of a suspension, as opposed to other sanctions the Corporation might choose to apply to a recipient. A suspension is one of several actions that may be taken by the Corporation to ensure the compliance of LSC recipients with the terms of their LSC grants. A suspension is generally used by Federal agencies as a temporary withdrawal of a grantee's authority to obligate or receive grant funds, pending corrective action by the

grantee or a decision by the agency to terminate the grant. Stein J., Administrative Law at § 53.02[3]. Suspensions are intended to be used in emergency situations which require prompt action and thus are normally not subject to full administrative appeals. Id. For example, the Corporation might choose to suspend when quick action is necessary to safeguard against a loss of LSC funds or the Corporation believes that prompt action will bring about corrective action and prevent the likely recurrence of violations. No changes have been made from the proposed version of this section.

Section 1623.2 Definition

The definition of suspension is revised from the prior rule to clarify the nature of a suspension and the differences between a suspension and a termination. The proposed definition stated that a suspension withholds funding to a recipient until the end of the suspension period. This was intended to clarify that when the Corporation suspends funding after a hearing under this part, it may only withhold the funds until the end of the suspension period as provided in § 1623.4(e) and (f). After the suspension period, the Corporation must return the funds to the recipient, and either begin termination proceedings or determine that the recipient is taking adequate steps to cure the problem.

One comment suggested that the temporary nature of a withholding under a suspension should be expressly stated in the rule. The Board agreed and added a provision in § 1623.6 stating that funds withheld under a suspension must be returned to the recipient at the end of the suspension period.

A definition of knowing and willful has been added to clarify one of the criteria included to determine whether there has been a substantial violation for the purposes of § 1623.3(b)(5). Knowing and willful means that the recipient had actual knowledge of the fact that its action or failure to take a required action constituted a violation and despite such knowledge, undertook or failed to undertake the action. For an in-depth discussion of the meaning of knowing and willful, see the discussion of the term in the final rule, 45 CFR part 1606, also published in this volume of the **Federal Register**.

Section 1623.3 Grounds for Suspension

Paragraph (a) of this section sets out the grounds for most suspensions. The underlying reason for a suspension is a substantial violation by the recipient of the terms of its LSC grant. A decision to suspend, rather than terminate, funding will usually be made when the Corporation has reason to believe that prompt action is necessary to safeguard LSC funds or effect an immediate cure of the violation at issue.

A provision setting out the criteria for determining whether there has been a substantial violation is included in this section in paragraph (b). The prior rules on suspension, termination and denial of refunding included two different undefined standards. Terminations or suspensions were undertaken for substantial violations and denial of refunding for significant violations. Because there has been some confusion over the years about the scope of the meaning of the two standards, this rule includes criteria intended to provide guidance to recipients on what constitutes a substantial violation. § 1623.3(b).

Comments on the criteria in the proposed rule mirrored those for the same standard in proposed rule, Part 1606, and the Board made the same revisions to the criteria for this rule as those made for Part 1606. Part 1606 is also published as a final rule in this volume of the **Federal Register** and recipients should refer to the preamble to Part 1606 for interpretive guidance on the criteria.

Paragraph (c) implements Section 509 of the Corporation's 1996 appropriations act, which has been incorporated by the Corporation's FY 1998 appropriations act. Section 509 requires recipients to complete audits which are consistent with the guidance promulgated by the Office of Inspector General. In addition, it authorizes the Corporation, after receiving a recommendation from the OIG, to suspend funding to a recipient who fails to have an acceptable audit, and allows the Corporation to continue the suspension until the recipient has completed an audit acceptable to the OIG. This generally means that the audit is prepared according to OIG audit guidances, which consist of the LSC Audit Guide for Recipients and Auditors and any relevant bulletins issued by the OIG.

One comment noted that the Corporation has discretion whether to suspend funding when it receives a recommendation from the OIG and urged the Corporation to clarify in the final rule that the Corporation would suspend funding only under extraordinary circumstances. The Board did not agree. Whether or not a recipient's audit meets the requirements of the OIG audit guidance is a determination made by the OIG. Whether to suspend based on the OIG recommendation is a determination made by LSC management. Although management has discretion in taking action, it should exercise this discretion on a case-by-case basis and generally give deference to the OIG decision. Requiring the Corporation to use an ''extraordinary circumstances'' standard in all cases would be inconsistent with the scheme set out in Section 509 of the Corporation's appropriations act which provides the OIG with specific authority to determine whether an audit is acceptable and which envisions management following up on a finding made by the OIG. The Corporation always has enforcement discretion to determine whether it is financially or administratively advisable to take action against a recipient. The Corporation should not limit its ability to take action when it is advisable to suspend funding.

The comment also encouraged revising the rule to indicate the criteria that would be used by the OIG to determine whether an audit meets OIG guidances. Based on comments from the OIG, the Board did not revise the rule. According to the OIG, the criteria by which an audit is judged are contained in the audit guidance issued by the OIG, which are the Audit Guide for Recipients and Auditors (which includes the requirements of government auditing standards and OMB Circular A–133) and audit bulletins. Both recipients and their auditors should be well aware of these documents, which set out the requirements for an audit and the responsibilities of recipients and auditors with respect to the audit.

One comment suggested that the preamble to the rule should indicate that the Corporation would consider only a suspension in part when a suspension in whole would leave the recipient with insufficient funds to remain in operation, thereby interrupting client services and interfering with the professional obligations of attorneys employed by the recipient. The Board decided not to obligate the Corporation to such an exact policy. It is clearly a responsibility long recognized by the Corporation to ensure continued legal assistance in each service area. Both the competition rule and the termination rule include provisions providing the Corporation funding discretion to address this need and the Corporation's decisions regarding suspension will be guided by this concern.

Section 1623.4 Suspension Procedures

The suspension procedures in this section are substantially the same as in the prior rule, but are set out in a new structure for clarity, and with two

substantive changes. First, references to the employee who orders a suspension are replaced by a reference to the Corporation. Second, the section deletes the provision in § 1623.3(c) of the prior rule that required the Corporation, except for unusual circumstances, to give the recipient an opportunity to take effective corrective action before suspending funding. Instead, paragraph (a)(3) provides the Corporation the flexibility needed in extraordinary circumstances addressed by suspensions to suspend funding before corrective action has taken place. However, the Corporation must identify any corrective action the recipient can undertake to avoid or end the suspension in the proposed determination.

Paragraph (a) of this section authorizes the Corporation to issue a written preliminary determination to suspend funding to the recipient. The recipient then has the burden to show cause why the suspension should not take place.

The preliminary determination is required to state the grounds for the action, identify the relevant facts and documents underlying the determination, specify any corrective action the recipient may take, and advise the recipient of its right to submit written materials in response to the preliminary determination and to request an informal hearing with the Corporation. Paragraph (c) requires the Corporation to consider all materials and oral evidence presented under this section and, if the Corporation thereafter determines that grounds for a suspension exist, the Corporation may issue a final written determination to suspend and shall provide that determination to the recipient.

Paragraph (e) permits the Corporation to rescind or modify the terms of the final determination to suspend and, after providing written notice to the recipient, reinstate the suspension without any additional proceedings under this part. Paragraph (e) also states that, except for suspensions for the failure of a recipient to complete an audit consistent with the guidance promulgated by the Office of Inspector General, a suspension shall not exceed 30 days, unless there is agreement between the recipient and the Corporation to extend the suspension for up to 60 days. This reflects the presumption that a suspension of too long a duration would likely endanger a recipient's ability to continue service to its clients. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. The Corporation, therefore, should act quickly to determine that the problem is solved and is unlikely to reoccur, the appropriate corrective action has been taken, or initiate a termination process under part 1606.

Paragraph (f) implements Section 509 of Public Law 104–134, which requires that suspensions for failure to have an acceptable audit should last until the recipient has completed an acceptable audit.

Section 1623.5 Time Extension and Waiver

This section provides that extensions of time may be provided for good cause, except for the time limits in § 1623.4(e). It also permits any other provision of this part to be waived or modified by agreement of the recipient and the Corporation for good cause.

Paragraph (b) from § 1606.6 in the proposed rule has been moved to this section and is designated as paragraph (c). This paragraph provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from suspending a recipient's grant or contract with the Corporation. See *Brock* v. *Pierce County*, 476 U.S. 253 (1986).

Section 1623.6 Interim Funding

Generally, this section is the same as in the prior rule. It requires the Corporation to continue funding the recipient at the current level during suspension proceedings. This is necessary to prevent an injustice if the proceedings reveal that a suspension is not in order and to ensure the continued availability of legal services to the poor in the recipient's service area.

List of Subjects in 45 CFR Part 1623

Administrative practice and procedures, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.

1623.1 Purpose.
1623.2 Definitions.
1623.3 Grounds for suspension.
1623.4 Suspension procedures.
1623.5 Time extensions and waiver.
1623.6 Interim funding.

Authority: 42 U.S.C. 2996e(b)(1); Pub. L. 104–134, 110 Stat. 1321, Sec. 509; Pub. L. 105–119, 111 Stat. 2440, Sec. 501(b).

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definitions.

For the purposes of this part:

(a) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(b) *Recipient* means any grantee or contractor receiving legal assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(c) *Suspension* means an action taken during the term of the recipient's current grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation; and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a) of this section will be based on consideration of the following criteria:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory

restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and wilfull.

(c) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(b) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 days after the recipient's request is received.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary.

(d) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for up to a total of 60 days without further proceedings under this part.

(f) When the suspension is based on the grounds in § 1623.3(c), a recipient's funds may be suspended until an acceptable audit is completed.

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(e), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be returned to the recipient at the end of the suspension period.

Dated November 18, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–31252 Filed 11–20–98; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 96–45; FCC 98–160]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on the issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on July 17, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, 20554. This document is also available from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

I. Introduction

1. Section 254 of the Communications Act codified the Commission's long-standing commitment to ensuring the preservation and advancement of universal service in rural, high cost, and insular areas. As section 254 required, the Commission convened a Federal-State Joint Board on Universal Service and, in light of the Joint Board's recommendations, the Commission on May 8, 1997, released the *Universal Service Order*, 62 FR 32862 (June 17, 1997), which, among other things, identified the services included within the definition of universal service and

established a specific timetable for implementation of revised universal service support programs. The Commission determined that carriers should receive support for serving rural and high cost areas based on the forward-looking cost of providing the supported services. Non-rural carriers would begin to receive high cost support based on forward-looking costs on January 1, 1999, while rural carriers would continue to receive high cost support based on existing support levels pending further review by the Commission, the Joint Board, and a Joint Board-appointed Rural Task Force, but at least until January 1, 2001.

2. The Commission determined that non-rural carriers' high cost support should be determined by computing the forward-looking cost of providing the supported services and subtracting from it a revenue benchmark amount, and that the share of support provided by federal mechanisms initially should be set at 25 percent. The Commission acknowledged that this share of support was based on the need to avoid double-recovery by carriers pending reform of state rates and support mechanisms, and stated that the federal share of support would be subject to review in light of state proceedings, the development of competition, and other relevant factors. The Commission's determination relating to the federal share of support generated several petitions for reconsideration and significant comment. Recently, the Commission committed to completing a proceeding reconsidering the federal share of support before revised support mechanisms are implemented for non-rural carriers.

3. On March 11, 1998, the state members of the Joint Board filed a request that certain issues related to the determination of high cost support, including issues regarding the share of federal high cost support, be referred to the Joint Board. Shortly after an en banc hearing on these issues convened by the Commission with the participation of the state Joint Board commissioners, the state members filed a letter requesting referral of two additional issues.

4. In this Order, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on these issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

II. Discussion

5. The state Joint Board members' referral request, as supplemented by their June 18 letter, requested referral of six issues: (1) Whether the FCC should take responsibility only for 25% of the high cost subsidy calculated by the new soon-to-be-adopted federal funding model and leave the remaining 75% for States to support; (2) Whether to apply federal universal service funds to reduce the cost of interstate access charges; (3) An appropriate method for formulating and distributing high cost funds among the States; (4) Whether and to what extent the FCC should have a role in making intrastate support systems explicit, and, as part and parcel of any such examination, a referral of the section 254(k) issue concerning recovery of joint and common costs; (5) The revenue base upon which the FCC should assess and recover providers' contributions for universal service; and (6) Whether, to what extent, and in what manner providers should recover contributions to universal service through their rates.

6. Although we recognize that the Joint Board has considered and given recommendations on many of these issues previously and has been consulted on an ongoing basis regarding matters in this docket, we find that further Joint Board input will be beneficial as we move forward on implementing universal service and high cost support. We find that further coordination between state and federal regulators on these issues will enhance the development of universal service and competition policy. We also find that a recommendation from the Joint Board on these issues will assist us in our review of the pending petitions for reconsideration on these issues. In consultation with the state members of the Joint Board, we have clarified, expanded, and reorganized the issues to be referred. Accordingly, we refer to the Joint Board the following issues:

(1) An appropriate methodology for determining support amounts, including a method for distributing support among the states and, if applicable, the share of total support to be provided by federal mechanisms. If the Commission were to maintain the current 25/75 division as a baseline, the Commission also requests the Joint Board's recommendation on the circumstances under which a state or carrier would qualify to receive more than 25 percent from federal support mechanisms.

(2) The extent to which federal universal service support should be applied to the intrastate jurisdiction. In its recommendation on this issue, the Commission requests the Joint Board's recommendation on the following topics:

(a) To the extent that federal universal service reform removes subsidies that are currently implicit in interstate access charges, whether interstate access charges should be reduced concomitantly to reflect this transition from implicit to explicit support, and whether other approaches would be consistent with the statutory goal of making federal universal service support explicit. The Commission also requests a recommendation on how it can avoid ''windfalls'' to carriers if federal funds are applied to the intrastate jurisdiction before states reform intrastate rate structures and support mechanisms.

(b) Whether and to what extent federal universal service policy should support state efforts to make intrastate support mechanisms explicit. The Commission recognizes that section 254(k) envisions separate state and federal measures related to the recovery of joint and common costs, but nevertheless welcomes the Joint Board's input on how section 254(k) may relate to the Commission's role in making intrastate support systems explicit.

(c) The relationship between the jurisdiction to which funds are applied and the appropriate revenue base upon which the Commission should assess and recover providers' universal service contributions and, if support for federal mechanisms continues to be collected solely in the interstate jurisdiction, whether the application of federal support to costs incurred in the intrastate jurisdiction would create or further implicit subsidies, barriers to entry, a lack of competitive neutrality, or other undesirable economic consequences.

(3) To what extent, and in what manner, is it reasonable for providers to recover universal service contributions through rates, surcharges, or other means.

7. We request that the Joint Board provide a recommended decision on these issues by November 23, 1998. We will then consider the Joint Board's recommendations and issue an order specifying the methodology for determining high cost support for non-rural carriers so that the new mechanism can be implemented by July 1, 1999.

8. In order to allow sufficient time for the Joint Board's deliberations and for the Commission to receive public comment on the Joint Board's recommendations, we hereby extend the implementation date for the revised high cost support mechanism for non-

rural carriers specified in the *Universal Service Order* by six months from January 1, 1999, to July 1, 1999. We find that the potential benefits of a referral justify this limited extension of the implementation timeline specified in the *Universal Service Order.* During the extension period, non-rural carriers (as well as rural carriers) will continue to receive support flows based on historical support levels, which have been sufficient to produce rates that the Joint Board has previously characterized as generally affordable. No convincing evidence has been presented to the Commission to show that circumstances, such as the development of local exchange competition, will significantly affect support flows before the revised implementation date.

9. In order to ensure that existing support flows continue until the revised implementation date, the Commission hereby amends § 36.601(c) of the Commission's rules to specify that non-rural carriers (as well as rural carriers) may continue to receive the expense adjustment for high cost loops specified in Subpart F of Part 36 of the Commission's Rules (the existing high cost loop fund) until July 1, 1999.

10. In light of this change to the implementation timeline for high cost support for non-rural carriers, we believe that additional time may be necessary to complete our review of support mechanisms for rural carriers described in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that it intended to release a further notice of proposed rulemaking on forward-looking cost methodologies for rural carriers in October 1998. This projected date was premised on the assumption that the Commission's proceedings related to non-rural carriers would have been essentially completed by that time. Given the amended date for implementing revised support mechanisms for non-rural carriers, we hereby clarify that we do not expect to issue a further notice of proposed rulemaking related to high cost support for rural carriers until a later date, to be determined by the Commission once further proceedings have been conducted by the Joint Board and its Rural Task Force. Rural carriers will continue to receive support based on historical support flows until the Commission adopts a forward-looking cost mechanism for rural carriers, which would become effective no earlier than January 1, 2001.

III. Procedural Matters and Ordering Clauses

A. Supplemental Final Regulatory Flexibility Analysis

11. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, only to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by section 603 RFA, 5 USC section 603, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), 61 FR 63778 (December 2, 1996), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision. The actions taken in this Order and Order on Reconsideration do not change the analysis included in the FRFA in the *Universal Service Order* because neither the referral of issues to the Joint Board nor the extension of the timetable for implementing a revised high cost support mechanism for non-rural carriers will affect reporting, recordkeeping, or other compliance requirements. Further, the actions taken in this Order and Order on Reconsideration only affect telecommunications carriers that are so large as not to meet the definition of a rural telephone company by extending the date when they will begin to receive high cost support based on the forward-looking cost of providing the supported services.

B. Ordering Clauses

12. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that this Order and Order on Reconsideration is adopted.

13. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the issues specified herein are referred to the Federal-State Joint Board on Universal Service for a recommendation to be received by the Commission no later than November 23, 1998.

14. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that section 36.601(c) of the Commission's rules, 47 CFR § 36.601(c), is hereby amended as noted in Appendix A. This rule change shall be effective December 23, 1998.

15. It is furthered ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the timetable established in the *Universal Service Order* for implementation of revised high cost support mechanisms for non-rural carriers is extended such that revised mechanisms for non-rural carriers will take effect July 1, 1999.

16. It is further ordered, that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order and Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 36 of the Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES.

1. The authority citation for part 36 continues to read as follows:

Authority: 47 USC Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

§ 36.601 General.

2. In § 36.601 remove ''January 1, 1999'' where ever it occurs and replace it with ''July 1, 1999''.

[FR Doc. 98–31208 Filed 11–20–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 111698B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel for 24 hours in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 18, 1998, until 1200 hours, November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 TAC of Atka mackerel for the Eastern Aleutian Islands District and Bering Sea subarea was established by Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 13,782 metric tons (mt). See § 679.20(c)(3)(iii).

The fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea was closed to directed fishing under § 679.20(d)(1)(iii) on February 2, 1998, under the 1998 interim specifications (63 FR 6110, February 6, 1998). On March 16, 1998, NMFS published 1998 final specifications and set aside the remaining Atka mackerel TAC in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (63 FR 12689, March 16, 1998; 63 FR 12698, March 16, 1998).

The Acting Administrator, Alaska Region, NMFS (Acting Regional Administrator) established a directed fishing allowance of 13,682 mt, and set aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries (63 FR 12689, March 16, 1998).

NMFS has determined that as of October 31, 1998, 2,400 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea.

In accordance with § 679.20(d)(1)(iii), the Acting Regional Administrator finds that this directed fishing allowance will soon be reached. Therefore, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea at 12 noon, A.l.t., November 19, 1998.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Atka mackerel TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Atka mackerel TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated November 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31273 Filed 11–18–98; 4:27 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 225
Monday, November 23, 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

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–1]

Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referenda order.

SUMMARY: This document directs that referenda be conducted among eligible growers of California nectarines, pears, and peaches to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in the production area.

DATES: The referenda will be conducted from January 5 through January 29, 1999. To vote in these referenda, growers must have been producing California nectarines, pears, and peaches during the period April 1 through November 30, 1998.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referenda agents at 2202 Monterey Street, suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487–5901; fax (209) 487–5906; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 916 (7 CFR part 916) and Marketing Order No. 917 (7 CFR part 917), hereinafter referred to as the ''orders,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by the growers. The referenda shall be conducted during the period January 5–29, 1999, among California nectarine, pear, and peach growers in the production area. Only growers that were engaged in the production of California nectarines, pears, and peaches during the period of April 1 through November 30, 1998, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. The Pear Commodity Committee unanimously recommended suspension of the pear provisions because such provisions were no longer needed. The California Bartlett pear industry is now functioning under a California Pear Marketing Program (State pear program) and is no longer using the pear order provisions. The State pear program, developed by the California Bartlett pear industry of the California Department of Food and Agriculture, is similar to the Federal pear program.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the orders if less than two-thirds of the growers voting in the referenda and growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referenda. The Secretary will also consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referenda herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0072 for nectarines and OMB No. 0581–0080 for pears and peaches. It has been estimated that it will take an average of 30 minutes for each of the approximately 2,130 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after January 29, 1999, will not be included in the vote tabulation.

Kurt J. Kimmel and Terry Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR Part 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents and from their appointees.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: November 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31184 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–284–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–M–284–D, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–284–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during modification of the forward engine mount assembly of the left and right engines to meet increased thrust load specifications, certain engine mount assemblies may not have been modified properly. Improper modification of these assemblies could cause the secondary load path of the forward engine mount to be unable to sustain required loads, resulting in structural failure, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998, which describes procedures for a one-time visual inspection of the forward engine mount assembly of the left and right engines to verify that the part number (P/N) on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. If the P/N of the forward engine mount is incorrect, the follow-on actions involve removal of the engine, visual inspection to detect any crack or failure of the thrust links on the forward engine mount assembly, modification of the engine mount if no crack or failure is detected, or replacement of the existing thrust link with a new thrust link and modification of the engine mount if any crack or failure is detected.

Accomplishment of the actions specified in the Airbus service bulletin is intended to adequately address the identified unsafe condition. The Airbus service bulletin references V2500 International Aero Engines Service Bulletin V2500–NAC–71–0135, Revision 1, dated March 5, 1998, as an additional source of service information.

The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 98–293–118(B) dated July 29, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 70 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $306,600, or $4,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–284–AD.

Applicability: Model A319–131 and –132, A320–232 and –233, and A321–131 series airplanes; except those on which Airbus Modification 27020 has been accomplished (reference Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 structural failure of the forward engine mount secondary load path, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD: Perform a one-time visual inspection of the forward engine mount assembly of the left and right engines to verify that the part number (P/N) on each assembly is correct, in accordance with Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998.

(1) If the P/N on the forward engine mount assembly of the left and right engines is 740–2010–513N or 740–2010–513 with a revision of 'N' or higher, prior to further flight, re-identify each assembly in accordance with the service bulletin. No further action is required by this AD.

(2) If the P/N on the forward engine mount assembly of the left and right engines is different from the P/N's specified in paragraph (a)(1) of this AD, or if the P/N cannot be determined: Prior to further flight, perform a detailed visual inspection to detect any crack or failure of the thrust links on each forward engine mount assembly, in accordance with the service bulletin.

(i) If no crack or failure of any thrust link on the left or right engine is detected: Within 2,250 landings following accomplishment of the inspection specified in paragraph (a)(2) of this AD, or at the next engine removal, whichever occurs first, modify each engine mount and its installation, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

(ii) If any crack or failure of any thrust link on the left or right engine is detected, prior to further flight, replace the existing thrust link with a new thrust link, modify each engine mount, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

Note 2: Inspection and modification of the engine mount assembly accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–71–1021, dated February 6, 1998, is considered acceptable for compliance with the applicable actions specified in this AD.

(b) As of the effective date of this AD, no person shall install a forward engine mount assembly on any airplane equipped with International Aero Engines (IAE) V2500–A5 engines, unless the actions described in Airbus Service Bulletin A320–71–1021, dated February 6, 1998, or Revision 01, dated June 10, 1998, have been accomplished for that assembly.

Note 3: Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998, references V2500 IAE Service Bulletin V2500–NAC–71–0135, Revision 1, dated March 5, 1998, as an additional source of service information for accomplishment of the actions specified in 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 4: 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.

Note 5: The subject of this AD is addressed in French airworthiness directive 98–293–118(B), dated July 29, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31177 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 series airplanes. This proposal would require modification of the power supply system of the horizontal stabilizer control unit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–279–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 series airplanes. The RLD advises that the existing design of certain horizontal stabilizer control units (HSCU) will result in the HSCU being inoperative if both the No. 1 and No. 2 direct current (DC) buses are de-energized, either as a result of malfunction or if certain emergency procedures are used by the flight crew. If the HSCU is inoperative, only alternate stabilizer control is available, and the flight crew must operate the ''ALT STAB'' switch for pitch trim control. A recent assessment has resulted in a determination that use of alternate stabilizer control alone may not be sufficient for pitch control during certain emergency procedures. Such loss of the primary hydraulic stabilizer control during use of certain emergency procedures, if not corrected, could result in the inability of the flight crew to control the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–27–071, dated December 21, 1996, which describes procedures for modification of the power supply system of the HSCU. The modification involves removal of the circuit breaker, placard, and associated wiring; and installation of a new circuit breaker, placard, and associated wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1996–158 (A), dated December 31, 1996, in order to assure the continued airworthiness of these airplanes in The Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,180, or $590 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 98–NM–279–AD.

Applicability: Model F.28 Mark 0070 series airplanes, as listed in Fokker Service Bulletin SBF100–27–071, dated December 21, 1996; 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 the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the power supply system of the horizontal stabilizer control unit in accordance with Fokker Service Bulletin SBF100–27–071, dated December 21, 1996.

(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.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–158 (A), dated December 31, 1996.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31176 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require repetitive inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. This proposal also would require eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections. This proposal is prompted by a report that an operator found two broken H–11 tension bolts on the side-of-body kick-load fitting on one airplane. The actions specified by the proposed AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–278–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found two broken H–11 tension bolts on a Boeing Model 767 series airplane. The broken bolts were on the side-of-body kick-load fitting, which is located on the wing rear spar. The broken bolts were attributed to stress corrosion cracking that resulted from a combination of factors, such as deterioration of the bolt finish, an existing pre-load, and the presence of moisture. Such stress corrosion cracking, if not detected, could result in reduced structural integrity of the wing-to-body joint structure.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. That service bulletin describes procedures for repetitive detailed visual inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. The service bulletin specifies two inspection options for the operator to choose from when performing the inspections: Option 1 allows the operator to defer the inspection of the four H–11 tension bolts on the lower splice plate, provided that the detailed visual inspections of the H–11 tension bolts on the kick-load fitting are repeated at 90-day intervals. Option 2 allows the operator to repeat the detailed visual inspections of the H–11 tension bolts on the kick-load fitting at 18-month intervals, provided the operator also inspects the H–11 tension bolts on the lower splice plate at the same time.

The service bulletin also describes procedures for replacement of any damaged or broken bolts with new, improved bolts, which would eliminate the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to mandate, within 6,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, the replacement of all four H–11 tension bolts at each side-of-body kick-load fitting with new, improved bolts as described in Boeing Service Bulletin 767–57A0064, Revision 1, as terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these conditions.

Cost Impact

There are approximately 177 airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection of the kick-load fitting, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the kick-load fitting proposed by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane, per inspection cycle.

It would take approximately 23 work hours per airplane to accomplish the proposed inspection of the splice plate, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the splice plate proposed by this AD on U.S. operators is estimated to be $96,600, or $1,380 per airplane, per inspection cycle.

It would take approximately 140 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $588,000, or $8,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–278–AD.

Applicability: Model 767 series airplanes, line positions 1 through 177 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the H–11 tension bolts on the side-of-body kick-load fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a detailed visual inspection of the four H–11 tension bolts at each side-of-body kick-load fitting located on the wing rear spar to detect damaged, broken, or improperly sealed bolts; and accomplish the requirements in either paragraph (a)(1) or (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998.

(1) *Option 1:* Repeat the detailed visual inspection at each side-of-body kick-load fitting thereafter at intervals not to exceed 90 days, until accomplishment of the actions specified in paragraph (c) of this AD. Or

(2) *Option 2:* Perform a detailed visual inspection of the four H–11 tension bolts on the lower splice plate located on the wing rear spar to detect damaged, broken, or improperly sealed bolts. Repeat the detailed visual inspection of each side-of-body kick-load fitting and the lower splice plate thereafter at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (c) of this AD.

(b) If evidence of any damaged, broken, or improperly sealed bolt is detected, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Thereafter, repeat the detailed visual inspection in either paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the actions specified in paragraph (c) of this AD.

(c) Within 6,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, replace all four H–11 tension bolts at each side-of-body kick-load fitting with new, improved bolts, and perform a detailed visual inspection to detect any damaged, broken, or improperly sealed bolt of the lower splice plate located on the wing rear spar, in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. If any damaged, broken, or improperly sealed bolt is detected during the inspection, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

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

(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.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31175 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. This proposed AD also would provide for optional terminating action for the repetitive inspections. This proposal is prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU firewall of Boeing Model 777 series airplanes. The actions specified by the proposed AD are intended to detect and correct wear of the safety spring wear plate doublers on the APU firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–275–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that excessive wear was found on the titanium safety spring wear plate doublers on the auxiliary power unit (APU) firewall of Boeing Model 777 series airplanes. Several of the airplanes on which the excessive wear condition was found had at least 40 percent wear of one or both of the doublers. In one case, the wear penetrated 0.060 inch into the 0.063-inch-thick doubler. Such excessive wear has been attributed to fretting between the tip of the APU door spring and the doubler. Excessive wear of the safety spring wear plate doublers, if not corrected, could result in a hole in the APU firewall, and consequent decreased fire protection capability.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, which describes procedures for repetitive inspections of the safety spring wear plate doublers on the APU firewall, measurement of wear of the doublers, and follow-on actions, if necessary. Those follow-on actions include repair, or replacement of the existing titanium doublers with new stainless steel doublers. Replacement of the existing doublers with new stainless steel doublers would eliminate the need for the repetitive inspections. If wear is detected that is through the wear plate doubler and into or through the APU firewall, the alert service bulletin specifies to contact Boeing for repair instructions. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections of the safety spring wear plate doublers attached to the APU firewall, measurement of wear of the doublers, and follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed in the paragraph entitled ''Differences Between Proposed Rule and Alert Service Bulletin.''

The FAA has determined that, if wear is detected that is through the wear plate doubler and into or through the APU firewall, flight with such damage (i.e., a hole in the doubler or APU firewall) is permitted, provided that a temporary repair is accomplished within 20 days after the damage is discovered. The FAA finds that 20 days is adequate to permit the repair to be accomplished at an authorized repair station. The FAA finds that allowing flight to continue for 20 days following detection of such damage is acceptable because there have been no reports indicating wear through the doubler or into the firewall on any in-service airplane, and no reports of any fire in the APU compartment of any Model 777 series airplane. This determination also is based upon the fact that the hole is caused by the tip of the APU door spring. When the APU doors are in the closed position, the tip of the door spring blocks the hole. The blockage of the hole by the spring is sufficient to prevent hazardous quantities of air, flammable fluids, or flames from passing through the hole. If extended operation (i.e., more than 20 days) is permitted with such a hole in the firewall, the size of the hole would continue to increase to a point at which the door spring no longer would prevent hazardous quantities of air, flammable fluids, or flames from passing through the hole.

The FAA also has determined that permanent replacement of any repaired wear plate doubler must be accomplished within 4,000 flight cycles after installation of the temporary repair. This determination is based on the fact that such a hole would not affect the structural integrity of the airplane. The FAA considers that a compliance time of 4,000 flight cycles is conservative (relative to the resistance to wear of the temporary repair) and sufficient to ensure the safety of the transport airplane fleet.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 156 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

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

Should an operator be required to accomplish the temporary repair, it would take approximately 2 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the temporary repair action is estimated to be $120 per airplane.

Should an operator be required or elect to accomplish the replacement of the wear plate doublers, it would take approximately 3 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of replacement of the wear plate doublers is estimated to be $180 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–275–AD.

Applicability: Model 777 series airplanes, line numbers 001 through 156 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct wear of the safety spring wear plate doublers on the auxiliary power unit (APU) firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability, accomplish the following:

(a) Perform a visual inspection of the two safety spring wear plate doublers on the APU firewall, and measure any wear of the doublers, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 total flight hours or less as of the effective date of this AD: Inspect and measure prior to the accumulation of 6,300 total flight hours.

(2) For airplanes that have accumulated between 6,001 and 10,000 total flight hours as of the effective date of this AD: Inspect and measure within 30 days after the effective date of this AD.

(3) For airplanes that have accumulated 10,001 total flight hours or more as of the effective date of this AD: Inspect and measure within 10 days after the effective date of this AD.

(b) If, during the inspection required by paragraph (a) of this AD, the wear on each doubler measures less than 0.045 inch, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(c) If, during the inspection required by paragraph (a) of this AD, the wear on either doubler measures greater than or equal to 0.045 inch: Except as provided by paragraph (d) of this AD, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 30 days, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(d) If, during the inspection required by paragraph (a) of this AD, any wear penetrates either doubler: Within 20 days after detection of the wear, accomplish the requirements of either paragraph (d)(1) or (d)(2) of this AD, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(1) Install a temporary stainless steel patch on both doublers, and within 4,000 flight cycles after installation of the temporary patch, accomplish the requirements of paragraph (d)(2) of this AD.

(2) Replace both existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers in accordance with the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

(e) If wear penetrates into or through the APU firewall: Within 20 days after detection of the wear, repair any damage to the APU firewall in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(f) Replacement of the existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

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

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

(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.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This action would establish repetitive inspection intervals for certain inspections required by the existing AD. This action also would add a requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–249–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 23, 1998, the FAA issued AD 98–03–06, amendment 39–10298 (63 FR 5224, February 2, 1998), applicable to certain Airbus Model A300 and A300–600 series airplanes, to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Since the issuance of AD 98–03–06, the manufacturer has issued Airbus Service Bulletins A300–57–0234, Revision 01 (for Model A300 series airplanes), and A300–57–6087, Revision 01 (for Model A300–600 series airplanes), both dated March 11, 1998. Airbus Service Bulletin A300–57–0234, Revision 01, limits the effectivity of the existing AD, however, these service bulletins add no additional airplanes to the effectivity. These service bulletins recommend repetitive intervals for accomplishing detailed visual and high frequency eddy current inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 98–151–247(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

The manufacturer also has issued Airbus Service Bulletins A300–57–0235 (for Model A300 series airplanes), and A300–57–6088 (for Model A300–600 series airplanes), both dated August 5, 1998. These service bulletins describe procedures for modification of Gear Rib 5 of the MLG attachment fittings at the lower flange by increasing the depth, diameter, and corner radius of the spotface of specified fastener holes. Accomplishment of this modification would eliminate the need for the repetitive inspections described previously. The DGAC approved these service bulletins.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–03–06 to continue to require inspections to detect cracks in Gear Rib 5 of MLG attachment fittings at the lower flange, and repair, if necessary. The proposed AD also would establish repetitive inspection intervals for certain inspections. In addition, the proposal would require modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the

service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and the Related Service Bulletins

Operators should note that, although the service bulletins described previously specify that appropriate corrective action may be obtained by contacting the manufacturer for disposition of certain repair conditions, this proposal would require that any such repairs be accomplished in accordance with a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent).

Operators also should note that this AD proposes to mandate, prior to the accumulation of 21,000 total flight cycles or within 2 years after the effective date of the AD, whichever occurs later, the modification of Gear Rib 5 of the MLG attachment fittings as described in Airbus Service Bulletins A300–57–6088 and A300–57–0235. Accomplishment of this modification would constitute terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

There are approximately 164 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection currently required by AD 98–03–06, and retained in this proposed AD, takes approximately 6 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 $59,040, or $360 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $10,270 per airplane. Based on these figures, the cost impact of the new actions proposed by this AD on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10298 (63 FR 5224, February 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–249–AD. Supersedes AD 98–03–06, Amendment 39–10298.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 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 (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 fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of March 9, 1998 (the effective date of AD 98–03–06, amendment 39–10298): Except as provided by paragraph (b) of this AD, within 40 flight cycles after March 9, 1998, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the initial inspections required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the

accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 2: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 5, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) or (b) of this AD.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088 (for Model A300–600 series airplanes), or A300–57–0235 (for Model A300 series airplanes), both dated August 5, 1998, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive 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, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 4: The subject of this AD is addressed in French airworthiness directive 98–151–247 (B), dated April 8, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31173 Filed 11–20–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This action would add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. This proposal is prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. The actions specified by the proposed AD are intended to prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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–NM–228–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 18, 1996, the FAA issued AD 96–07–01, amendment 39–9549 (61 FR 12015, March 25, 1996), applicable

to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, to require repetitive visual inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time eddy current inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners. That action was prompted by reports indicating that attachment fasteners of the vertical stabilizer failed due to fatigue. The requirements of that AD are intended to prevent loss of fail-safe capability of the vertical stabilizer due to cracking of its attachment fasteners.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that, on two airplanes, certain second oversize fasteners that were approved for use as replacement fasteners in the banjo No. 4 fitting of the vertical stabilizer have failed due to fatigue cracking.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, and Revision 03, dated March 25, 1998. These revised service bulletins are essentially similar to McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993, which was referenced as the appropriate source of service information in AD 96–07–01. However, among other things, Revision 02 of the service bulletin provides instructions for gaining access to perform the eddy current inspection of the aft flange, instructions for repair of cracks in the banjo No. 4 fitting, and an additional preventive modification for uncracked banjo fittings; and Revision 03 revises the part number of second oversize fasteners to be used as replacements for the attachment fasteners in the banjo No. 4 fitting. Revision 03 also describes procedures for an external visual inspection to detect failure of the attachment fasteners of the banjo No. 4 fitting, and follow-on actions. Those follow-on actions include performing the external visual inspections on a repetitive basis; inspecting using an eddy current technique to detect cracking of the forward and aft flanges and bolt holes of the banjo No. 4 fitting, and repair, if necessary; and replacing the attachment fasteners of the banjo No. 4 fitting with new, improved attachment fasteners made from a higher strength and more corrosion-resistant material. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–07–01 to continue to require repetitive inspections to detect any failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer, a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This proposed AD also would add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 420 airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry would be affected by this proposed AD.

Since the issuance of AD 96–07–01, the manufacturer has revised its estimate of the work hours necessary to perform the actions that are currently required by that AD. McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, reflects the manufacturer's revised estimates; and the cost information, below, also has been revised to refer to the new estimates.

The visual inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection currently required by that AD on U.S. operators is estimated to be $14,520, or $60 per airplane, per inspection cycle.

The eddy current inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 4 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 eddy current inspection currently required by this AD on U.S. operators is estimated to be $58,080, or $240 per airplane.

The replacement of the 12 attachment fasteners of the banjo No. 4 fitting that is currently required by AD 96–07–01, and retained in this AD, takes approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement currently required by this AD on U.S. operators is estimated to be $263,780, or $1,090 per airplane.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $14,520, or $60 per airplane.

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

Should an operator that has already completed the replacement of the attachment fasteners of the banjo No. 4 fitting in accordance with AD 96–07–01 be required to repeat the replacement, it would take approximately 14 additional work hours, at an average labor rate of $60 per work hour. Additional parts would cost $150 per airplane. Based on these figures, the cost impact of any necessary repetition of the replacement is estimated to be $990 per airplane.

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9549 (61 FR 12015, March 25, 1996), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 98–NM–228–AD. Supersedes AD 96–07–01, Amendment 39–9549.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes; and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; 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 (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 cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane, accomplish the following:

(a) Except as required by paragraph (c)(3) of this AD, within 1,500 landings after April 24, 1996 (the effective date of AD 96–07–01, amendment 39–9549): Perform an external visual inspection, using a minimum 5X power magnifying glass, to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer (as specified in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual, Chapter 20–10–00, or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

(1) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Except as required by paragraphs (a)(2) and (c)(3)(ii) of this AD, within 5 years after April 24, 1996: Perform an eddy current surface inspection to detect cracking of the forward and aft flanges; and an eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting; in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

Note 2: Paragraph (b) of this AD does not require that eddy current bolt hole inspections be accomplished for the bolt holes of the banjo No. 4 fitting if the attachment fasteners were replaced prior to April 24, 1996, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992.

(1) If no cracking is detected, prior to further flight, replace the 12 attachment fasteners located on the banjo No. 4 fitting with new, improved attachment fasteners, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992, or Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998. After the effective date of this AD, only Revision 03 of the service bulletin shall be used.

(i) Accomplishment of the replacement in accordance with the original issue of the service bulletin constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges is accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

(ii) Accomplishment of the replacement in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998; constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges, and the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting, are accomplished in accordance with Revision 1, Revision 02, or Revision 03 of the service bulletin.

(2) If any cracking is detected, prior to further flight, repair either in accordance with Figure 6 or Figure 7, as applicable, of Chapter 55–20–00, Volume 1, of the DC–10 Structural Repair Manual; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Within 1,500 landings after the effective date of this AD, perform a one-time visual inspection to determine whether second oversize fasteners having part number (P/N) S4931917–8Y are installed in the banjo No. 4 fitting of the vertical stabilizer.

(1) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have been accomplished, no further action is required by this AD.

(2) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have *not* been accomplished: Within 1,500 landings after the last inspection performed in accordance with paragraph (a) of this AD, repeat that inspection, and perform the follow-on actions specified by paragraph (a) of this AD.

(3) If second oversize fasteners having P/N S4931917–8Y *are* installed, prior to further flight, perform an external visual inspection to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer in accordance with paragraph (a) of this AD.

(i) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(ii) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(d) As of the effective date of this AD, no person shall install a second oversize fastener having part number (P/N) S4931917–8Y in the banjo No. 4 fitting of the vertical stabilizer on any airplane.

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

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

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199

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

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31172 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 am to approximately 5:00 pm on each day on Wednesday, December 16 and Thursday, December 17, 1998.

ADDRESSES: This Committee meeting will be held at the offices of the Federal Mediation and Conciliation Service (FMCS), 2100 K Street, NW, Room 200, Washington, DC 20427. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments on these minutes should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC, Telephone (202) 219–8771. This is not a toll-free number.

Agenda

The Committee will first adopt the minutes of the previous meeting. The Committee will then discuss the key issues that the Committee members believe should be addressed by any guidance that the Committee may develop to implement section 3(40) of ERISA. The issues addressed in these negotiations pertain to how the Department should develop a proposed rule that would facilitate determinations by the Department, employee benefit plans, and state insurance regulatory agencies as to whether a particular agreement is a collective bargaining agreement, and whether a plan is established or maintained under or pursuant to one or more collective bargaining agreements. Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before December 11, 1998 to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Arzuaga or telephone (202) 219–4600, x153. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Arzuaga at the address below. Papers will be accepted and included in the record of the meeting if received on or before December 11, 1998.

Signed at Washington, DC, this 17th day of November, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 98–31191 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL173–1b; FRL–6190–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Illinois; Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve the Illinois State Plan submittal

for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan was submitted to USEPA on July 21, 1998 in accordance with the requirements for adoption and submittal of State plans for designated facilities in title 40 of the Code of Federal Regulations part 60 (40 CFR part 60), subpart B. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless USEPA receives relevant adverse written comment. Should USEPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 23, 1998.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Illinois Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 28, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 98–31075 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MI49–01(b); FRL–6189–7]

Approval of Section 112(l) Program of Delegation; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve Michigan's request for a mechanism of delegation of the Federal air toxic program pursuant to Section 112(l) of the Clean Air Act of 1990. In the ''Final Rules'' section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect, and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on January 22, 1999, and no further action will be taken. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 23, 1999.

ADDRESSES: Written comments may be mailed to Robert B. Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Michigan Department of Environmental Quality (MDEQ) may be examined during normal business hours at the following locations:

Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604

Air Quality Division, Michigan Department of Environmental Quality, 106 West Allegan Street, Lansing, Michigan 48909

FOR FURTHER INFORMATION CONTACT: Laura Gerleman at (312)353–5703.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

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

Dated: August 26, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–31077 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6190–6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Cedartown Municipal Landfill Superfund site from the National Priorities List (NPL); request for comments.

SUMMARY: EPA, Region 4 (EPA) announces its intent to delete the Cedartown Municipal Landfill Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Georgia (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the state have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site will be accepted until December 23, 1998.

ADDRESSES: *Comments may be mailed to:* Annie M. Godfrey, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No. (404) 562–8862.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Cedartown Public Library, 245 East Avenue, Cedartown, Georgia, 30125–3001, Telephone No. (770) 748–5644.

FOR FURTHER INFORMATION CONTACT: Annie M. Godfrey, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8919.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA announces its intent to delete the Cedartown Municipal Landfill Superfund Site (the Site), in Polk County, Georgia from the National Priorities List (NPL) which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; or (ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or (iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate; or (iv) The site is a regulated treatment, storage, or disposal facility (TSD) regulated under the authority of the Resource Conservation and Recovery Act (RCRA).

Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA Region 4 issued a Record of Decision (ROD) in November 1993. The selected remedy included landfill cover maintenance, controls to restrict land use and prevent groundwater use, and groundwater monitoring to ensure that the contaminants were reduced naturally and did not move away from the site. Groundwater monitoring was to be continued after groundwater performance standards are achieved. The ROD contained a contingency for pumping and treating groundwater if the performance standards could not be attained.

(2) EPA Region 4 issued a ROD amendment in May 1998, following two and one-half years of groundwater monitoring. Monitoring data indicated that only manganese remained above the performance standard and did not appear to be migrating offsite. The amendment changed the remedy to utilize institutional controls to restrict groundwater use in the areas beneath the site where performance standards are exceeded and to eliminate monitoring and the pump and treat contingency.

(3) The Georgia EPD concurred with the proposed deletion decision.

(4) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

(5) All relevant documents have been made available for public review in the local Site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Any comments received during the notice and comment period will be evaluated before the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region 4 Regional Administrator places a document in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Cedartown Municipal Landfill site is located in Polk County on the outskirts of the City of Cedartown, Georgia, approximately 62 miles northwest of Atlanta, Georgia. The Site is situated on the western edge of Cedartown and is bordered on the east by Tenth Street, the south by Route 100 (Prior Station Road), and the north and west by undeveloped and/or agricultural land. Property to the east of the Site consists of an industrial complex. Land to the north, west and south of the Site is a mixture of residential, agricultural, and

undeveloped land. The Site lies within the limits of the City of Cedartown.

The Site occupies approximately 94 acres and has wooded areas along the north, south and west. A seasonal stream and pond, which appear during periods of high precipitation, exist approximately 700 feet west of the Site perimeter. The eastern half of the Site is covered by thick grasses. Approximately 10 acres of land, situated between the eastern and western halves of the Site, were not used for landfill operations. One leachate seep was observed on-site.

B. History

The Site encompasses a former iron ore mine which subsequently was used as a municipal landfill. While the landfill received primarily municipal solid sanitary waste during its operation, quantities of industrial waste were also reportedly disposed at the Site. The industrial wastes disposed at the Site may have included the following:

- Sludge from an industrial waste water treatment system,
- Animal fat and vegetable oil skimmings from a separation unit,
- Liquid dye wastes,
- Latex paint and paint sludges, and
- Plant trash.

In 1979, in accordance with then applicable State regulations pertaining to the closure of landfills, the landfill was covered with a layer of clay soil varying in thickness from one to 12 feet. A vegetative cover was then planted over the soil layer to prevent erosion.

From 1985 to 1987, EPA evaluated conditions at the Site and identified areas of potential investigation. EPA then proposed the Site for inclusion on the National Priorities List (NPL) in June 1988 and finalized the listing in March 1989. In November 1993, EPA issued a Record of Decision (ROD) for the Site. The ROD selected a remedy consisting of the following:

- Cover maintenance and seep controls,
- Institutional controls to minimize land use and prevent groundwater use,
- Surface water monitoring to assess whether contaminants were leaching from the seep,
- Groundwater monitoring to assess the migration and/or natural attenuation of contaminants,
- Implementation of a contingency pump and treat system if groundwater performance standards were not met, and
- Continued groundwater monitoring after groundwater performance standards were achieved.

EPA Region 4 issued a ROD amendment in May 1998 which amended the remedy to utilize institutional controls to restrict groundwater use in the areas beneath the site where performance standards are exceeded and to eliminate monitoring and the pump and treat contingency. The City of Cedartown (the City) has implemented the required institutional controls to restrict groundwater use at the Site. The City has annexed all property which lies above the landfill area. A city ordinance is in place to restrict the installation of wells on these properties. Additional ordinances restrict the placement of groundwater wells on adjacent property.

C. Characterization of Risk

Groundwater monitoring for two and one-half years has demonstrated that levels of all constituents of concern, except manganese, are below performance standards. Groundwater concentrations of manganese have remained stable in the wells which exceed the standard. Elevated levels of manganese have not been detected in more distant wells. In addition, EPA analysis of groundwater data demonstrates that elevated manganese may be caused by mining activities which occurred before the Site was used as a municipal landfill. Risk to human health has been reduced to acceptable levels by controlling access to contaminated groundwater. Institutional controls implemented by the City will restrict the use of groundwater in areas where performance standards are not met. The results of the ecological risk assessment indicated that the Site provides a habitat for a variety of wildlife, but that chemical exposures on the Site do not represent a threat to wildlife which may inhabit the area. No endangered or sensitive resident species or critical habitats were identified in the study area.

EPA believes that conditions at the Site pose no unacceptable risks to human health or the environment. One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''the responsible parties or other parties have implemented all appropriate response actions required.'' EPA, with concurrence from the Georgia Environmental Protection Division (EPD), believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the regional public docket. Since waste will remain on the site, a five year review will be required in the future.

EPA, with concurrence of the Georgia EPD, has determined that all appropriate response under the CERCLA have been completed, and that no further action by responsible parties is necessary. Therefore, EPA proposes to delete the Site from the NPL and requests public comments on the proposed deletion.

Dated: September 30, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30964 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–00256; FRL–6047–6]

RIN 2070–AC83

Round Table Discussion of the Upcoming Lead Renovation and Remodeling Rulemaking; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting

SUMMARY: EPA will hold a round table discussion meeting on the forthcoming rulemaking under section 402(c)(3) of the Toxic Substances Control Act (TSCA). Section 402(c)(3) directs the Agency to revise the regulations on lead-based paint activities to apply to renovation or remodeling activities that create lead-based paint hazards in target housing. The purpose of this discussion is to provide a forum where interested parties can contribute information and give individual perspectives on specific policy questions related to this forthcoming rulemaking. Agency staff may also ask participants to give their individual reactions to specific proposals and questions.

DATES: The meeting will be from 9 a.m. to 4:30 p.m. on December 7, 1998. Written comments must be submitted on or before January 15, 1999.

ADDRESSES: The meeting will be held at the Holiday Inn Rossyln Westpark, 1900 North Fort Meyer Dr., Arlington, VA.

Each comment must bear the docket control number OPPTS–00256. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit III. of this notice.

No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mike Wilson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–4664, e-mail address: wilson.mike@epa.gov.

Meeting Registration: National Lead Information Center at 1–800–424–LEAD.

SUPPLEMENTARY INFORMATION:

I. Background

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X direct EPA to promulgate regulations to fulfill the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA entitled ''Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities.'' These rules are codified at 40 CFR part 745, subpart L. Section 402(c)(3) of TSCA directs the Agency to revise these regulations so they apply to renovation or remodeling activities which create lead-based paint hazards in target housing.

II. Round Table Discussion

The purpose of this meeting is to obtain individual input and comment on the regulatory options for modification of existing lead-based paint activities regulations. The existing regulations are codified at 40 CFR part 745, Subpart L—Lead-Based Paint Activities.

The round table discussion will examine the following issues: which contractors are engaged in renovation and remodeling activities that create a lead based paint hazard; which activities present the greatest potential hazard; how to promote lead safe renovation in a non-regulatory fashion; and implementation issues. Although there will be some discussion of the technical studies, EPA would like to focus on policy questions (e.g, establishing a deminimis area of deteriorated lead-based paint). EPA is currently planning to hold two meetings, completing the discussion in early 1999. All meetings will be held in Washington, DC and will be open to the public.

Individuals wishing to provide comments to EPA, but who cannot attend the round table discussion may submit written comments to EPA at the address listed under ''ADDRESSES'' in this notice. In order to be included in the synopsis of comments, written comments must be received by close of business on January 15, 1999.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–00256 (including comments and data submitted electronically as described in this unit). 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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–00256. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: November 18, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31400 Filed 11–19–98; 2:42 pm]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 63, No. 225
Monday, November 23, 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

[S&T–98–001]

Presiding Officer Designated for Administrative Cases Involving Violations of the Pesticide Recordkeeping Requirements of the Food, Agriculture, Conservation and Trade Act of 1990

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of designation.

SUMMARY: The Administrator of the Agricultural Marketing Service has designated the administrative law judges of the Office of the Administrative Law Judges, USDA, as the Presiding Officer for administrative civil penalty cases involving certified applicators of restricted use pesticides who violate the recordkeeping requirements of the Food, Agriculture, Conservation and Trade Act of 1990.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, AMS, USDA, 8700 Centreville Road, Suite 202, Manassas, VA 20110, Telephone (703) 330–7826.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by Section 1491 of the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act) to require certified applicators of restricted use pesticides (RUPs) to maintain records of all RUP applications. The FACT Act also authorizes the Secretary to promulgate regulations implementing the recordkeeping requirements and to enforce those requirements by the imposition of civil penalties for violations. A violator's first offense is subject to a civil penalty of up to $550 and each subsequent offense is subject to a penalty of not less than $1,100.

The Agricultural Marketing Service (AMS) promulgated regulations implementing the recordkeeping requirements on April 9, 1993 (7 CFR part 110). The regulations include rules of practice for administrative civil penalty proceedings (7 CFR part 110.8), which provide that AMS may initiate an administrative civil penalty proceeding by filing a notice of violation with the Presiding Officer. The Presiding Officer is defined in the regulations as ''any individual designated in writing by the Administrator'' to preside at the proceedings (7 CFR part 110.2).

Accordingly, the Administrator of AMS hereby designates the administrative law judges of the Office of the Administrative Law Judges, USDA, to preside over administrative civil penalty cases involving violations of the pesticide recordkeeping requirements of the FACT Act and the regulations promulgated thereunder.

Dated: November 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31183 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from charitable organizations that provide emergency food assistance; from food banks; from food pantries; and from emergency kitchens.

DATES: Comments on this notice must be received by January 27, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–2130, Washington, DC 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information on charitable organizations that provide emergency food assistance; food banks; food pantries, and emergency kitchens.

Type of Request: Approval to collect information on charitable organizations that provide emergency food assistance, food banks, food pantries, and emergency kitchens.

Abstract: USDA's Economic Research Service (ERS) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including food consumption determinations and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; food security status of the poor; domestic food assistance programs; low-income assistance programs; and food safety regulation. In carrying out this overall mission, ERS seeks approval of information gathering activities that would provide key information about the capacity of the Emergency Food Assistance System (EFAS) to provide food assistance to low-income households.

USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance through normal channels of trade, by providing low-income consumers with purchasing power to buy food at market prices from food retailers authorized to participate in the program. Other programs, such as the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and The Emergency Food Assistance Program (TEFAP) provide food assistance outside regular marketing channels. The NSLP and SBP provide cash subsidies and commodity assistance to schools to help provide low-cost or free lunches and breakfasts to schoolchildren. The Emergency Food Assistance Program (TEFAP), distributes commodity foods to State and local agencies for distribution to low-income households for home consumption, or to

charitable organizations that prepare and provide meals for needy people.

The EFAS interacts closely with USDA food assistance programs by serving as a distribution outlet for TEFAP commodities and by providing temporary or supplemental food assistance to many of the same needy populations served by USDA programs. Through its Food Recovery and Gleaning Initiative, USDA is coordinating public and private efforts to increase the amount of surplus food channeled through EFAS providers by 33 percent by the year 2000.

EFAS providers are largely private, nonprofit organizations that distribute groceries (nonprepared foods) and meals (prepared foods) on a short-term or emergency basis, to needy individuals and households who lack the resources to meet their own food needs. Recipients include the elderly, the homeless, the unemployed, and the working poor, as well as victims of natural disasters. Food banks, food pantries, and emergency kitchens are important components of the system. Food banks are primarily collection and distribution centers near the ''top'' of the system, providing food to a large set of diverse and geographically dispersed agencies/providers. Food pantries are distribution centers that provide groceries and other basic supplies for use by recipients in their homes or at other locations away from the distribution sites. Emergency kitchens supply food for on-site consumption to people who do not live at the site. Both kitchens and pantries focus on providing emergency food to needy families in their neighborhoods.

In order to fully assess the interactions of these organizations with USDA food assistance programs and their implications for public policy, ERS must have information on providers' operating characteristics, service areas, and resource base, the quantity and type of food flowing into the system, the number of people served, and providers' capacity to manage current and future changes in food demand and resources. Information about the availability and demand for EFAS services in prior years is also needed.

Previous research has examined interactions between EFAS providers and the homeless [1] and has examined operating data from limited numbers of EFAS providers.[2] However, important information gaps remain, due to such factors as (1) lack of national representativeness; (2) a focus on the homeless population rather than on the full set of clients served by the EFAS; and (3) lack of comparability across studies, each of which had limited scope.

To fill these information gaps, ERS, working with Mathematica Policy Research, Inc., will survey food banks, food pantries, and emergency kitchens. The sampling process for this study uses a multi-stage design. In the first stage, the United States will be divided into 2,000 mutually exclusive and collectively exhaustive Primary Sampling Units (PSUs) covering the 48 continental United States and the District of Columbia, stratified by region, urbanicity, and size. A random sample of 360 PSUs will be drawn. A listing of all food banks in the country will be constructed, along with a frame of pantries and kitchens in the 360 sampled areas. Obtaining lists of food providers will require contacts with state TEFAP directors and national religious, social service, and volunteer organizations, as well as intensive telephone canvassing of public and private organizations and government agencies at the local or county level.

When selecting the sample of PSUs, the measure of size will be the square root of the estimated poverty population in each PSU. The ideal measure would be the number of EFA providers, but this number is not known. The number of providers is expected to be less than proportional to the number of people in poverty. In previous work, the square root factor has been found usually to reflect this relationship well.

After the sampling stage has been completed, a census of food banks will be conducted, and data will be collected from all food banks in the 48 continental United States and the District of Columbia. Stratified random samples of food pantries and emergency kitchens will be surveyed. To collect survey data, computer-assisted telephone interviews (CATI) will be conducted with representatives of food banks, food pantries, and emergency kitchens.

Respondent burden will be minimized by using CATI methods to streamline the interviewing process, and by carefully training interviewing staff on survey procedures. The objective of minimizing burden will also be accomplished through careful attention to instrument development, aimed at limiting content to only those domains that are important to the agency's objectives, and by ensuring clear question flow.

Responses will be voluntary and confidential. To ensure confidentiality, data will be reported only in tabular form, with analysis cells large enough to prevent identification of individual providers. In addition, identifying information will be kept only by the contractor and will be released only to the contractor's internal staff who need it directly for the survey and analysis operations.

Estimate of Burden: To develop the sample frame, telephone contact with representatives of national organizations will average 30 minutes, and telephone contacts with state TEFAP officials and local or county informants will average 15 minutes. CATI interviews with respondents at food banks, food pantries, and emergency kitchens will average 45 minutes.

Respondents: Respondents are state and local governments, local and national charitable organizations, food banks, food pantries, and emergency kitchens. To develop the sample frame, 15 national-level informants, 1 TEFAP official from each of the 48 continental States and the District of Columbia, and 15 local-or county-level informants in each of the 360 sampled areas will be asked for contact names, addresses, and telephone numbers of food providers. For the CATI survey, data will be collected from 1,657 food pantries and 1,470 emergency kitchens. All of the estimated 500 to 600 food banks in the United States will be included in the food bank survey, and after taking nonresponse into account, the number of completions is estimated to be 440.

Estimated Total Annual Burden on Respondents: Estimated burden of the development of the sample frame will be 7.5 hours for the national organizations, 12 hours for the TEFAP officials, and 1,350 hours for contacts in the 360 sampled areas, totaling 1,370 hours for all informants. The estimated burden of the CATI interviews will be 330 hours for the food banks, 1,243 hours for the food pantries, and 1,103 hours for the emergency kitchens, totaling 2,676 hours for all respondents.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

[1] Cohen, Barbara E., Nancy Chapman, and Martha R. Burt. ''Food Sources and Intake of Homeless Persons.'' *Journal of Nutrition Education*, vol. 24, no. 1 supp. January 1, 1990.

[2] Second Harvest. *Hunger 1997: The Faces & Faces.* Chicago: The Amburg Group, 1997

the use of appropriate automated, electronic, mechanical, or other technology. Comments may be sent to: David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–2130, Washington, DC 20036–5831.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: November 16, 1998.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–31260 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on supplemental food security questions for the April 1999 Current Population Survey. These data will be used to develop a scale of household level food security in the United States, to assess changes in food security for population subgroups, to assess performance of domestic food assistance programs, and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by January 22, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room S–2130, Washington, D.C. 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Application for April Food Security Supplement to the Current Population Survey, 1999.

Type of Request: Approval to collect information on household food insecurity.

Abstract: The U.S. Bureau of the Census will supplement the April 1999 Current Population Survey with questions regarding household food shopping, food sufficiency, coping mechanisms and food scarcity, and concern about food sufficiency. A similar supplement was also appended to the CPS in April 1995, September 1996, April 1997, and August 1998.

ERS is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Department spends about $37 billion each year to ensure access to nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including Food Stamps, Child Nutrition, and WIC programs. These programs, which serve 1 in 6 Americans, represent our nation's commitment to the principle that no one in our country should fear hunger or experience want. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

These data will be used to develop a scale of food security reflecting a range from food secure households through households experiencing severe food insecurity. Ultimately, this scale will be used to identify the prevalence of poverty-linked food insecurity and hunger experienced in the United States. The purpose of this project is to provide a consistent measure of the extent and severity of food insecurity that will aid in policy decision making. The supplemental survey instrument has been developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. All interviews, whether by personal visit or by telephone, are conducted using computers.

Estimates of Burden: Public reporting burden for this data collection is estimated to average 10 minutes.

Respondents: Individuals or households.

Estimated number of Respondents: 50,000.

Estimated Total Annual Burden on respondents: 8,330 hours.

Copies of the information to be collected can be obtained from David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2130, Washington, DC 20036–5831, 202–694–5466.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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. Comments may be sent to David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2130, Washington, D.C. 20036–5831, 202–694–5466. 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: November 5, 1998.

Betsey Kuhn,

Director, Food and Rural Economy Division.

[FR Doc. 98–31261 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on December 14 and 15, 1998 at the Wallowa Mountains Office of the Wallowa-Whitman National Forest, 88401 Highway 82 in Enterprise, Oregon. The meeting will begin at 9:00

a.m. and continue until 5:00 p.m. the first day and will begin at 7:30 a.m. and continue until 12:00 p.m. on the second day. Agenda items to be covered include: (1) Consensus process and conflict of interest discussion; (2) Program of work; (3) Information about the Hells Canyon National Recreation Area; (4) Baseline information on the associated plans of the Hells Canyon National Recreation Area; (5) Open public forum. All meetings are open to the public. Public comments will be received at 1:00 p.m. on December 14.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: November 16, 1998.

Kendall Clark,

Area Ranger.

[FR Doc. 98–31200 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Electronic and Information Technology Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. This document gives notice of the dates, times, and location of the next meeting of the Electronic and Information Technology Access Advisory Committee (Committee).

DATES: The next meeting of the Committee is scheduled for December 1 and 2, 1998, beginning at 9:30 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meetings will be held at 1331 F Street, NW., Washington, DC, in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 39 (Voice); (202) 272–5449 (TTY). E-mail address: wakefield@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/eitaacmtg.htm.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the Access Board published a notice appointing 23 members to its Electronic and Information Technology Access Advisory Committee (Committee). 63 FR 51891 (September 28, 1998). The Committee will make recommendations to the Access Board on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. The Committee is composed of Federal agencies and Federal contractors; the electronic and information technology industry; organizations representing the access needs of individuals with disabilities; and other persons affected by accessibility standards for electronic and information technology. At its first meeting on October 15 and 16, 1998, the Committee took the following actions:

- Added Compaq Computers, Pitney Bowes, Sun Microsystems, and the Information Technology Industry Council to the Committee;
- Formed three subcommittees. One subcommittee will examine the definitions needed for the recommended standards. Another subcommittee will examine the various functions that are performed by electronic and information technology. These functions include creating, processing, transmitting, and interacting with information and the technology involved. A third subcommittee will begin the process of classifying the variety of products covered by the standards into product families;
- Created a listserv to facilitate communications between meetings. To subscribe to the listserv send an e-mail message to: listproc@trace.wisc.edu.; and
- Established a schedule of meeting dates. The Committee will meet again on January 5–6, 1999; February 8–9, 1999; March 29–30, 1999; and, May 11–12, 1999.

The meetings are open to the public. There will be a public comment period each day for persons interested in presenting their views to the Committee. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real-time transcription will be available.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–31253 Filed 11–20–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Bureau: International Trade Administration.

Title: Advocacy Questionnaire.

Agency Form Number: ITA–4133P.

OMB Number: 0625–0220.

Type of Request: Revision-Regular submission.

Number of Respondents: 200.

Avg. Hours per Response: 30 minutes.

Needs and Uses: The Department of Commerce, invites the general public and other Federal agencies to comment on proposed revisions to the Advocacy Questionnaire used by the Trade Promotion Coordination Committee (TPCC) Advocacy Network to evaluate requests for U.S. Government (USG) advocacy in connection with overseas bids and proposals. The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate USG advocacy among the TPCC. The Advocacy Center is under the umbrella of the TPCC, which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The TPCC is tasked with assessing USG advocacy in order to achieve increased exports and jobs for American workers. The purpose of the Advocacy Questionnaire is to collect the information necessary to make an evaluation as to whether a U.S. firm qualifies for USG advocacy assistance. The Advocacy Center, appropriate ITA officials, our U.S. Embassies worldwide, and other federal government agencies (the Advocacy Network) that provide advocacy support to U.S. firms, will require U.S. firm(s) seeking USG advocacy support to complete the Questionnaire.

Affected Public: Companies that desire USG advocacy.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Englemeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Ave., NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: November 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31235 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–98]

Foreign-Trade Zone 15—Kansas City, MO, Expansion of Facilities and Manufacturing Authority—Subzone 15D, Bayer Corporation Plant (Pharmaceuticals), Kansas City, Missouri

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting on behalf of the Bayer Corporation (Bayer), to expand the scope of manufacturing authority under zone procedures and to add two sites within Subzone 15D, at the Bayer plant in Kansas City, Missouri. It was formally filed on November 16, 1998.

Subzone 15D was approved by the Board in 1988 at a single site (59 bldgs./750,000 sq. ft. on 112 acres) located at 8400 Hawthorn Road in Kansas City, Missouri, with authority granted for the manufacture of agricultural and specialty chemicals for the control of insects, weeds and plant diseases (Board Order 440, 54 FR 38413, September 18, 1989).

Bayer is now proposing to add two sites (300 employees) and expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 15D to include animal and human pharmaceutical products. Proposed *Site 2* (10 bldgs./720,000 sq. ft. on 55 acres after completion of current expansion) is the main production site of Bayer's Animal Health Division, located at 12707 Shawnee Mission Parkway, Shawnee, Kansas, some 15 miles southwest of existing *Site 1*. (Approximately, one-third of the land is leased from the City of Shawnee.) The company may also produce human health pharmaceutical products at the Shawnee plant in the future. Proposed *Site 3* (1 bldg./164,000 sq. ft. on 3.76 acres) is a leased warehouse located at 5101 Speaker Road, Kansas City, Kansas, some 10 miles west of *Site 1*.

At the outset, the company is expecting to manufacture Co-Ral®, Lysoff®, Spotton® and Tiguvon® animal health products (all HTSUS 3808.10.2500, duty rate .4¢/kg. + 7.1%) under zone procedures. Foreign-sourced materials, including coumafos (HTSUS 2932.29.10, duty rate 10.1%) and fenthion (HTSUS 2920.10.4000, duty rate 10.1%), will account for, on average, 30 percent of material value. The company may also purchase from abroad other ingredients and materials related to pharmaceutical manufacturing activity in the following general categories: Gums, starches, waxes, vegetable extracts, mineral oils, sugars, empty capsules, protein concentrates, prepared animal feed, mineral products, inorganic acids, chlorides, clorates, sulfites, sulfates, phosphates, cyanides, silicates, radioactive chemicals, rare-earth metal compounds, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, insecticides, rodenticides, fungicides and herbicides, fertilizers, vitamins, hormones, antibiotics, gelatins, enzymes, pharmaceutical glaze, essential oils, albumins, gelatins, activated carbon, residual lyes, acrylic polymers, silicones, color lakes, soaps and detergents, various packaging and printing materials, medicaments, pharmaceutical products, and instruments and appliances used in medical sciences.

FTZ procedures would exempt Bayer from Customs duty payments on the foreign components used in export activity (about 5% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished products (duty-free to 1.4¢/kg. + 13.9%) for the foreign components noted above (duty rates ranging from duty-free to 16.3%). The application indicates that the savings from FTZ procedures will help improve Bayer's international competitiveness.

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 January 22, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 1999).

A copy of the application will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 601 East 12th St., Room 635, Kansas City, Missouri 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: November 16, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31271 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

October 1998 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Sunset Reviews and revocation of antidumping orders and finding and termination of suspended investigation: Television Receivers from Japan (A–588–015); Color Television Receivers from Korea (South) (A–580–088); Color Television Receivers from Taiwan (A–583–099); Small Electric Motors from Japan (A–588–090); High Power Microwave Amplifiers from Japan (A–588–005); Barium Carbonate from Germany (A–428–061).

SUMMARY: On October 1, 1998, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on color television receivers from South Korea and Taiwan, high power microwave amplifiers from Japan, and barium carbonate from Germany as well as the antidumping finding on television receivers from Japan. The Department also initiated a sunset review of the

suspended investigation on small electric motors from Japan. Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders and finding and terminating the suspended investigation.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Scott E. Smith, or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–3207, (202) 482–6397, or (202) 482–1560 respectively.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department issued an antidumping finding on television receivers from Japan (36 FR 4597, March 10, 1971). In addition, the Department issued antidumping duty orders on color television receivers from South Korea and Taiwan (49 FR 7620, March 1, 1984), high power microwave amplifiers from Japan (47 FR 31413, July 20, 1982) and barium carbonate from Germany (46 FR 32864, June 25, 1981). The Department also suspended an investigation of small electric motors from Japan (45 FR 73723, July 20, 1980). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of these orders, finding and suspended investigation by publishing notice of the initiation in the **Federal Register** (63 FR 52683, October 1, 1998). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders and finding as well as the suspended investigation.

No domestic interested parties in any of the sunset reviews of these orders, finding and suspended investigation responded to the notice of initiation by the October 16, 1998, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998)(''*Sunset Regulations*'')).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, October 16, 1998 (*see* section 351.218(d)(1)(i) of the *Sunset Regulations*), we are revoking these antidumping orders and finding and terminating the suspended investigation.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders and finding entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and duty deposit requirements. The suspension agreement on small electric motors from Japan will remain in effect until January 1, 2000. The Department will complete any pending administrative reviews of these orders, finding and suspended investigation and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 17, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31102 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC)

ACTION: Notice of public meeting.

Time and Date: December 9, 1998, beginning at 4:30 p.m. until approximately 9 p.m. and December 10, 1998, beginning at 7 a.m. until approximately 10 a.m.

Place: This meeting will take place at the Huntsville Marriott, Five Tranquility Base, Huntsville, Alabama 35805.

Status: The meeting will be open to the public. The time between 6 p.m. and 9 p.m. on December 9, 1998, will be set aside for public comments. Approximately 100 seats will be available to the public on a first-come first-served basis.

Matters to be Considered: This meeting will include MTC consultation on the proposed Consolidation, Automation, and Closure Certifications for the Huntsville, Alabama, Weather Service Office and a report on the NWS Modernization status.

Contact Person for More Information: Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: November 17, 1998.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 98–31225 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: A device to eliminate the ''dead-zone'' in digital phase detectors, and a method and system for forming images by back projection.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Method and System for Forming Image by Backprojection.

Inventor: John W. McCorkle.
Patent Number: 5,805,098.
Issued Date: Sep. 8, 1998.

Title: Fast-Locking Low-Noise Phase-Locked Loop.
Inventor: John W. McCorkle.
Patent Number: 5,821,817.
Issued Date: Oct. 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Cammarata, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31197 Filed 11–20–98; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents covers a wide variety of technical arts including: A range correction module for spin stabilized projectiles, a response compensation circuit, a method and apparatus for fabricating high density monolithic metal and alloy, billets, and a hand-held probe for real-time analysis of trace pollutants in the atmosphere and on surfaces.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Range Correction Module for a Spin Stabilized Projectile.
Inventors: Michael S.L. Hollis and Fred J. Brandon.
Patent Number: 5,816,531.
Issued Date: Oct 6, 1998.

Title: Transduce Response Compensator.
Inventors: Richard B. Loucks and Larry G. Ferguson.
Patent Number: 5,823,043.
Issued Date: Oct 20, 1998.

Title: Hot Explosive Consolidation of Refractor Metal and Alloys.
Inventor: Laszlo J. Kecskes.
Patent Number: 5,826,160.
Issued Date: Oct 20, 1998.

Title: Hand-Held Probe for Real-Time Analysis of Trace Pollutants in Atmosphere and on Surfaces.
Inventors: Robert J. Lieb, Richard B. Murray, Robert L. Pastel and Rosario C. Sausa.
Patent Number: 5,826,214.
Issued Date: Oct 20, 1998.

Title: Drag Control Module for Range Correction of a Spin Stabil.
Inventors: Fred J. Brandon and Michael S.L. Hollis.
Patent Number: 5,826,821.
Issued Date: Oct 27, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5069, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31196 Filed 11–20–98; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 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 Leader, Information Management Group, 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 17, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 9,848,645; Burden Hours: 6,589,649.

Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under Title IV of the Higher Education Act (HEA).

[FR Doc. 98–31186 Filed 11–20–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–83–NG]

Rumford Power Associates Limited Partnership; Order Granting Long-Term Authorization To Export Natural Gas to Canada for Subsequent Re-Import

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1434 on November 9, 1998, granting Rumford Power Associates Limited Partnership (RPA) authorization to export to Canada for re-import to the United States up to 46,000 Mcf of natural gas per day. RPA intends to purchase this gas from Aquila Energy Marketing Corporation. The exported and imported gas would be used as fuel to operate RPA's new 265 megawatt cogeneration facility in Rumford, Maine. The project is expected to begin construction in November 1998. Gas for testing purposes will be required in March 2000 with commercial operation targeted for July 2000. Volumes of gas not used at the cogeneration facility would be sold by RPA to customers in the United States.

The authorized quantity would be exported and imported on an interruptible basis for a testing period of five months, and thereafter on a firm basis for eight years commencing on commercial operation of the cogeneration plant. This gas would be exported from the United States at St. Clair, Michigan/St. Clair, Ontario, and equivalent volumes would be re-imported into the United States at Pittsburg, New Hampshire/East Hereford, Quebec. RPA will take delivery of the gas in Canada at Dawn, Ontario. The source of this gas would be Canada and the United States. Gas not needed for the electric generating facility that would be sold by RPA to third parties may be imported at alternative border points.

This order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 12, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–31256 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–411, 412, 417R, 759, 826, 860A, 861, 860B (formerly 867), and 900, ''Electric Power Surveys''
2. Energy Information Administration, Office of Coal, Nuclear, Electric and Alternate Fuels, OMB No. 1905–0129, Revision of a Currently Approved Collection; Mandatory

A **Federal Register** notice, 63 FR 35582 dated June 30, 1998, described proposed modifications to specific forms required by the rapidly changing electric power industry. Based on comments received and EIA's further analysis of the information that should be collected on electric power, EIA has made some further modifications that are included in the materials sent to OMB for approval. The modifications are summarized below.

TABLE 1.—CHANGES TO SURVEYS

Form No.	Proposed change(s) in FEDERAL REGISTER notice (63 FR 35582 dated June 30, 1998)	Proposed changes to surveys in package submitted to OMB
Form EIA–411, ''Coordinated Bulk Power Supply Program''.	Propose changing planning projections period (Items 1, 2, and 4) from 10 years to 5 years. The form and instructions will be modified to show these changes.	Change projected period (Items 1, 2, 3.4, 4, 5 and 6) from 10 years to 5 years. See subsequent table regarding changes to confidentiality provisions.
Form EIA–412, ''Annual Report of Public Electric Utilities''.	Propose changing the reporting threshold from 120,000 Mwh to 150,000 Mwh.	Same changes as in 6/30 *FR* notice. See subsequent table regarding changes to confidentiality provisions.
Form EIA–417R ''Electric Power System Emergency Report''.	None	No changes are being proposed at this time.
Form EIA–759, ''Monthly Power Plant Report''.	None	(1) Change the monthly reporting threshold from operating utilities with at least one plant with a nameplate capacity of 25 megawatts or more to 50 megawatts or more. (This will eliminate nearly 50 utilities from reporting monthly data and make it consistent with the reporting requirements on the Form EIA–900.) (b) Change the threshold for utilities reporting on the annual survey to utilities operating plants with less than 50 megawatts nameplate capacity instead of 25 megawatts. (c) See subsequent table below regarding changes to confidentiality provisions.
Form EIA–826, ''Monthly Electric Utility Sales and Revenue Report, with State Distributions''.	Propose adding two new data tables: (1) the distribution company will be asked to provide data about the monthly bill if they are billing the consumer for another energy service provider; and (2) the energy service provider will report data if billing is done by them or a third party other than the distribution company.	No additional changes are being proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–860, ''Annual Electric Generator Report''.	Two changes are proposed: (1) The survey form designation and name will be altered to Form EIA–860A, ''Annual Electric Generator Report—Utility,'' and (2) the planning projection period (Schedule II and Schedule III) will be changed from 10 years to 5 years.	No additional changes are proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–861, ''Annual Electric Utility Report''.	Three changes are proposed: (1) Item 5 on schedule II indicating new plant intention(s) will be deleted; (2) Schedule IV will require energy service providers to report the total dollars paid by the consumer(s) whether or not the energy service provider issues the bill; and (3) the Demand Side Management (Schedule V) threshold will be raised from 120,000 Mwh to 150,000 Mwh.	Changes included in package submitted to OMB—Items (1) and (3) from the 6/30 *FR* notice are included; Item 2 was not included. Also, Schedule V, Part C, Demand Side Management, activities eliminated the projected annual cost.
Form EIA–867, ''Annual Nonutility Power Producer Report''.	(1) The form name and number will be changed to, Form EIA–860–B, ''Annual Electric Generator Report—Nonutility.''; (2) Item 3(a) estimated useful thermal output and 3(b) thermal output used will be added to Schedule IVB. The form and instructions will be modified to show these changes.	No additional changes are proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–900, ''Monthly Nonutility Sales for Resale Report''.	Six changes are proposed: (1) The survey name will be changed to ''Monthly Nonutility Power Report;'' three new data elements on (2) fuel type, (3) gross generation (kWh), and (4) fossil fuel consumption will be added; and (5) sales for resale and (6) sales to other end users will be deleted.	The six changes proposed in the 6/30 *FR* notice are included. In addition, (1) end-of-month stocks of coal and petroleum for each facility will be added, and (2) the respondent will have a choice of reporting gross generation or net generation and will specify which is reported. See subsequent table regarding changes to confidentiality provisions.

Another **Federal Register** notice (63 FR 38620 dated July 17, 1998) was issued regarding EIA procedures of confidentiality treatment given to electric power data collected and disseminated by the EIA through the above-mentioned data surveys. Form EIA–767 is included in this table because it is used by EIA to collect electric power data. Form EIA–767 is jointly sponsored by EIA and the Environmental Protection Agency and will be submitted to OMB separately.

TABLE 2.—CONFIDENTIAL DATA ELEMENTS

Data elements	Forms affected—FR Notice (63 FR 38620 dated July 17, 1998)	Clearance package submitted to OMB
Future—generating capacity:		
1—retirement dates	*EIA–411* generator(s) planning data for: (a) existing (changes to); (b) retirement date(s); (c) new generators (all information).	Same proposed confidential elements as the 7/17/ *FR* notice except added projected fuel consumption for Form EIA–767.

TABLE 2.—CONFIDENTIAL DATA ELEMENTS—Continued

Data elements	Forms affected—FR Notice (63 FR 38620 dated July 17, 1998)	Clearance package submitted to OMB
2—changes to existing units.	*EIA–767* planning data for: (a) new plants/equip.; (b) equipment updates; (c) retirement date(s); (d) projected fuel consumption.	
3—planned generating unit data.	*EIA–860* planning data for: (a) generator updates; (b) retirement date(s); (c) new generator(s).	
4—projected fuel consumption.	*EIA–867* planning data for equipment.	
Heat rates	*EIA–411* (a) heat rate data *EIA–767* (a) boiler efficiency *EIA–860* (a) heat rate data	Same changes as in *FR* notice
1—Sales for resale/Contracts with purchasers.	*EIA–412* name(s), quantities, demand charges, energy/other charges, revenue/settlements. *EIA–867* names, maximum contract amount, amount delivered.	The elements listed in the 7/17 *FR* notice will not be treated as confidential.
Wholesale purchases/contracts with sellers.	*EIA–412* name(s), quantities, demand charges, purchased/exchanged, energy/other charges, total costs.	The elements listed in the 7/17 *FR* notice will not be treated as confidential.
Fuel inventory—stocks	*EIA–759* *EIA–900*	An element on fuel inventory—stocks has been added to Form EIA–900 and that element will be confidential.
Financial data—environmental equipment.	EIA–767	These data elements will not be treated as confidential by EIA.
Sales to other end user(s) name(s) and amount.	*EIA–867* name(s), maximum contract, amount delivered	Same as in 7/17 *FR* notice.

3. The Electric Power Surveys collect information on electric power capacity, generation, fuel consumption, fuel receipts, fuel stocks, prices, electric rates, construction costs, and operating income and revenue. Form EIA–417R collects data on electric power disturbances. Respondents include electric utilities, nonutility electric power producers, electric reliability council members, and independent electric power system operators. Electric power data collected are used by the Department of Energy for analysis and forecasting. Data are published in various EIA reports.

4. Business or other for-profit; Federal Government; State, Local or Tribal Government

5. 81,505 hours (8,573 respondents x 2.21 responses per year x 4.3 hours).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., November 17, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–31255 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–767, ''Steam-Electric Plant Operation and Design Report''
2. Energy Information Administration and Environmental Protection Agency (jointly sponsored); OMB No. 1905–0197 and 2080–0018, respectively; Revision of a Currently Approved Collection; Mandatory

A **Federal Register** notice was published on July 17, 1998, stating that planning data for: (a) new plants/equipment; (b) equipment updates; and (c) retirement date(s); along with heat rates (boiler efficiency) would be given confidentiality treatment according to EIA's procedures. The clearance package submitted to OMB has the same proposed confidential elements with the addition of projected fuel consumption. The July 17, 1998, proposal to treat financial data on environmental equipment as confidential has been changed and that data will be treated as non-confidential.

3. Form EIA–767 is a consolidation of data requirements of EPA and DOE. Data are collected annually from steam-electric power plants of 10 (MW) or more. Data concern air emission and water quality and are used for economic, regulatory, and environmental analysis. Power plants between 10 MW and 100 MW and nuclear plants complete only certain pages of the form.

4. Business or other for-profit; Federal Government; State, Local or Tribal Government.

5. 51,952 hours (848 respondents x 1 response per year x 61.26 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., November 17, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–31257 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–23–001]

ANR Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 2, 1998.

ANRS states the attached sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31132 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–15–001]

Black Marlin Pipeline Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Black Marlin Pipeline company (Black Marlin) tendered for filing as part of its FERC Gas Tqariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Substitute Fourth Revised Sheet No. 201A
Substitute Original Sheet No. 211B
Substitute Original Sheet No. 211C

Black Marlin states that on October 1, 1998 revised tariff sheets were submitted to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling provisions promulgated by the Gas Industry Standards Board, including the bumping of scheduled interruptible service by firm shippers. On October 30, 1998 the Commission issued a Letter Order (October 30 Order) accepting the tariff sheets effective November 2, 1998 subject to Black Marlin filing, with 15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. Black marling states it is making the instant filing in compliance with the October 30, Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31128 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–27–001]

Blue Lake Gas Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the attached Appendix A to the filing, to be effective November 2, 1998.

Blue Lake states the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned docket.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31133 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4582–000]

CU Power Canada Limited; Notice of Issuance of Order

November 17, 1998.

CU Power Canada Limited (CU Power), an affiliate of Alberta Power Limited, filed an application for Commission authorization to engage in wholesale power sales in the United States at market-based rates, and for certain waivers and authorizations. In particular, CU Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CU Power. On November 12, 1998, the Commission issues an Order Accepting For Filing Market-Based Rate Schedule (Order), in the above-docketed proceeding.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CU Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CU Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CU Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CU Power's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–31116 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–45–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing Sheet Nos. 107, 196, and 224A to its FERC Gas Tariff, Original Volume No. 1. Discovery states that the purpose of this filing is to comply with the Commission's order issued October 29, 1998 in Docket No. RP99–45–000. Discovery requests waiver of any Commission regulations necessary to allow these tariff revisions to become effective November 2, 1998.

Discovery states that the instant filing reflects changes to (1) state procedures for notification of shippers that are bumped as a result of intra-day nominations, (2) provide for a waiver of penalties for bumped parties resulting from intra-day nominations, (3) eliminate Gas Industry Standards Board (GISB) standard 1.2.7 from Discovery's tariff, and (4) incorporate by reference GISB Standard 1.3.2.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31136 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–59–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised, Volume 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

East Tennessee states that the revised sheets are being filed in compliance with the Commission's Letter Order issued October 30, 1998 in the above-referenced docket. East Tennessee further states that the tariff sheets revise Midwestern's tariff provisions regarding intra-day nomination rights to provide (1) incorporation of Version 1.3 of GISB Standard 1.3.2. (i) through (iv) verbatim; (2) removal of the optional bumping notice by electronic mail; and (3) reference to the GISB Standards adopted by Order No. 587–H as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31140 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–146–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective January 1, 1999:

Fourth Revised Sheet No. 261
Original Sheet No. 261A

Equitrans states that the purpose of this filing is to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding which the Commission approved on April 29, 1998 in Docket No. RP97–149–003, et at. (83 FERC ¶ 61,093). Specifically, a voluntary contribution mechanism provision has been added to the Equitrans' Section 28 of its General Terms and Conditions to allow customers to make voluntary contributions to GRI in such amounts and for such GRI projects as specify by the customers. Equitrans proposal is consistent with the Stipulation and Agreement, that the voluntary contribution mechanism is not a pipeline rate, rate provision, or term or condition of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31146 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

United States of America Federal Energy Regulatory Commission

[Docket No. TM99–1–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective January 1, 1999:

Eleventh Revised Sheet No. 5
Twelfth Revised Sheet No. 6
Tenth Revised Sheet No. 8

Equitrans states that the purpose of this filing is to comply with the ''Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five Year Plan'' issued on September 29, 1998 in Docket NO., RP98–235–000. The Commission authorized pipeline companies to collect the Gas Research institute (GRI) funding unit from their customers. The 1999 GRI unit surcharge approved by the Commission is (1) $0.2300 per dekatherm (Dth) per month demand surcharge for high load factor customers, (2) $0.1420 per Dth month demand surcharge for low load factor customers and (3) $0.0075 per Dth commodity/usage surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31148 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–14–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of February 1, 1999:

Substitute Seventh Revised Sheet No. 102B
Second Revised Sheet No. 102C
Substitute Sixth Revised Sheet No. 117A

FGT states that on October 1, 1998 revised tariff sheets ere submitted to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling provisions promulgated by the Gas Industry Standards Board, including the bumping of scheduled interruptible service by firm shippers. FGT further states that on October 1, 1998, FGT filed concurrently, in Docket No. RP99–29–000, a Request for Waiver proposing that these changes become effective February 1, 1999 rather than November 2, 1998, the effective date established in Order No. 587–H.

On October 30, 1998 the Commission issued a Letter Order (October 30 Order) granting FGT's request to implement the changes effective February 1, 1999 and accepting the tariff sheets subject to FGT filing, within15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. Errata to the October 30 Order correcting the listing of accepted tariff sheets was issued November 3, 1998. FGT states it is making the instant filing in compliance with the October 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31127 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3511–000, ER98–3562–000, ER98–3563–000, ER98–3564–000, ER98–3565–000, and ER98–3566–000]

FPL Energy Maine Hydro, Inc.; FPL Energy Mason, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy AVEC, LLC; FPL Energy Power Marketing, Inc; Notice of Issuance of Order

November 17, 1998.

FPL Energy Maine Hydro, Inc., FPL Energy Mason, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy AVEC, LLC, (collectively Affiliates), and FPL Energy Power Marketing, Inc. (collectively with Affiliates, Applicants)[1] filed proposed rate schedules seeking approval to make sales of power at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On November 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 AND 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–31115 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Applicants are wholly-owned subsidiaries of FPL Energy Maine, Inc. and are affiliated with Florida Power & Light Company. FPL Energy Maine was formed on January 5, 1998 to acquire certain of the generating assets being sold by Central Maine Power Company, the Union Water-Power Company, Cumberland Securities Corporation, and Central Securities Corporation as part of a divestiture plan.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–148–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Garden Banks Gas Pipeline, L.L.C. (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 10, 1998.

GBGP states that the purpose of this filing is to update GBGP's Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. GBGP also proposed other minor changes to update these sheets by (1) changing date references (2) clarifying whom the signing party is and the associated title and (3) correcting or deleting prior company names that are no longer in use.

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 Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31147 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–5–001]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 12, 1998.

GBGP states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–5–000. Specifically, GBGP was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) waiving of daily non-critical penalties for interruptible shippers that have been bumped. GBGP does not have any daily non-critical penalties, therefore a waiver is not necessary. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31124 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–431–001]

Great Lakes Transmission Limited Partnership; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective November 2, 1998:

Substitute Fourth Revised Sheet No. 10A
Substitute Fourth Revised Sheet No. 27
Substitute Fifth Revised Sheet No. 50C

Great Lakes states that the tariff sheets are being filed to comply with the Letter Order issued by the Commission on October 29, 1998, in the above-named docket (Order). In the Order Great Lakes was directed to revise its tariff to: (1) provide bumping notification by telephone or facsimile, and to permit shippers to elect the method by which they wish to receive such notice; (2) include the deadlines by which nominations must leave the control of shippers; and (3) include sections (v) and (vi) of GISB standard 1.3.2, either verbatim or by reference. Great Lakes states that the above named tariff sheets comply with all three directives.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31121 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–66–001]

High Island Offshore System; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Second Revised Sheet No. 57A
Original Sheet No. 57B
Original Sheet No. 57C
Fourth Revised Sheet No. 58
Seven Revised Sheet No. 110
Sub Third Revised Sheet No. 110A

HIOS asserts that the purpose of this filing is to comply with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–H. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31142 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–421–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 14, 1998.

First Revised Sheet No. 60D
Second Revised Sheet No. 64B
Sixth Revised Sheet No. 120

Iroquois states that these sheets were submitted in compliance with the Commission's letter order issued on October 29, 1998 in Docket No. RP98–421–000. The tariff sheets included herewith reflect changes required by the Commission.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31119 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–62–001]

Midcoast Interstate Transmission, Inc.; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Midcoast Interstate Transmission,

Inc. (Midcoast) tendered for filing as part of its FERC Gas Tariff, Second Revised volume No. 1, the following tariff sheets, to become effective November 2, 1998:

Sub. Fourth Revised Sheet No. 79
Sub. Second Revised Sheet No. 79A
Sub. Second Revised Sheet No. 79B
Original Sheet No. 79C
Sub. Fourth Revised Sheet No. 80
Third Revised Sheet No. 84
Third Revised Sheet No. 154

Midcoast states that the purpose of this filing is to comply with the Commission's October 29, 1998 Order in this docket. Midcoast further states that the above referenced tariff sheets comply fully with that Order.

Midcoast requested that the Commission grant such waivers as it deems necessary to accept this filing and make it effective on November 2, 1998.

Midcoast states that copies of the filing were served on each of its firm customers, interruptible customers and all interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31141 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–53–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

Midwestern states that the revised sheets are being filed in compliance with the Commission's Letter Order issued October 29, 1998 in the above-referenced docket. Midwestern further states that the tariff sheets revise Midwestern's tariff provisions regarding intra-day nomination rights to provide (1) allowance for waiver of daily penalties for bumped shippers; (2) incorporation of Version 1.3 of GISB Standard 1.3.2 (i) through (iv) verbatim; (3) removal of the optional bumping notice by electronic mail; and (4) reference to the GISB Standards adopted by Order No. 587–H as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31137 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–3–001]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 12, 1998.

Mississippi Canyon states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–3–000. Specifically, Mississippi Canyon was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) waiving of daily non-critical penalties for interruptible shippers that have been bumped. Mississippi Canyon does not have any daily non-critical penalties, therefore a waiver is not necessary. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31122 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–145–000]

Mississippi Canyon Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Mississippi Canyon Gas Pipeline, L.L.C. (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 10, 1998.

Mississippi Canyon states that the purposes of this filing is to update Mississippi Canyon's Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. Mississippi Canyon also proposed other minor changes to update these sheets by (1) changing date references (2) clarifying whom the signing party is and the associated title and (3) correcting or deleting prior company names that are no longer in use.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31145 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–69–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of November 1, 1998:

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on October 28, 1998, in the above-referenced docket [85 FERC 61,126 (1998)]. National Fuel further states that the revised tariff language provides that National Fuel's ability to discount is limited to rates between the applicable maximum and minimum rates for the service being provided.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31143 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Thirteenth Revised Sheet No. 25, to be effective January 1, 1999.

Natural states that the purpose of this filing is to implement the Gas Research Institute (GRI) Surcharge in accordance with Section 39 of the General Terms and Conditions of Natural's Tariff. The GRI surcharges were approved by the Federal Energy Regulatory Commission's (Commission) Order issued September 29, 1998, at Docket No. RP98–235–000, to be effective January 1, 1999.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective January 1, 1999.

Natural states that copies of the filing are being mailed to its 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 Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31149 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–4–001]

Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective November 2, 1998.

Nautilus states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–4–000. Specifically, Nautilus was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) the waiving of daily non-critical penalties for interruptible shippers that have been bumped. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31123 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–143–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in

Appendix A to the filing, proposed to become effective December 12, 1998.

Nautilus states that the purpose of this filing is to update Nautilus' Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. Nautilus also proposed other minor changes to update these sheets by (1) changing date references; and (2) clarifying whom the signing party is and the associated title.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31144 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–36–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Northern Natural Gas Company (Northern), tendered for filing tariff sheets restoring reference to the $0.0400 per MMBtu Carlton surcharge in compliance with FERC Order dated October 30, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31134 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–37–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Northern Natural Gas Company (Northern), filed tariff sheets to eliminate the Exit Fee language in Section 25 in compliance with FERC Order dated October 29, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring 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 Section 385.2121 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31135 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–406–001]

Overthrust Pipeline Company; Notice of Motion To Withdraw Tariff Filing

November 17, 1998.

Take notice that on November 6, 1998, Overthrust Pipeline Company filed a motion to withdraw its September 17, 1998 FERC Gas Tariff filing in the captioned docket.

Overthrust had filed to revise tariff language applicable to the sale of firm transportation capacity to be consistent with that approved by the Commission for Questar Pipeline Company, the operating partner of Overthrust. On October 16, 1998, the Commission accepted the filed tariff sheets and suspended them for five months and ordered a technical conference.

Overthrust, in its motion, states that any efficiencies Overthrust expected to obtain would be lost by the five month suspension, and therefore has moved to withdraw its September 17, 1998 filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31118 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–19–002]

Panhandle Eastern PipeLine Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for

filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Sub Fourth Revised Sheet No. 239
Sub Second Revised Sheet No. 239A
Sub Original Sheet No. 239B
Sub Original Sheet No. 239C
Sub Fourth Revised Sheet No. 265
Sub Fifth Revised Sheet No. 339

Panhandle states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–19–000 & 001. The revised tariff sheets included herewith (1) revise Sections 8.2(a), 8.2(b) and 12. 11(h) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and (2) incorporate by reference the Gas Industry Standards Board (GISB) Standard 1.3.2(v) and (vi), Version 1.3 in Section 27.6 of the General Terms and Conditions.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31130 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–4448–000 and ER98–4608–000]

PP&L, Inc. PP&L EnergyPlus Company; Notice of Amendment of Filing

November 6, 1998.

Take notice that on November 2, 1998, PP&L, Inc. (PP&L) and PP&L EnergyPlus Company (EnergyPlus) filed an amended code of conduct in the above-referenced dockets.

PP&L and EnergyPlus state that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest such 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 23, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31111 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–8–001]

Sabine Pipe Line Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Sabine Pipe Line Company (Sabine) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Second Revised Sheet No. 204,
Substitute Original Sheet No. 226C
Original Sheet No. 226D

Sabine states that the purpose of this filing is to comply with the Commission's order issued October 29, 1998, in Docket No. RP99–8–000. Sabine requests waiver of any Commission regulations necessary to allow these tariff revisions to become effective November 2, 1998.

Sabine states that the instant filing reflects changes to (1) state procedures for notification of shippers that are bumped as a result of intra-day nominations, (2) provide for a waiver of penalties for bumped parties resulting from intra-day nominations, and (3) eliminate Gas Industry Standards Board (GISB) standard 1.2.7 from Sabine's tariff.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31125 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–4115–000; ER98–4116–000; and ER98–4118–000]

Southern Energy Canal, L.L.C.; Southern Energy Kendall, L.L.C.; Southern Energy New England, L.L.C.; Notice of Issuance of Order

November 17, 1998.

Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C., and Southern Energy New England, L.L.C. (jointly, Southern Generators) filed applications to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Southern Generators requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Southern Generators. On November 12, 1998, the Commission issued an Order Approving Sales of Jurisdictional Facilities Conditionally Accepting For Filing Market-Based Rates And Supplemental Filings As Modified (Order), in the above-docketed proceedings.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (L), (M), and (O):

(L) Within 30 days of the date of this order, any person desiring to be heard

or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southern Generators should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(M) Absent a request to be heard within the period set forth in Ordering Paragraph (L) above, Southern Generators are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Southern Generators, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(O) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Southern Generators' issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C.

David P. Boergers,

Secretary.

[FR Doc 98–31114 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–13–001]

Steuben Gas Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 2, 1998.

Steuben states that attached tariff sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned docket.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31126 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–67–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 17, 1998.

Take notice that on November 10, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP99–67–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for Chevron U.S.A., Inc. (Chevron), under Tennessee's blanket certificate issued in docket No. CP82–413–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that Chevron requested that Tennessee install a delivery point located in Federal waters at South Timbalier Area, Block 37, Platform A to provide service to Chevron's platform for emergency fuel use. Tennessee further states that the estimated proposed volumes delivered through the new delivery point would be approximately 1,000 dekatherms per day. Tennessee also states that Chevron proposes to obtain service pursuant to either an interruptible service agreement under Tennessee's Rate Schedule IT or through capacity release from existing shippers. Tennessee states that the estimated cost of the facility is $41,300 for which Chevron would reimburse to Tennessee.

Specifically, Tennessee proposes to fabricate, install, own, operate and maintain a 2-inch hot tap assembly and would install, own, operate and maintain electronic gas measurement equipment. Tennessee states that it would utilize existing communication and solar equipment in connection with the project. It is further stated that Chevron would install, own, operate and maintain approximately 50 feet of 2-inch diameter interconnecting piping and would install, own and maintain the measurement facilities. Tennessee further states that it would operate the measurement facilities. It is also stated that the installation or the interconnect piping and measurement facilities would be inspected by Tennessee to ensure its compliance with Tennessee's specifications.

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) 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31113 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–58–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for as part of its filing FERC Gas Tariff, Fifth Revised

Volume 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

Tennessee states that the revised sheets are being filed in compliance with the Commission's Order issued October 28, 1998 in the above-referenced docket. Tennessee Gas Pipeline Company, 85 FERC ¶ 61,112 (1998). Tennessee further states that the tariff sheets revise Tennessee's tariff provisions regarding intra-day nomination rights to provide: (1) incorporation of Version 1.3 of GISB Standard 1.3.2 (i) through (iv) verbatim; (2) addition of clarifying language regarding adjustment in gas flow; (3) allowance for an Intra-day 1 Nomination Change from a firm storage to have priority over scheduled and flowing volumes with a priority below firm primary; (4) removal of the optional bumping notice by electronic mail; and (5) reference to the GISB Standards adopted by Order No. 587–H (including GISB Standard 1.3.22) as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31139 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–20–002]

Trunkline Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Sub Eighth Revised Sheet No. 167
2nd Sub Second Revised Sheet No. 167A
Sub First Revised Sheet No. 167B
2nd Sub Original Revised Sheet No. 167C
Sub Second Revised Sheet No. 177
Sub Fourth Revised Sheet No. 242A

Trunkline states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–20–000 & 001. The revised tariff sheets included herewith (1) revised Sections 3.1(B), 3.1(C) and 5.1(A) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and (2) incorporate by reference the Gas Industry Standards Board (GISB) Standard 1.3.2(v) and (vi), Version 1.3 in Section 28.6 of the General Terms and Conditions.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31131 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–18–001]

Trunkline LNG Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheets to be effective November 2, 1998:

Sub First Revised Sheet No. 64A
Sub First Revised Sheet No. 64B
Sub Original Sheet No. 64C
Sub Second Revised Sheet No. 115

TLNG states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–18–000. The revised tariff sheets included herewith modify Sections 3.3(B) and 3.3(C) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and that bumped interruptible shippers will be notified of such bump through the electronic bulletin board, the Web Site and by telephone and facsimile transmission 1.3.2 (v) and (vi), Version 1.3 has been incorporated by reference in Section 21.7 of the General Terms and Conditions. TLNG'S tariff has no provision for daily penalties; therefore, there are no daily penalties to be waived for interruptible shippers whose scheduled volumes are bumped by a firm intra-day nomination.

TLNG states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31129 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–428–002]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

November 17, 1998.

Take notice that on November 13, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets effective November 2, 1998:

Sub First Revised Sheet No. 42B
Sub Original Sheet No. 42C
Sub Original Sheet No. 42D

Original Sheet No. 42E
Original Sheet No. 42F

Tuscarora states that the purpose of this filing is to comply with Letter Order Pursuant to § 375.307(b)(1) and (b)(3) issued on October 30, 1998. Specifically, Tuscarora has revised Section 4 of the General Terms and Conditions of its tariff to include the verbatim text of GISB Standard 1.3.2(i) through (vi) and to provide notice of bumping in the same manner as currently provided for OFO notices. In addition, Section 4 was revised to provide advance notice of bumping to interruptible shippers, to notify the interruptible shippers whether penalties will apply on the day volumes are reduced, and to waive non-critical penalties for bumped shippers on the day of the bump.

Tuscarora states that copies of this filing were mailed to customers of Tuscarora, interested state regulatory agencies and all parties on the service list in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31120 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–57–001]

U–T Offshore System; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 2, 1998:

Second Revised Sheet No. 46A
Original Sheet No. 46B
Original Sheet No. 46C
Sub Ninth Revised Sheet No. 73
Sub Fourth Revised Sheet No. 73A
Sub Third Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to comply with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31138 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–3–999, et al.]

MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

November 10, 1998.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. EL99–3–000]

Take notice that on November 3, 1998, MidAmerican Energy Company filed an Amendment to Petition for Enforcement and Declaratory Order in the above-captioned proceeding.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Storm Lake Power Partners I LLC, Storm Lake Power Partners II LLC, and Lake Benton Power Partners II LLC

[Docket No. EC99–8–000]

Take notice that on November 4, 1998, Storm Lake Power Partners I, LLC, Storm Lake Power Partners II LLC, and Lake Benton Power Partners II (Applicants), each of 13000 Jameson Road, Tehachapi, California 93561, submitted for filing an application for approval under Section 203 of the Federal Power Act of a corporate reorganization in which the Applicants' indirect parent Enron Development Corp. will transfer its interests in the Applicants to a new entity, Midwest Power Funding LLC and will then transfer its interest in Midwest Power Funding LLC to another new entity, Enron Wind Midwest LLC, which will be unduly owned by Enron Wind Development Corp. No determination has been made that the submittal constitutes a complete filing.

The Applicants are constructing wind power generation facilities in Iowa and Minnesota. The purpose of the reorganization is to permit the issuance of a consolidated debt offering for construction and term debt financing for the facilities. The reorganization will not change the ultimate ownership or control of the facilities.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.

[Docket No. EL99–9–000]

Take notice that on November 4, 1998, Old Dominion Electric Cooperative (Old Dominion) tendered for filing a complaint against PJM Interconnection, L.L.C., for modification of the PJM Open Access Tariff and Attendant PJM Market Structure Agreement and request for investigation of the cause of a persistent run-up in energy market prices within PJM since Locational Marginal Pricing (LMP) was implemented by it. Old Dominion requests that the Commission direct a modification of the PJM Open Access Tariff and the necessary associated agreement to grant the PJM Office of the Interconnection the authority that it has previously requested to recall Capacity Resources planned for bilateral sales outside the PJM control area—in order to serve PJM internal loads prior to scheduling external generation bid at market prices. In addition, Old Dominion requests that the Commission initiate an investigation pursuant to Section 206 of the Federal Power Act to determine the cause of a dramatic and persistent increase in Energy Market prices to consumers within the PJM control area since the LMP proposal of the PJM Companies, excluding PECO Energy, was implemented on April 1, 1998. Old Dominion maintains that such an investigation is necessary in the

absence of operation of a market power policing Market Monitoring Plan and implementing Market Monitoring Unit by PJM.

Copies of Old Dominion's complaint filing were served upon PJM Interconnection, L.L.C., and state regulatory authorities in Virginia, Delaware, Maryland, Pennsylvania and New Jersey.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint are also due on or before December 4, 1998.

4. Tenaska Power Services Company, Entergy Power marketing Corp., CoAgra Energy Services, Inc., e prime, inc., Energy Services, Inc., Colonial Energy, Inc., and Niagara Mohawk Energy Marketing, Inc.

[Docket Nos. ER94–389–017, ER95–1615–013, ER95–1751–012, ER95–1269–012, ER95–1021–013, ER97–1968–006, and ER96–2525–009]

Take notice that the following informational filings have been made with the Commission and are available for public inspection in the Commission's Office of Public Information:

On October 30, 1998, Tenaska Power Services Company filed certain information as required by a Commission order issued in Docket No. ER94–389–000.

On October 30, 1998, Entergy Power Marketing Corporation filed certain information as required by a Commission order issued in Docket No. ER95–1615–000.

On October 30, 1998, ConAgra Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER95–1751–000.

On October 30, 1998, e prime, inc. filed certain information as required by a Commission order issued in Docket No. ER95–1269–000.

On October 30, 1998, Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER95–1021–000.

On October 30, 1998, Colonial Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–1968–000.

On October 30, 1998, Niagara Mohawk Energy Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–2525–000.

5. Southwest Power Pool Inc.

[Docket No. ER98–1163–003]

Take notice that on November 4, 1998, Southwest Power Pool Inc., tendered for filing its compliance filing in response to the Federal Energy Regulatory Commission's October 5, 1998, order in the captioned proceeding.

Copy of this filing is being served on all parties on the Commission's service list.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. CinCap V, LLC, Southern Energy Retail Trading and Marketing, Inc., Southern Energy Trading and Marketing Inc., Enron Energy Services, Inc., Constellation Power Source, Enron Power Marketing, Inc., Equitable Power Services Company, Tosco Power, Inc., Competitive Utility Services Corporation, Sithe Power Marketing Inc., North American Energy, Inc., Kamps Propane, Inc., Medical Area Total Energy Plant, Inc., Energy International Power Marketing Corporation, Automated Power Exchange, Inc., and CL Power Sales Six. L.L.C.

[Docket Nos. ER98–4055–001, ER98–1149–001, ER95–976–015, ER98–13–007, ER97–2261–007, ER94–24–027, ER94–1539–018, ER96–2635–007, ER97–1932–007, ER98–107–004, ER98–242–002, ER98–1148–001, ER98–1992–002, ER98–2059–002, ER98–1033–000, and ER96–2652–016]

Take notice that the following informational filings have been filed with the Commission and are available for public inspection and copying in the Commission's Office of Public Information:

On October 30, 1998, CinCap V, LLC filed certain information as required by a Commission order issued in Docket No. ER98–4055–000.

On October 30, 1998, Southern Energy Retail Trading and Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1149–000.

On October 30, 1998, Southern Energy Trading and Marketing Inc. filed certain information as required by a Commission order issued in Docket No. ER95–976–000.

On October 30, 1998, Enron Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–13–000.

On October 30, 1998, Constellation Power Source, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–2261–000.

On October 30, 1998, Enron Power Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER94–24–000.

On October 30, 1998, Equitable Power Services Company filed certain information as required by a Commission order issued in Docket No. ER94–1539–000.

On October 30, 1998, Tosco Power Inc. filed certain information as required by a Commission order issued in Docket No. ER96–2635–000.

On October 30, 1998, Competitive Utility Services Corporation filed certain information as required by a Commission order issued in Docket No. ER97–1932–000.

On October 30, 1998, Sithe Power Marketing Inc. filed certain information as required by a Commission order issued in Docket No. ER98–107–000.

On October 30, 1998, North American Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–242–000.

On October 30, 1998, Kamps Propane, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1148–000.

On October 30, 1998, Medical Area Total Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1992–000.

On October 30, 1998, Automated Power Exchange, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1033–000.

On October 30, 1998, CL Power Sales Six, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER96–2652–000.

7. Boston Edison Company

[Docket Nos. ER99–35–000, EL99–7–000, and EL99–8–000]

Take notice that on October 22, 1998, Boston Edison Company (Boston Edison), tendered for filing Standstill Agreements with Braintree Electric Light Department and Reading Municipal Light Department in the above-captioned proceeding.

Boston Edison states that copies of this filing have been posted and served upon the customers involved in Docket No. ER98–35–000 and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER99–275–000]

Take notice that on November 5, 1998, Commonwealth Electric company (Commonwealth) and Cambridge Electric Light Company (Cambridge), tendered for filing a corrected Service Agreement between Southern Company Energy Marketing, L.P., replacing the Service Agreement inadvertently filed

on October 22, 1998, in the above-referenced docket.

Comment date: November 25, 1998, in accordance with standard Paragraph E at the end of this notice.

9. NorAm Energy Services, Inc., CNG Power Services Corporation, El Paso Energy Marketing, CMS Marketing, Services and Company, Koch Energy Trading Company, CL Power Sales Two, L.L.C.

[Docket Nos. ER99–472–000, ER94–1554–018, ER95–428–016, ER96–2350–015, ER95–218–015, and ER95–892–029]

Take notice that the following informational filings have been filed with the Commission and are available for public inspection and coping in the Commission's Office of Public Information:

On October 30, 1998, NorAm Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–928–000.

On October 30, 1998, CNG Power Services Corporation filed certain information as required by a Commission order issued in Docket No. ER94–1554–000.

On October 30, 1998, El Paso Energy Marketing filed certain information as required by a Commission order issued in Docket No. ER95–428–000.

On October 30, 1998, CMS Marketing, Services and Trading Company filed certain information as required by a Commission order issued in Docket No. ER96–2350–000.

On October 30, 1998, Koch Energy Trading Company filed certain information as required by a Commission order issued in Docket No. ER95–218–000.

On October 30, 1998, CL Power Sales Two, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER95–892–000.

10. Duke Power, Williams Generation Company-Hazelton, CNG Retail Services Corp., CL Power Sales One, L.L.C., CL Power Sales Three, L.L.C., CL Power Sales Four, L.L.C., CL Power Sales Five, L.L.C., Citizens Power Sales, and Sempra Energy Trading Corp.

[Docket Nos. ER99–514–000, ER99–515–000, ER97–1845–005, ER95–892–028, ER95–892–030, ER95–892–031, ER95–892–032, ER94–1685–022, and ER94–1691–020]

Taken notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's public reference room:

On October 30, 1998, Duke Power filed certain information as required by a Commission order issued in Docket No. ER96–110–000.

On October 30, 1998, Williams Generation Company-Hazelton filed certain information as required by a Commission order issued in Docket No. ER97–4587–000.

On October 30, 1998, CNG Retail Services Corporation filed certain information as required by a Commission order issued in Docket No. ER97–1845–000.

On October 30, 1998, CL Power Sales One, L.L.C., Cl Power Sales Three, L.L.C., CL Power Sales Four, L.L.C. and CL Power Sales Five, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER95–892–000.

On October 30, 1998, Citizens Power Sales filed certain information as required by a Commission order issued in Docket No. ER94–1685–000.

On October 30, 1998, Sempra Energy Trading Company filed certain information as required by a Commission order issued in Docket No. ER94–1691–000.

11. Entergy Services, Inc.

[Docket No. ER99–519–000]

Take notice that on November 4, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an Amendment (dated August 19, 1998), to the Capacity and Energy Letter Agreement between Entergy Services, Inc., and Sam Rayburn G&T Electric Cooperative, Inc.

Entergy Services requests that the Letter Amendment be made effective as of August 1, 1998. Entergy Services also seeks waiver of the Commission's notice requirements.

Comment date: November 24, 1998, in acordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–520–000]

Take notice that on November 4, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing the First Amendment to the Agreement for Special Requirements Wholesale Electric Service between Entergy Gulf States, Inc., and East Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric executed on August 21, 1988.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER99–522–000]

Take notice that on November 4, 1998, Western Resources, Inc., (Western Resources), tendered for filing notice that effective the January 4, 1999, Service Agreement No. 44 to FERC Electric Tariff, Original Volume No. 5, the Non-Firm Point-to-Point Transmission Service Agreement between Western Resources, Inc., and Vastar Power Marketing, Inc., effective April 22, 1997 and filed with the Federal Energy Regulatory Commission by Western Resources, Inc., in docket No. ER97–2990–000, is to be canceled.

Notice of the proposed cancellation has been served upon southern Company Energy Marketing L.P., and the Kansas Corporation Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–523–000]

Take notice that on November 4, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing an executed Network Service and Network Operating Agreements between NYSEG and Empire Natural Gas Corporation. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of October 23, 1998 for the Agreement.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER99–524–000]

Take notice that on November 5, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Wabash Valley Power Association, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed

in Docket No. ER 98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Company

[Docket No. ER99–525–000]

Take notice that on November 5, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment (First Amendment) to the Control Area and Transmission Service Agreement (Agreement) between PG&E and Power Exchange Corporation (PXC) which was accepted by the Commission on May 5, 1995 in FERC Docket No. ER95–769–000 as PG&E Rate Schedule FERC No. 186. The purpose of the First Amendment is to adopt new contract language resulting from the settlement of a dispute between the Parties.

Copies of this filing were served upon PXC and California Public Utilities Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER99–526–000]

Take notice that on November 5, 1998, Commonwealth Edison Company (ComEd), tendered for filing one Service Agreement, establishing MBLP, as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of October 27, 1998, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MBLP and the Illinois Commerce Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER99–527–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM), tendered for filing Notice of Assignment that DETM will replace Duke/Louis Dreyfus, L.L.C. (d/LD) as a customer under the Interchange Agreement designated as Rate Schedule FERC No. 17.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–528–000]

Take notice that on November 5, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing Notice of Cancellation effective December 2, 1998, Rate Schedule FERC No. 216, effective date March 24, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon North American Energy Conservation, Inc.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER99–529–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM) tendered for filing Consent of Assignment entered into between Cinergy and Duke Energy Trading and Marketing L.L.C. (DETM). Cinergy and DETM are requesting that DETM will replace Duke/Louis Dreyfus, L.L.C. (D/LD) of D/LD's rights and obligations under the Western Systems Power Pool Agreement designated as Rate Schedule FERC No. 1.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER99–530–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM) tendered for filing a Notice of Assignment that DETM will replace Duke/Louis Dreyfus, L.L.C. (D/LD) as a customer under the Cinergy Power Sales Standard Tariff, Volume No. 4.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company

[Docket No. ER99–535–000]

Take notice that on November 6, 1998, Ameren services Company (ASC), tendered for filing a Service agreement for Firm Point-to-Point Transmission Service between ASC and Constellation Power Source, Inc., (CPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to CPS pursuant to Amerens's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective October 8, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Ameren Services Company

[Docket No. ER99–536–000]

Take notice that on November 6, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Constellation power Source, Inc., (CPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to CPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective on October 8, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–537–000]

Take notice that on November 6, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 8 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power officers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of November 5, 1998, to new Energy Ventures, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public

Service Commission, and all parties of record.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Peco Energy Company

[Docket No. ER99–538–000]

Take notice that on November 6, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated June 2, 1997 with Kennebunk Light and Power District (KLPD) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds KLPD as a customer under the Tariff.

PECO requests an effective date of October 8, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to KLPD and to the Pennsylvania Public Utility Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Montaup Electric Company

[Docket No. ER99–539–000]

Take notice that on November 6, 1998, Montaup Electric Company (Montaup), tendered for filing Notice of Cancellation of its Rate Schedule FERC No. 123.

Comment date: November 25, 1998, in accordance with Standard paragraph E at the of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER99–540–000]

Take notice that on November 6, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an agreement between PG&E, the United States of America, Department of Energy, Oakland Operations Office (DOE) (collectively Parties), entitled ''Settlement Agreement for Power Delivery to the United States Department of Energy Laboratories''.

The Agreement is intended to, among other things, settle issues and implement procedures for PG&E's existing obligation to deliver power to DOE's Northern California Laboratories known as Lawrence Livermore National Laboratory (LLNL), Lawrence Livermore National Laboratory Site 300 (Site 300), Stanford Linear Accelerator Center (SLAC), and Lawrence Berkeley National Laboratory (LBNL) under PG&E Rate Schedule FERC No. 147.

Copies of this filing have been served upon DOE, Western and the California Public Utilities Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Western Systems Power Pool

[Docket No. ER99–541–000]

Take notice that on November 6, 1998, the Western Systems Power Pool (WSPP), tendered for filing revisions to the WSPP Agreement, and for authorization to allow certain members of the WSPP to sell power under the WSPP Agreement at market-based rates.

The WSPP states the revisions to the WSPP Agreement are necessary to update the terms of the WSPP Agreement and better ensure commercial enforceability of the agreements terms. In addition, the WSPP seeks authorization for WSPP members who have already received authorization from the Federal Energy Regulatory Commission (FERC) to sell power at market-based rates, and for WSPP members who are not subject to the FERC's jurisdiction under Section 201 of the Federal Power Act, to sell power under the WSPP Agreement at market-based rates.

Comment date: November 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31110 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

November 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendments to License.

b. *Project Name:* Catawaba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–373, –377, and –380.

d. *Date Filed:* October 1, 1998 (for –373 and –377); November 5, 1998 (for –380).

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Counties and Lakes affected in North Carolina: Counties: Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg; Lakes: On Lakes James, Rhodiss, Hickory, Lookout Shoals, Norman, and Mountain Island. *Counties and Lakes affected in South Carolina:* Counties: Chester, Fairfield, Kershaw, Lancaster, and York; Lakes: Wylie, Fishing Creek, Great Falls, Rocky Creek, and Wateree.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y) Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, (202) 219–3076.

j. *Comment Date:* December 26, 1998.

k. *Description of the filing:* Pursuant to Commission order issued February 2, 1996, Approving and Modifying Shoreline Management Plan for the Catawba-Wateree Hydroelectric Project, there are three filings before the Commission at this time: (1) The Shallow Water Fish Habitat Survey Mapping Project (Shallow Water Survey); (2) The Revision of the Shoreline Management Plan (SMP) Maps and; (3) The Proposed Methodology and Survey Instruments for the Recreation Needs Survey (Needs Survey). These filings represent efforts being undertaken by the licensee to fulfill the requirements of paragraphs (B), (C), (D), (E) and (F) of the above-mentioned order. In summary, the Shallow Water Survey was conducted as a part of the licensees efforts to identify areas of importance for fish spawning and to classify the shoreline for appropriate uses to protect the identified areas. The SMP maps are purposed to be revised in accordance with the Shallow Water Survey findings. The proposed Needs Survey (and methodology) is intended to, in part, evaluate: (1) recreational needs at the project; (2) boating use activities and; (3) the need for possible shoreline reclassification based on the survey results.

1. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments with the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31117 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting

November 17, 1998.

Between the years 2000 and 2010, a number of hydropower project licenses in California will expire. We have scheduled a public outreach meeting in Sacramento, California for the purpose of discussing concerns and experiences stakeholders may have in using an alternative process in licensing hydropower projects. The agenda is as follows:

Place: Sterling Hotel, 1300 H Street, Sacramento, California 95814.

Date: Wednesday, December 9, 1998.

Time: 9:00 a.m. to 5:00 p.m.

The Sterling Hotel is located in downtown Sacramento at the junction of 13th Street and ''H'' Street. From the Sacramento Airport, it is about a 15 minute drive. From the Airport take Interstate 5 South to the ''Old Sacramento J Street'' off-ramp. Go on J Street and make a left onto 13th. Take 13th to H Street. There is a parking garage between ''J'' and ''I'' Streets on 13th.

For further information, please contact Theresa Gibson at (202) 219–2793.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31112 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–8]

Agency Information Collection Activities: Proposed Collection; Comment Request: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: U. S. Institute for Environmental Conflict Resolution, and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Roster of Environmental Dispute Resolution and Consensus Building Professionals, EPA ICR #1888.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection (see the section A below entitled ''Questions to Consider in Making Comments''). This document provides information on the need for the roster and the information to be recorded in the roster and a discussion of qualification requirements for applicants wishing to be listed on the roster. Copies of the qualifications requirements and draft application form have been distributed widely for review through professional societies such as the Society of Professionals in Dispute Resolution and the International Association of Public Participation. The Roster will not be open to receive applications until all Paperwork Reduction Act requirements are met.

DATES: Comments must be received on or before January 22, 1999.

ADDRESSES: Send comments to the Consensus and Dispute Resolution Program, Mail Code 2136, Environmental Protection Agency, Washington, DC 20460, fax: (202) 260–5478.

FOR FURTHER INFORMATION CONTACT: Deborah Dalton, Deputy Director, Consensus and Dispute Resolution Program, Mail Code 2136, Environmental Protection Agency, Washington, DC 20460, fax: (202) 260–5478; email:dalton.deborah@epa.gov.

SUPPLEMENTARY INFORMATION:

Potentially Affected Persons

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals. This Roster will be one of several sources of information which federal environmental and natural resource agencies will use to identify appropriately experienced conflict resolution professionals for use in resolving environmental and natural resource disputes or issues in controversy under the Administrative Dispute Resolution Act of 1996 and the Negotiated Rulemaking Act of 1996.

Title: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals—EPA ICR #1888.01.

Background

A. Questions to Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution and EPA request your comments to any of the following questions related to establishing a National Roster of Environmental Dispute Resolution and Consensus Building Professionals:

(1) Is the proposed roster (''collection of information'') necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility?;

(2) Is the agencies' estimate of the time spent completing the application form (''burden of the proposed

collection of information'') accurate, including the validity of the methodology and assumptions used?;

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information to be collected?; and

(4) Can you suggest 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, e.g., permitting electronic submission of responses?

B. What Are the Statutory Bases for Use of Dispute Resolution and Consensus Building Professionals in Agency Disputes?

The Administrative Dispute Resolution Act (ADRA), Public Law 101–552, authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. The Negotiated Rulemaking Act (NRA), Public Law 101–648, authorizes and encourages agencies to use consensus building methods as a means of developing regulations. Both Acts anticipate the use of a ''neutral,'' an individual who, with respect to an issue in controversy, functions specifically to help the parties in resolving the controversy. Neutrals may be facilitators, mediators, conciliators, arbitrators or early neutral evaluators. The 1990 ADRA called for the Administrative Conference of the U.S. to establish standards for neutrals and to maintain a roster of individuals who met the standards. The Administrative Conference of the U.S. was abolished in 1995 and its roster subsequently lapsed.

The U.S. Institute for Environmental Conflict Resolution was established by Congress in 1997 (Public Law 105–156) to assist in the resolution of environmental conflicts in which the federal government is a stakeholder. The Institute is housed at the Morris K. Udall Foundation, a federal commission located in Tucson, Arizona. The Institute is authorized to direct its resources to resolve costly environmental conflicts outside the courtroom and to foster collaborative agreements among affected parties concerning the implementation of federal environmental, public lands and natural resources policy. Federal agencies are authorized by the new law to employ the Institute to assist in alternative conflict resolution in matters involving environmental, natural resources and land-related disputes. The Institute will operate primarily as a facilitator and broker for public and private stakeholders. The Institute's small professional staff will accomplish most of its work through partnering and subcontracting with existing qualified professionals with longstanding experience in environmental conflict resolution and consensus building. The legislation requires the Institute, to the maximum extent possible, to use service providers in the geographic area of the conflict.

C. Why Is a New Roster Needed?

Identification of an appropriate, experienced neutral is an essential step in initiating and conducting a credible dispute resolution or consensus building process. There are a number of ways that parties to a conflict identify neutrals—past experience with a neutral, recommendations from colleagues, professional directories, yellow pages of phone books, responses to Requests for Proposal, etc. None of these processes is particularly rigorous or efficient in terms of timing, particularly when the parties are seeking persons with specialized expertise.

The U.S. Institute for Environmental Conflict Resolution is charged with assisting in the resolution of environmental, public lands and natural resources conflicts that involve federal agencies as stakeholders. Consistent with its mandate, the Institute must be able to identify appropriate experienced dispute resolution and consensus building professionals in an expedited manner. This national roster will serve as a primary source for the Institute to access qualified professionals who have specific background and expertise sought by stakeholders to environmental conflicts.

EPA has long had a nationwide contract listing numerous dispute resolution consultants and firms. This contract provides excellent service for national level issues, but it can be cumbersome and time consuming in seeking out neutrals for local site or facility-based disputes or consensus building efforts.

In 1997, EPA conducted a study to examine whether a specialized roster was necessary and whether any existing rosters (public or private) could fulfill the need. The study concluded that EPA (especially regional offices of EPA) needed a specialized roster or database which would list neutrals experienced in helping parties in environmental cases, and that there was no existing database that would meet EPA's needs. The study identified a number of federal, state and private rosters of neutrals. The other existing Federal roster, the FDIC Roster of Neutrals (OMB #3064–0107), does not contain significant numbers of neutrals experienced in environmental or natural resource matters. A number of states have rosters of environmental neutrals, but the entry qualifications vary significantly and even taken together, they do not provide adequate nationwide coverage.

The Roster developed as a result of this ICR will provide the U.S. Institute for Environmental Conflict Resolution, EPA and other federal agencies with the ability to identify an additional number, range and variety of dispute resolution and consensus building service providers throughout the U.S. The ICR will provide two kinds of information: (1) Information to determine if the individual applying has met the basic entry qualifications; (2) information to be used in conducting database searches to match cases or issues with potential neutrals experienced in particular kinds of disputes or issues.

D. How Were the Roster Entry Qualifications and Information Developed?

EPA has entered into an Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution to develop a roster specifically designed to identify dispute resolution and consensus building professionals (neutrals) with environmental and/or natural resource public policy experience. The U.S. Institute convened a workgroup to give individual opinions and advice to the Institute and EPA regarding whether or not the roster should have entry qualifications and how the roster should be constructed and managed. The workgroup consists of EPA dispute resolution specialists and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. As a result of the individual advice of the workgroup and others who have responded to requests for opinions, the U.S. Institute and the EPA are proposing the entry criteria and information collection items included in this Information Collection Request.

In addition to the public comment being solicited in this notice, the U.S. Institute and EPA are conducting extensive outreach to professional associations of dispute resolution and consensus building professionals, state offices of dispute resolution, individual dispute resolution practitioners, professional associations of attorneys, and environmental and citizens groups though presentations at professional meetings and conventions and through individual contacts with people and

organizations who have participated in previous dispute resolution efforts.

E. What Are the Roster Entry Qualifications?

As a result of consultations with the workgroup, the U.S. Institute for Environmental Conflict Resolution and EPA are proposing the following basic entry criteria for an individual seeking to be listed on the Roster database.

Draft Roster Entry Criteria

In order to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals, a person must: (1) Have served as the principal or co-principal professional on two to five environmental cases. Each case must have involved at least 40 direct case hours of contact and in the aggregate must total at least 200 case hours; and (2) accumulate a total of at least 50 points across three scoring categories, including process experience, interactive training experience, and substantive background. The scoring categories and scoring system are presented in the chart below:

Scoring categories and subcategories (50 points required for entry)	Range of points for each sub-category	Maximum points for the category
1. Process Experience		90
a. Number of environmental or public policy cases in the last 10 years as principal or co-principal professional—5 points per case up to 10 cases.	0–50	
b. Additional credit if any of those cases were complex environmental or public policy cases—5 additional points per case up to 5 cases.	0–25	
c. Number of environmental or public policy cases in the last 10 years as apprentice or junior professional—3 points per case up to 5 cases.	0–15	
2. Interactive Process Training		20
a. Training experience—At least 24 hours of basic interactive training and 16 hours of advanced interactive training in dispute resolution and consensus building.	0 or 10	
b. Trainer—Directed at least 40 hours of basic interactive training in dispute resolution and consensus building.	0 or 10	
c. Senior Trainer/teacher experience—Directed interactive training in dispute resolution and consensus building totaling 150 contact hours.	0 or 20	
3. Substantive Experience		25
a. Graduate degrees or graduate program certificates in substantively relevant fields, such as law, environmental sciences or policy, engineering, public administration or management, communication theory, planning, conflict resolution—10 points for up to one degree/certificate.	0 or 10	
b. Years of employment or volunteer experience in the above fields—1 point for every year up to 15 years	0–15	

Definitions

1. Case—A case is an actual or potential dispute or lack of agreement on one or more issues. A case may also be described as a process of building agreement, recommendations or advice on actual or potential issues in controversy as well as facilitating collaborative processes among multiple parties on actual or potential issues in controversy. Systems design and evaluation work would also be included. For purposes of entry, a case must have engaged the applicant for more than 40 case hours.

a. Environmental Case—Cases or processes involving environmental pollution prevention or cleanup, land use, natural resource use or distribution, environmental permitting, facility siting disputes, environmental justice, negotiated rulemaking, enforcement or compliance.

b. Public Policy Case—Cases or processes involving the setting of governmental policy at the national, regional, state or local level, such as environmental or natural resource policy, health policy, or education policy.

c. Complex Environmental or Public Policy Case—An environmental or public policy case where there are multiple issues at stake involving at least four parties representing distinct interests at the table, at least one of whom is a governmental entity.

2. Case Hours—Actual contact time with the parties as individuals or a group, plus time spent in dispute or conflict assessment, dispute resolution process design, conduct of all phases of the process, or evaluating or reporting on the process. This does not include hours spent prior to professional engagement in the project.

3. Environmental Dispute Resolution and Consensus Building Professional—Any third party neutral engaged to help all parties in the prevention or resolution of disputes or controversy. In order to gain entry to this roster, the environmental dispute resolution and consensus building professional must have expertise in one or more of the following processes: conciliation, facilitation, mediation, neutral evaluation or assessment, fact finding, mini-trials, arbitration, dispute systems design.

4. Principal or Co-principal Professional—An environmental dispute resolution and consensus building professional who has been engaged to serve as or share the lead in conduct of a case. If serving as a co-principal professional, one must be acting as a co-lead with equal role in the conduct of the case.

5. Apprentice or Junior Professional—An assistant to the principal or co-principal professionals in the conduct of a case.

6. Interactive Process Training—Training in alternative dispute resolution processes and techniques, such as mediation, facilitation, and conflict management, which is interactive in nature incorporating a substantial number of role plays, simulations, and interactive group demonstrations.

F. What Kinds of Additional Information Are Sought for Roster Database Searches?

As a result of the 1997 EPA study and the individual recommendations from the Roster Workgroup, there are data elements in the ICR that we will use for conducting database searches on behalf of parties to an issue or dispute. Such elements include: geographic location of previous cases, languages spoken, minority group identification, experience with certain types of common environmental disputes, special skills or background. The U.S. Institute and EPA have developed a

draft application form to obtain information both to make decisions on whether an applicant qualifies for the roster and to record other relevant information.

G. Draft Application Form

Please note that the format of this form may change when the U.S. Institute and EPA select the database software for the Roster. We will also be making every effort to allow for methods to obtain and possibly submit the application electronically.

BILLING CODE 6560–50–P

Draft OMB Number: October 6, 1998

U. S. Environmental Protection Agency
Application for the National Roster of
Environmental Dispute Resolution and Consensus Building Professionals

DISCLOSURE OF ESTIMATED REPORTING BURDEN: Public reporting burden for this form is estimated to average 90 minutes, including the time for reviewing instructions, searching existing data sources, gathering the data requested, and completing and reviewing the form. Send comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden, to ...

GENERAL INSTRUCTIONS: Complete all information requested on this form. Please type or print legibly. DO NOT send a resume or other material in lieu of this form. Information from these submissions will be made available to the disputants and public agencies. Successful applicants will be responsible for updating information included on the roster.

I. General Information

Last name		Address	
First name			
Middle initial		City	
Bus. phone		State	
Fax		Zip code	
Home phone		email	

II. Organizational Affiliation (☐ full time; ☐ part time; ☐ none (if none, go to Section 3)

Name of organization		Address	
Telephone			
Fax		City	
No. of neutrals		State	
No. of other staff		Zip code	
		email	
		web address	

☐ Non-profit
☐ Business firm
☐ Government agency

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III. Services Provided

A. Dispute Resolution and Consensus Building Services

Check each service that you have experience in providing and are willing to provide in the future.

☐ Mediation of environmental disputes
☐ Mediation of "complex" environmental disputes
☐ Facilitation of consensus building processes
☐ Regulatory negotiations
☐ Policy dialogues
☐ Superfund allocation disputes
☐ Neutral evaluations
☐ Arbitration
☐ Mini-trials
☐ Convening processes
☐ Process/systems design
☐ Evaluation of ADR processes
☐ Dispute resolution training

B. In what locations have you previously worked?

Any state in the following regions:

- ☐ New England: CT, MA, ME, NH, RI, VT
- ☐ Mid-Atlantic: DE, MD, NY, NJ, PA, VA, WV
- ☐ Southeast: AL, FL, GA, KY, MS, NC, SC, TN
- ☐ Great Lakes: IL, IN, MI, MN, OH, WI
- ☐ North Central: IA, KS, MO, ND, NE, SD
- ☐ South Central: AR, LA, OK, TX
- ☐ Mountain: CO, ID, MT, WY
- ☐ Southwest: AZ, NM, NV, UT
- ☐ Pacific Southwest: CA
- ☐ Pacific Northwest: AK, OR, WA
- ☐ Pacific Islands: HI, Guam and Amer. Samoa
- ☐ Atlantic Islands: PR, VI
- ☐ Foreign Countries (please list): _____

C. What are your capacities to handle special requirements (either internal to your organizational, or through subcontracting)?

- ☐ Logistical support for complex cases
- ☐ Meeting summaries and reports
- ☐ Translations and other language support
- ☐ Database management
- ☐ Web page and computer support
- ☐ Access to technical experts

D. Fee Structure

Hourly Rate	Other fees and expenses (specify).
	Conditions or exceptions (specify).

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IV. Process Experience (Please review the definitions for all italicized terms before answering the following questions.)

A. Number of *environmental or public policy* cases in the last 10 years for which you served as *principal* or *co-principal*	☐ 0-3 ☐ 4-7 ☐ 8-15 ☐ > 15
B. Number of *complex environmental or public policy* cases in the last 5 years for which you served as *principal* or *co-principal*	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ >3

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C. Environmental Dispute Resolution and Consensus Building Case Descriptions

Please list your most relevant cases and provide the information requested. You should provide as many cases (up to 10) as you indicate under "number of environmental or public policy cases" in IV.A. above. Only list cases completed during the last 10 years. Do not include cases where you were acting as common counsel, judge or hearing officer.

	Case 1	Case 2	Case 3	Case 4	Case 5
Descriptive name of case (Please use up to 50 characters)					
Case descriptor (use codes shown at end of form)					
No. of parties	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10
ADR role	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____
Level of your involvement	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior
No. of *case hours* you spent on case	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100
Scale of case	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international
case end date or current year if ongoing					
Is case more fully described below?	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐

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C (continued). Environmental Dispute Resolution and Consensus Building Case Descriptions

	Case 6	Case 7	Case 8	Case 9	Case 10
Descriptive name of case (Please use up to 50 characters)					
Case descriptor (use codes shown below)					
No. of parties	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10
ADR role	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____
Level of your involvement	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior
No. of *case hours* you spent on case	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100
Scale of case (check the one or two most applicable)	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international
case end date, or current year if ongoing					
Is case more fully described below?	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐

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Draft OMB Number:

D. In order to meet the entry criteria for this roster, you must have served as *principal* or *co-principal* dispute resolution or consensus building professional on at least two *environmental cases* which in the aggregate total at least 200 *case hours*. List the *environmental cases* listed in IV-C above which together add up to 200 *case hours*.

1. _____
2. _____
3. _____
4. _____
5. _____

E. In order to receive additional credit for work on *complex environmental or public policy cases*, please list up to five cases described in IV-C above which meet the following definition: an environmental or public policy case where there are multiple issues at stake involving at least four parties representing distinct interests at the table, at least one of whom is a governmental entity.

1. _____
2. _____
3. _____
4. _____
5. _____

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F. Provide two references (with address and phone numbers) for each of two cases listed above.

Case name: _____

Reference 1: _____

Reference 2: _____

Case name: _____

Reference 1: _____

Reference 2: _____

G. Detailed Case Descriptions

Select up to five of the cases presented in IV-C above. Choose cases that represent the types and range of cases with which you work. These descriptions will be made available to prospective roster clients, so be as clear and descriptive as possible.

Descriptive name of case (use same name as used in table above)	*For each case, provide up to 40 words describing the case (types of parties, location, issues, outcomes) and your role in it.*

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V. Interactive Process Training

Please check any of the following that apply to you:

☐ I have taken 24 hours of general training in mediation or facilitation *and* an additional 16 hours of advanced training in complex or multiparty disputes, environmental disputes or systems design.

☐ I have taught as a lead trainer and teacher at least 40 hours of interactive seminar or skills building courses in mediation, facilitation, or consensus building for complex or multiparty disputes, environmental disputes or systems design.

☐ I have taught as a lead trainer and teacher at least 150 hours of interactive seminar or skills building courses in mediation, facilitation, or consensus building for complex or multiparty disputes, environmental disputes or systems design.

For each box checked above, please substantiate by listing the names of courses, with dates, locations, and your involvement.

Course Name	Course Dates	Course Location	Your Involvement

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VI. Other Relevant Education and Experience

A. Graduate Education and Program Certifications

Name of school	*City and state of school*	*Degree or graduate program certification achieved*	*Substantive focus of degree (use codes shown below)*	*Year of degree*

B. Work and Voluntary Professional Experience

Organization	*Full time or part time?*	*Occupation, Position or Title*	*Professional Field Code (listed at end of questionnaire)*	*Dates Worked*		*Number of FTE years worked*
				From	*To*	
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
					Total number of years:	

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C. Narrative Description of Experience (Optional)

In the space below (200 words or less), summarize your experience in providing mediation, facilitation and other dispute resolution services. Provide information that you believe would be useful to stakeholders in determining whether you would be an appropriate neutral for their dispute.

D. Language Skills

Spoken Languages	*Level of Fluency (Fair, Good, Excellent)*

6. Minority and Women Status (Check all that apply.)

- ☐ Caucasian
- ☐ Native American
- ☐ African American
- ☐ Hispanic American
- ☐ Asian-Pacific American
- ☐ Woman
- ☐ You are affiliated with an organization which is 51% or more owned by one or more of the above listed minority groups

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7. Certification

Are you currently debarred, suspended, proposed for debarment or suspension, or have you been declared ineligible for the award of contracts by any Federal agency or Government corporation?

☐ Yes ☐ No

I certify that the above information and all information I am submitting in connection with this questionnaire is true and correct to the best of my knowledge and that I will be removed from consideration or placement on the EPA Roster for falsifying any information provided. False certification may also subject me to civil or criminal penalties as prescribed in 18 U.S.C. § 1001. In understanding that all information provided is a public record. If I am listed on the EPA Roster, I agree to abide by the Ethical Standards of Professional Responsibility developed by the Society for Professionals in Dispute Resolution (SPIDR) and such other professional standards as are applicable to me.

Signed: _____

Codes for Use in Filling Out This Questionnaire

Case Descriptor Codes	*Code*	*Professional Field Codes*	*Code*
Air quality - general		Mediator, facilitator	
Air quality – stationary source		Arbitrator	
Air quality - mobile sources			
Water quality - drinking water		Arts, design	
Water quality - general		Architecture	
Wetlands		Area and cultural studies	
Watershed, estuary		Business, management	
Water management		Communications	
Coastal zone		Criminal justice	
Birds, fish, game management		Building construction, development, real estate	

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Case Descriptor Codes	*Code*	*Professional Field Codes*	*Code*
Endangered species		Economics	
Ecosystem management and sustainable development		Education	
Resource management		Engineering: chemical	
Public lands management		Engineering: civil	
Forestry		Engineering: environmental	
Land use, growth management		Finance	
Energy		Geography, history, sociology, anthropology, archeology	
Radiation, nuclear power, nuclear waste		International affairs, political science	
Hazardous or solid waste disposal		Humanities, philosophy	
Hazardous waste remediation, Superfund		Law	
Allocation of liability for damages		Languages, literature, linguistics	
NEPA, CEQA		Planning	
Facility, dam, road siting		Psychology, mental health	
Mining and minerals		Public interest work	
Transportation		Public policy, government, elected official	
Public health		Science: environmental	
Oceans		Science: biology, ecology	
Pollution Prevention		Science: chemistry, biochemistry	
Archeological, historic preservation		Science: earth, geology, atmospheric	
Native American sovereignty		Social work, social services	
Treaties - international		Other Engineering	
Permits		Other Professional	
Pesticides, toxic substances		Other Science	
Right to Know		Other	
Environmental technology or futures			
Recycling, conservation			
Public health			
Other health or medical issues			
Other Environmental			
Other Public Policy			
Other Neighborhood or Community			

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H. Will This Roster Be the Only Source of Conflict Resolution and Consensus Building Professionals for Environmental Disputes?

No. This Roster will be one of several sources of information with federal environmental and natural resource agencies will use to identify appropriately experienced dispute resolution and consensus building professionals for use in resolving environmental and natural resource disputes or issues in controversy under the Administrative Dispute Resolution Act of 1996 and the Negotiated Rulemaking Act of 1996. However, an individual who wishes to be considered as a neutral in environmental or natural resources public policy matters is not required to be listed on this roster. Federal government personnel and parties to environmental or natural resources issues will not be limited to this Roster in identifying and contracting for the services of neutrals. We hope that this Roster will expedite the identification of individuals who are appropriate to act as neutrals in a dispute and that the information in the Roster will shorten the time needed to complete contract documents.

The U.S. Institute will review all applications submitted against the entry criteria. Those who are qualified will be listed on the database; those who do not qualify may reapply as their professional experience develops. Professionals who are not included in this database are in no way barred from work on disputes involving federal agencies and the U.S. Institute will explicitly inform parties of other known rosters they may wish to consult when selecting a neutral.

I. Does Being on This Roster Guarantee Conflict Resolution Work for the Government?

No. Being listed on the database does not guarantee that you will be offered work as a neutral in U.S. government cases. The decision as to whom to retain as a neutral lies with the parties to an issue or dispute. Being listed on this database may increase the chances of parties finding out that you offer conflict resolution or consensus building services.

J. Burden Statement and Estimate

Burden Statement: This ICR compiles data available from the resumes of most conflict resolution and consensus building professionals into a format that is standardized for database searches and retrievals. A professional will need to complete the entire form only once. Professionals will be allowed to update their information on a voluntary basis periodically so that the database reflects their most current experience, and may be required to update their experience every five years. The database system is being designed to allow for some electronic information submittal. The burden includes time spent to access the professional's most recent detailed resume and to insert that information into the ICR form.

Estimated Number of Respondents (first year): 400.

Estimated Time per Response: 90 minutes.

Estimated Total First Year Burden: 600 hours.

Estimated Number of New Respondents (per year for succeeding years): 20.

Estimate Time per Response: 90 minutes.

Estimated Number of Updates (per year for succeeding years): 50.

Estimated Time per Update: 15 minutes.

Estimated Subsequent Year Annual Burden: 42.5 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmit information.

Dated: October 28, 1998.

Paul Lapsley,

Director, Regulation Management Division, Office of Regulation Management and Information, Office of Policy, U.S. Environmental Protection Agency.

Kirk Emerson,

Director, U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

[FR Doc. 98–31243 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–2]

Technical Workshop on Issues Associated With Dermal Exposure and Uptake

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a meeting, organized and convened by Eastern Research Group, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer consultation on issues related to the assessment of dermal exposure and uptake. The meeting is being held to discuss methods under development or currently in use by EPA to assess dermal exposure to environmental contaminants with subsequent absorption across the skin.

DATES: The meeting will begin on Thursday, December 10, 1998, at 8:30 a.m. and end on Friday, December 11, 1998, at 5:00 p.m.

ADDRESSES: The meeting will be held at the Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, Maryland 20814. Eastern Research Group, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, contact Eastern Research Group, Inc., Tel: (781) 674–7374, or visit their HomePage at *http://www.erg.com/erg/confer.htm* by December 1, 1998. You may also obtain additional information and register by visiting the National Center for Environmental Assessment HomePage at *http://www.epa.gov/ncea/new.htm*. Space is limited so please register early.

FOR FURTHER INFORMATION CONTACT: For further information concerning the workshop on dermal exposure and uptake issues please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 401 M St., SW., Washington, D.C. 20460, Telephone (202) 564–3359.

SUPPLEMENTARY INFORMATION: During the development of EPA guidance on assessing dermal exposure to and uptake of environmental contaminants, several generic, cross-cutting issues have been identified. These issues were referred to the EPA Risk Assessment Forum (RAF) for discussions within the broader scientific community. The present Workshop is being held to provide a peer consultation for invited participants to discuss these issues. The information obtained through these discussions will be considered by EPA as work continues on dermal exposure and risk initiatives.

In January 1992, the EPA Office of Health and Environmental Assessment (now the National Center for Environmental Assessment, NCEA) completed an interim report entitled Dermal Exposure Assessment: Principles and Applications. This report provides guidance for conducting dermal exposure and risk assessments. Using this as a foundation, a workgroup convened under the Superfund program has been developing an expanded and updated guidance on dermal exposure

and uptake. A draft of this guidance was peer reviewed in February 1998. During this review, several broad issues related to dermal exposure and risk assessment were identified. These issues transcend the program specific approaches of Superfund and are important to dermal exposure and risk assessment practices Agency-wide. The generic issues, that will be the focal point for discussions during the present workshop, can be organized into four categories: issues associated with dermal exposure to contaminants in water, issues associated with dermal exposure to contaminants in soil, issues associated with the adjustment of toxicity factors to reflect absorbed dose, and issues related to risk characterization and uncertainty analysis for dermal assessments.

Dated: November 13, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–31246 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–3]

Science Advisory Board/Scientific Advisory Panel; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Joint Subcommittee of the Science Advisory Board (SAB) and the Scientific Advisory Panel (SAP) will meet on the dates and times described below. All times noted are Eastern Standard Time. The meeting is open to the public; however, due to limited space, seating will be on a first-come basis.

The Joint SAB/SAP Data from Testing on Human Subjects (DTHS) Subcommittee will meet on Thursday and Friday, December 10/11, 1998 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. The meeting will begin at 8:30 am and end no later than 5:00 pm. This is the first meeting of this Subcommittee.

Purpose of the Meeting: This Joint Subcommittee was established to provide advice and comment to EPA on issues related to data derived from testing on human subjects and its use in pesticides decision making. In the midst of this effort, some specific issues have arisen regarding the testing of human subjects in support of pesticide registrations. Both scientific and (primarily) ethical questions have been raised about the data, the manner in which they were developed, and the purpose to which they can or should be put. The Agency thus seeks advice from the SAB/SAP Joint Committee on a range of issues, especially focusing on the practical questions confronting the Pesticide Program as it seeks to implement the Food Quality Protection Act. During this public meeting, the Subcommittee will address these scientific and ethical issues, including: (a) the value of human studies; (b) how to determine what constitutes an appropriate (scientifically and ethically) human study; (c) the risks and benefits to subjects and society; (d) applying principles to specific situations; (e) identifying clearly out-of-bounds studies; and (f) assessing and assuring compliance with appropriate standards. A copy of the formal Charge to the Subcommittee will be posted on the SAB Website (http://www.epa.gov/sab) on or about November 16.

At the public meeting, Agency staff will brief the Subcommittee on current activities involving human studies, as well as on issues/problems raised by these activities. In concert with these presentations, EPA will present background materials for the Subcommittee's information and consideration.

Availability of Review Materials: Hard copies of EPA primary background documents for the meeting may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

FOR FURTHER INFORMATION: Members of the public desiring additional information about the conduct of the public meeting itself should contact Mr. Samuel Rondberg, Co-Designated Federal Officer, DTHS Subcommittee, Science Advisory Board (1400), Room M3706, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (202) 260–7118; or via E-mail at: samuelr717@aol.com. A copy of the draft agenda will be available on the SAB Website (http://www.epa.gov/sab) or the SAP Website (http://www.epa.gov/pesticides/SAP/), or upon request from Ms. Wanda Fields, Management Assistant, Science Advisory Board at (202) 260–5510 or by FAX at (202) 260–7118 or via E-Mail at: fields.wanda@epa.gov. Anyone desiring additional information on the substantive issues to be addressed at this meeting should contact Mr. Larry C. Dorsey, Co-Designated Federal Officer for the Subcommittee, Environmental Protection Agency (7509C), 401 M St., SW, Washington, DC 20460. Mr. Dorsey may be contacted via telephone/voice mail at (703) 305–5369, or by E-Mail at: dorsey.larry@epa.gov.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Rondberg in writing (by letter, fax, or by E-Mail—see previously stated information) no later than 12 noon Eastern Time, Friday, November 27, 1998 in order to be included on the Agenda. These oral comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and include at least 35 copies of an outline of the issues to be addressed or of the presentation itself. By mail, submit written comments to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Comments and data also may be submitted electronically by sending electronic mail (E-Mail) to: opt-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 also will be accepted on disks in WordPerfect 8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP- ''. No Confidential Business Information (CBI) should be submitted through E-Mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: The Agency encourages that written statements be submitted before the meeting to provide Panel Members time to consider and review the comments.

Information submitted as a comment in response to this notice may be

claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice (including comments and data submitted electronically) under docket number ''OPP- ''. A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, will be available for inspection from 8:30 am to 4:00 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in *Availability of Review Materials* earlier in this Notice.

Dated: November 13, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–31247 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 12, 1998.

SUMMARY: The Federal Communications Commission, 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, Public Law 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: Written comments should be submitted on or before December 23, 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: 3060–0623.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form Number: FCC 600.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 54,143.

Estimated Time Per Response: 0.5 to 7.0 hours.

Total Annual Burden: 121,846 hours.

Total Annual Cost: $25,769,685 (Legal/engineering consultants, filing fees, and postage).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Needs and Uses: This form is used by various applicants in accordance with 47 CFR Part 22 (Public Mobile Services), Part 24 (Personal Communications Services), Part 74 (Remote Pickup and Low Power Broadcast Auxiliary), Part 90 (Land Mobile) and Part 95 (IVDS). Statutory authority for this collection of information is contained in 47 U.S.C. 154(i) and 309(j), as amended.

FCC Form 600 was previously filed by winners of FCC auctions (long form application filed by Broadband and Narrowband PCS, IVDS, Cellular Unserved, 900 MHz SMR), and it is anticipated that it would be used for several upcoming auctions. However, with the development of the Universal Licensing System (ULS), auction winners are now filing FCC Form 601 in lieu of FCC Form 600. Therefore, the number of respondents and burden hours have been adjusted for several of the auctions where estimates were previously provided for using the Form 600, as well as an adjustment in receipts for other services.

We estimate a decrease in the number of annual respondents from 194,769 to 54,153 and a total annual burden decrease from 779,076 hours to 216,612 hours as the result of a program change. We have re-evaluated the respondent costs and adjusted the total to reflect correctly the contracting expenses. This form will eventually be replaced by FCC Form 601 upon conversion of all radio services to ULS which currently use FCC Form 600.

The information will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed. It will also be used to update the database and to provide for proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31207 Filed 11–20–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–009648A–101.

Title: Inter-American Freight Conference.

Parties:

A.P. Moller-Maersk Line
CSAV/Braztrans Joint Service
Crowley American Transport, Inc.
Ivaran Lines Limited d/b/a/ Ivaran Lines
Libra Navegacao SA
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas
Empresa de Navegacao Alianca S.A.
Columbus Line
Mexican Line Limited
Sea-Land Service, Inc.
APL Co. Pte. Ltd.
Transroll Navieras Express
Comagnie Generale Maritime S.A.
TNX Transportes Ltda.
Euroatlantic Container Line S.A.
P&O Nedlloyd B.V.

Synopsis: The proposed modification removes the port of Manos, Brazil from the geographic scope of the agreement.

Agreement No.: 218–011530–002.

Title: Samson/Sea-Land Cooperative Working Agreement.

Parities:

Samson Tug and Barge
Sea-Land Service, Inc.

Synopsis: The proposed amendment extends the term of the parties' transshipment agreement to January 1, 2001.

Dated: November 17, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31205 Filed 11–20–98; 8:45 am]

BILLING CODE 6730–01–M

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 December 17, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas; New Galveston Company, Wilmington, Delaware; and Frost National Bank, San Antonio, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Keller State Bank, Keller, Texas.

Board of Governors of the Federal Reserve System, November 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31180 Filed 11–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-29895) published on page 60346 of the issue for Monday, November 9, 1998.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Sun Bancorp, Vineland, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Sun Bancorp, Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun National Bank, Delaware, Wilmington, Delaware.

Comments on this application must be received by November 25, 1998.

Board of Governors of the Federal Reserve System, November 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31182 Filed 11–20–98; 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 December 7, 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. Marquette Bancshares, Inc., Minneapolis, Minnesota; to acquire Northland Financial Company, Minneapolis, Minnesota, and thereby engage in commercial real estate mortgage brokerage and servicing, arranging commercial real estate equity financing, and performing real estate appraisals, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31181 Filed 11–20–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Request for Comment on Exposure Draft.

SUMMARY: The Federal Accounting Standards Advisory Board (FASAB) has published for comment an exposure draft of a proposed statement of recommended federal accounting standards that would amend Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources. The exposure draft is titled Deletion of Paragraph 65.2—Material Revenue-Related Transactions Disclosures. The exposure draft explains why the Board believes that this subparagraph should be deleted and presents the alternative view of one Board member. Comments are requested by December 12, 1998. Comments should be directed to Wendy Comes, Executive Director, at the address shown in the exposure draft. Copies of the exposure draft may be obtained by calling FASAB at (202) 512–7350, by faxing a request to (202) 512–7366, or at http://www.financenet.gov/financenet/fed/fasab/deletion.pdf.

FOR FURTHER INFORMATION CONTACT: Robert Bramlett, Assistant Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7355.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 18, 1998.

Robert W. Bramlett,

Assistant Director.

[FR Doc. 98–31262 Filed 11–20–98; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0235).

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 concerning Price Reductions clause. The information collection was previously published in the **Federal Register** on June 19, 1998 at 63 FR 33667, allowing for a 60-day public comment period. Public comments were received from the Coalition for Government Procurement and the Information Technology Services Council.

Following is a summary of the comments GSA received and GSA's response.

1. The Price Reduction clause is an administrative and financial burden.

The clause was significantly streamlined when modified in 1994. Other administrative requirements were also relaxed or deleted. The clause requires submission of information in only very limited circumstances. The only monitoring required by the clause is for sales to the designated customer or class of customer. No special format or periodic reporting is required. GSA contacted a sampling of potential respondents (small and large business MAS contractors), from various schedules to determine the estimated annual burden. It found the average number of times the information is reported each year is 2 times with an estimated time of 15 hours. Several of the small businesses consulted said the clause was not a burden. The Price Reduction clause is a key safeguard that has been built into the MAS procurement process to protect against loss of taxpayer dollars.

2. The Price Reduction clause is not necessary to ensure price reasonableness on MAS contracts.

The clause simply assures that the government maintains throughout the life of the contract the relative price/discount advantage negotiated in relation to the contractor's commercial customer upon which the contract award is predicated.

The clause provides that if a contractor sells any item covered by a comparable type contract at a price below the negotiated MAS contract price to the identified comparable customer, then the contractor must give the government an equivalent price reduction on all subsequent government orders for the balance of the contract period or until the price is furthered reduced.

Without a mechanism such as the Price Reduction clause to ensure that a balance between government prices and commercial prices is maintained there are no assurances of continued price reasonableness under the contract. The only reasonable alternative would be to have shorter contracts and negotiate more frequently, imposing a greater burden on the contractor. To eliminate such a clause would be to eliminate an important means by which the government insures that it receives the best pricing. Most MAS contracts are often three to five years in length; price reductions insure that the government is receiving current market prices in response to changes in market demand and technology. The existence of the price reduction clause helps allow MAS contracts to be of longer duration than the more typical one-year supply contract. Absent such a clause, the government would be forced to enter into contracts of shorter duration in order to maintain current pricing. The administrative costs and other burdens associated with more frequent negotiations would be increased for contractors and government alike.

3. The Price Reduction clause is not consistent with commercial practice.

GSA acknowledges that there are differences of opinion with industry with regard to the Price Reductions clause being consistent with commercial practice, however, there are similar type arrangements in private industry. GSA's Office of Inspector General (OIG) has found that price reduction requirements, in fact, are standard commercial practice for many large volume purchasers. The OIG has found commercial agreements that contained provisions by which a seller would commit to giving the buyer the benefit of any decreases in prices for the subject products during the term of the agreement.

DATES: Comment Due Date: December 23, 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 also may be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, concerning the Price Reductions clause. The Price

Reductions clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Respondents: 6,862; annual responses: 13,724; average hours per response: 7.5; burden hours: 102,930.

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: November 17, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–31264 Filed 11–20–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service, Region 10; Notice of Intent To Prepare an Environmental Assessment/ Environmental Impact Statement

ACTION: The US General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), for the construction of a new Federal Courthouse in Eugene, Lane County, Oregon.

Procedures: The EA will be prepared at the completion of, and based upon, a scoping report. The EA will evaluate the proposed project, including all reasonable alternatives identified through the scoping process and a no-action alternative. Scoping will be accomplished through direct mailing correspondence to interested persons, agencies, and organizations and through two Public Scoping Meetings. The public scoping meetings will be held on December 14th and 15th, 1998 at the Hilton Hotel, 66 East 6th Ave., Eugene, OR, in the Joplin/Seeger Conference Room at 6:00 pm following an open house beginning at 5:30 pm. GSA will publish a public notice of these meetings in Eugene newspapers approximately two weeks prior to the events.

After the EA is prepared, it will be made available for public review. If significant impacts are not identified in the EA, GSA will issue a Finding of No Significant Impact (FONSI).

If, upon completion of the EA, significant impacts to the environment are identified, GSA will prepare an Environmental Impact Statement. Public meetings will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45-day public comment period in the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement GSA will issue a Record of Decision that will identify the site selected.

SUPPLEMENTARY INFORMATION: GSA, assisted by Herrera Environmental Consultants, is anticipating the preparation of an Environmental Assessment or Environmental Impact Statement to acquire a site, design, and construct a new US Courthouse in Eugene, Oregon. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EA, including social, economic, or environmental concerns. Scoping should be limited to identifying significant issues to be analyzed in the environmental document and commenting on alternatives and the merit of the proposal.

Project Purpose, Historical Background, and Description

The District Judges, Magistrates, and US Marshals are currently located in the existing US Courthouse. Bankruptcy and other Court related Agencies are located in leased space in downtown Eugene. The existing Courthouse does not currently meet the requirements of the US Court's Design guide. The existing Courthouse/Federal Building complex cannot be adapted to accommodate the required space needs of both the Court and Agency tenants.

Congress has authorized GSA to acquire a site for construction of a new US Courthouse in Eugene. The approximate gross overall square feet planned for the project is 265-290 for all US District Court and Bankruptcy Court activities in Eugene, Oregon.

Alternatives: The EA/EIS will examine the short- and long-term impacts on the natural and physical environment. The impact assessment will include but not be limited to impacts such as social environment, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and consideration of City planning and zoning requirements.

The EA/EIS will examine measures to mitigate significant adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historical Preservation Act to identify potential impacts to existing historic or cultural resources.

The EA/EIS will consider a no-action alternative and action alternatives. The no-action alternative would continue the occupancy in the existing Courthouse and continue to lease Court space in Eugene. The action alternatives will consist of different sites and configurations for construction of a new building in the delineated area in downtown Eugene. The delineated area includes a portion of the centralized business area. The delineated area includes property that is adjacent to the boundaries of the delineated area. The delineated area is as follows:

Bounded on the north by 5th Avenue, on the east by High Street, on the south by Broadway, and by Olive Street on the west.

ADDRESSES: In addition to the public scoping process, please send your written comments on the scope of alternatives and potential impacts to the following address: Michael D. Levine, Regional Environmental Program Manager, 10PCB, General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: Michael D. Levine at 253–931–7308, or e-mail at *Michael.Levine@GSA.GOV*. Written comments should be received no later than January 7, 1999.

FOR FURTHER INFORMATION CONTACT:

Nona Diediker at Herrera Environmental Consultants, 2200 Sixth Ave, Suite 601, Seattle, Washington, 98121 or call 206–441–9080; or Michael D. Levine, GSA (253) 931–7263.

Mailing List: If you wished to be placed on the project mailing list to receive further information as the EA process develops, contact Nona Diediker at the address noted above.

Dated: November 13, 1998.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 98–31265 Filed 11–20–98; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Times and Dates: 9 a.m.–5 p.m., December 8, 1998. 9 a.m.–5 p.m., December 9, 1998.

Place: Conference Room 800, Hubert H. Humphrey Building, 200 Independence Ave. SW, Washington, DC 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of Pub.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the National Committee on Vital and Health Statistics (NCVHS) is required to study the issues related to the adoption of uniform data standards for patient medical record information and the electronic interchange of such information, and report to the Secretary of Health and Human Services not later than August 2000 on recommendations and legislative proposals for such standards and electronic interchange. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

To assist in developing the NCVHS recommendations to HHS relating to clinical data standards, the NCVHS Subcommittee on Standards and Security, Working Group on Computer-based Patient Records, has scheduled a public meeting on December 8–9, 1998 in Washington, DC. At the meeting, the Subcommittee will seek advice on how best to address the report and recommendations to HHS relating to clinical data standards. For the meeting, the Subcommittee is inviting specific individuals with knowledge and experience in these areas to (1) provide their perspectives and advice, (2) address specific questions relating to clinical data standards, and (3) answer further questions from the Subcommittee. Other individuals and organizations that would also like to submit written statements to the Subcommittee on these issues are invited to do so at the meeting. The tentative agenda for the meeting, as well as a description of the panels of speakers, will be posted on the NCVHS website: http://aspe.os.dhhs.gov/ncvhs, when available.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information about the meeting may be obtained from Michael Fitzmaurice (AHCPR, 301–594–3938) or Bob Mayes (HCFA, 410 786–6872), lead staff for the Computer-based Patient Record Working Group. Information about the NCVHS is available on the NCVHS home page of the HHS website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: November 16, 1998.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director, NCVHS.

[FR Doc. 98–31108 Filed 11–20–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection & Advocacy Program Statement of Objectives and Priorities.

OMB No.: 0980–0270.

Description: This information collection is a reporting by Protection & Advocacy (P&A) Systems in each State. Using this reporting format, the P&A systems describe their Statement of Objectives and Priorities for the coming fiscal year in the pursuit of their effort under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) to protect the civil and human rights of persons with developmental disabilities. This Statement of Objectives and Priorities (SOP) is required by Section 142(a)(2) (paragraphs C and D) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Each P&A System is required to develop an SOP and to submit it to public comment.

The final version of the SOP is submitted by each P&A System to the Department of Health and Human Services, which will use the data in the SOP to monitor compliance of P&As with the Developmental Disabilities Assistance and Bill of Rights Act, and will also provide a management tool for necessary program stewardship and grasp of prospective program direction.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Statement of Objectives and Priorities	56	1	44	2,464

Estimated Total Annual Burden Hours: 2.464.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31109 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection & Advocacy Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is a reporting by Protection & Advocacy (P&A) systems in each State. Using this reporting format, the P&A systems describe their program performance during the previous fiscal year in the pursuit of their effort under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to protect the civil and human rights of persons with developmental disabilities. This program performance report (PPR) is required by Section 107(b) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*).

The PPR is submitted by each P&A system to the Department of Health and Human Services, which will use the data in the PPR to develop an annual report to the President, the Congress, and the National Council on Disability, as required by Section 107(c) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Additionally, the data in the reports will provide the Department with an overview for good management of the program, and will enable the Department to respond to Congressional requests.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Program Performance Report	56	1	44	2,464

Estimated Total Annual Burden Hours: 2,464.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31233 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Council Program Performance Report.

OMB No.: 0980–0172.

Description: This information collection is a reporting by Developmental Disabilities Council (DD Council) programs in each State. Using this reporting format, the DD Councils describe their program performance against a backdrop of State trends during the previous fiscal year in the pursuit of their effort under Part B of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to promote systems change in service systems for persons with developmental disabilities. This program performance report (PPR) is required by Section 107(a) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*).

The PPR is submitted by each DD Council to the Department of Health and Human Services, which use the data in the PPR to develop an annual report to the President, the Congress, and the National Council on Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Additionally, the data in the reports will provide the Department with an overview for good management of the program, and will enable the Department to respond to Congressional requests.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD Council Program Performance Report	55	1	44	2,420

Estimated Total Annual Burden Hours: 2,420.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31234 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 2000

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of correction.

SUMMARY: This notice corrects the most recent population statistics and revises the allotment amounts contained in the notice published on Tuesday, November 10, 1998 (63 FR 63062). The allotments to the States published herein are based upon the authorization set forth in section 2003(c) of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: John K. Jolley, (202) 401–5284.

SUPPLEMENTARY INFORMATION: Section 2003(c) of the Act authorizes $2.380 billion for Fiscal Year 2000 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 2000, the allotments are based upon the Bureau of Census population statistics contained in its report ''Estimates of the Population of States: Annual Time Series, July 1, 1990 to July 1, 1997 (Press Release CB97–213 December 31, 1997), and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1999.

FISCAL YEAR 2000 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Total	$2,380,000,000
Alabama	38,192,807
Alaska	5,385,371
American Samoa	88,560
Arizona	40,279,749
Arkansas	22,310,825
California	285,345,103
Colorado	34,425,700
Connecticut	28,916,527
Delaware	6,473,057
Dist. of Col.	4,677,934
Florida	129,584,949
Georgia	66,198,507
Guam	410,345
Hawaii	10,496,611
Idaho	10,699,999
Illinois	105,196,025
Indiana	51,855,203
Iowa	25,220,163
Kansas	22,947,519
Kentucky	34,558,345
Louisiana	38,484,625
Maine	10,982,974
Maryland	45,046,112
Massachusetts	54,101,318
Michigan	86,431,233
Minnesota	41,438,179
Mississippi	24,141,321
Missouri	47,769,749
Montana	7,772,975
Nebraska	14,652,809
Nevada	14,829,668
New Hampshire	10,372,809
New Jersey	71,212,474
New Mexico	15,298,346
New York	160,385,029
North Carolina	65,659,086
North Dakota	5,668,347
No. Mariana Islands	82,069
Ohio	98,917,513
Oklahoma	29,332,147
Oregon	28,677,766
Pennsylvania	106,292,554
Puerto Rico	12,310,345
Rhode Island	8,728,016
South Carolina	33,249,584
South Dakota	6,526,115
Tennessee	47,469,087
Texas	171,898,582
Utah	18,207,685

FISCAL YEAR 2000 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

Vermont	5,208,512
Virgin Islands	410,345
Virginia	59,548,591
Washington	49,609,087
West Virginia	16,058,842
Wisconsin	45,718,178
Wyoming	4,244,629

Dated: November 17, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–31232 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0758]

Determination of Regulatory Review Period for Purposes of Patent Extension; Seroquel®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Seroquel® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's

regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Seroquel® (quetiapine fumarate). Seroquel® is indicated for the management of the manifestations of psychotic disorders. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Seroquel® (U.S. Patent No. 4,879,288) from Zeneca Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Seroquel® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Seroquel® is 3,264 days. Of this time, 2,839 days occurred during the testing phase of the regulatory review period, while 425 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 21, 1988. The applicant claims September 20, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 21, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 29, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Seroquel® (NDA 20–639) was initially submitted on July 29, 1996.

3. *The date the application was approved*: September 26, 1997. FDA has verified the applicant's claim that NDA 20–639 was approved on September 26, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,651 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 22, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 24, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–31101 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 1, 1998, 8 a.m. to 5 p.m., and December 2, 1998, 8 a.m. to 4 p.m.

Location: Town Center Hotel, The Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–998 Celebrex™ (celecoxib, Searle) for the treatment of acute or chronic signs and symptoms of osteoarthritis and rheumatoid arthritis and the management of pain.

Procedure: On December 1, 1998, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 25, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 25, 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.

Closed Committee Deliberations: On December 2, 1998, from 8 a.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will be briefed on issues that may come before the committee in the near future.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

FDA regrets that it was unable to publish this notice 15 days prior to the Arthritis Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Arthritis Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Dated: November 17, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–31270 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Plaque Subcommittee of the Nonprescription Drugs 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 is open to the public.

Name of Committee: Dental Plaque Subcommittee of the Nonprescription Drugs 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 December 2 and 3, 1998, 8:30 a.m. to 5 p.m.

Location: Advisory Committee Conference Room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Robert L. Sherman or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5191, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 2, 1998, the subcommittee will: (1) Review the ingredients triclosan and the combination of triclosan and zinc citrate; (2) review and vote on the combination of zinc chloride, sodium citrate, hydrogen peroxide, and sodium lauryl sulfate; and (3) discuss comments on the draft subcommittee report. On December 3, 1998, the subcommittee will discuss comments on the draft report and adopt the report.

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 November 25, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 25, 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.

FDA regrets that it was unable to publish this notice 15 days prior to the Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 16, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–31269 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1008]

Guidance for Industry on Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act.'' This guidance document provides an overview of FDA's policy on enforcement of the pharmacy compounding provisions of section 503A of the Federal Food, Drug, and Cosmetic Act (the act) during the transition to full implementation of that section, which was added by the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments on the guidance document may be submitted by February 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lee D. Korb, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Enforcement Policy During Implementation of Section 503A of the

Federal Food, Drug, and Cosmetic Act.'' On November 21, 1997, the President signed the Modernization Act (Pub. L. 105–115). Section 127 of the Modernization Act, which adds section 503A to the act (21 U.S.C. 353a), clarifies the status of pharmacy compounding under Federal law. Under section 503A of the act, drug products that are compounded by a pharmacist or physician on a customized basis for an individual patient may be entitled to exemptions from three key provisions of the act: (1) The adulteration provision of section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning the good manufacturing practice requirements), (2) the misbranding provision of section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use), and (3) the new drug provision of section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug or abbreviated new drug applications).

To qualify for these statutory exemptions, a compounded drug product must satisfy several requirements, some of which are to be the subject of FDA's rulemaking or other actions. FDA is currently working on several rules and other documents necessary to implement section 503A of the act. However, section 503A of the act takes effect on November 21, 1998, and FDA will not have completed its implementation efforts by this date. This guidance document describes FDA's policy on enforcement of section 503A of the act during the transition to full implementation of that provision.

This guidance document is being issued as a Level 1 guidance consistent with FDA's ''Good Guidance Practices'' (62 FR 8961, February 27, 1997). It is being implemented immediately without prior public comment because the guidance document is needed to explain to industry the agency's current policy on enforcement of section 503A of the act, which will take effect November 21, 1998. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance document represents the agency's current thinking on enforcement of section 503A of the act during the transition to full implementation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, on or before February 22, 1999, submit to the Dockets Management Branch (address above) written comments on the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CDER at ''http://www.fda.gov/cder/guidance.htm''.

Dated: November 17, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31221 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P–15A & HCFA–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection.

Title of Information Collection: Medicare Information Needs: Supplement to the Medicare Current Beneficiary Survey (MCBS).

Form No.: HCFA–P–15A (OMB# 0938–NEW).

Use: This supplement to the MCBS builds upon the previously fielded Round 18 Supplement, which provided useful information to HCFA's Center for Beneficiary Services on beneficiary information needs and preferences for how to receive information. Results from this data collection will be used by HCFA to guide continued development of communication and education programs for Medicare beneficiaries.

Affected Public: Individuals or Households.

Number of Respondents: 12,000.

Total Annual Responses: 12,000.

Total Annual Hours: 3,000.

(2) *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Medicaid Program Budget Reports and Supporting Regulations in 42 CFR Section 430.30.

Form No.: HCFA–37 (OMB# 0938–0101).

Use: The Medicaid Program Budget report is prepared by the State Medicaid Agencies and is used by HCFA for (1) developing National Medicaid Budget estimates, (2) quantifying Budget Assumptions, (3) issuing quarterly Medicaid Grant Awards, and (4) collecting projected State receipts of donations and taxes.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 57.

Total Annual Responses: 224.

Total Annual Hours: 7,840.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan, Room N2–14–26 7500 Security Boulevard Baltimore, Maryland 21244–1850

Dated: November 13, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–31236 Filed 11–20–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1998:

Name: Council on Graduate Medical Education.

Date and Time: December 16, 1998, 8:30 a.m.–5 p.m.; December 17, 1998, 8:30 a.m.–1 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC.

This meeting is open to the Public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions and the Acting Executive Secretary of COGME; a panel on GME Financing Issues; a panel on GME Program Issues; and a panel on Medical Education in Integrated Settings. The Council will hear an update on Progress in Minority Entry into Medicine. It will discuss the COGME 15th Report outline, and its future direction.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: November 17, 1998.

Jane M. Harrison,

Director, Division of Policy and Review Coordination.

[FR Doc. 98–31222 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Single Source Cooperative Agreement with the National Council of Urban Indian Health.

SUMMARY: The Indian Health Service (HHS) announces the award of a cooperative agreement to the National Council of Urban Indian Health (NCUIH) for a demonstration project for urban Indian health care advocacy, consultation, health data dissemination, training, and technical assistance. The project is for a three-year project period effective September 30, 1998, to August 31, 2001. Funding for the project is $412,170.

The award is issued under the authority of the Public Health Service Act, section 301, and is listed under Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. To provide various forms of technical assistance to member organizations, with subject matter varying according to member need and NUCIH initiatives.
2. To advocate on behalf of Title V programs and their consumers.
3. To disseminate information in a timely and accurate manner by means of a quarterly newsletter and establishment of a web page.
4. To coordinate two meetings for the general membership to conduct business and develop policy strategies.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. NCUIH is the only nationwide Indian organization that is specifically established to address the health needs of American Indians living in urban areas with membership consisting of Title V urban Indian organizations. Furthermore, it is the only nationwide organization of urban Indians supporting the growth of the urban Indian health care delivery system.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. Substantial programmatic involvement is as follows:

1. IHS staff will participate in at least one Board meeting annually. Purposes will be to present the IHS prospectus on current health care and legislative issues affecting the urban Indian people.
2. IHS staff will approve articles to be included in newsletters.
3. IHS staff may, at the request of NCUIH, participate on study groups and may recommend topics for consideration.
4. IHS will be involved in the selection and approval process for hiring key personnel. Key personnel include the Chief Executive Officer, Administrative Assistant, and consultants. NCUIH must submit the Chief Executive Officer selection criteria to IHS for approval.
5. IHS will be involved in the agenda for the Roundtable meeting in November 1998 and the annual Leadership meeting in March 1999.

CONTACTS: For program information, contact Mr. James F. Cussen, Director, Urban Programs, Office of the Director, Indian Health Service, Room 6–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852 (301) 443–4680. For grants management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Management, Suite 100, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204.

Dated: November 13, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 98–31223 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 3, 1998, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include (1) Review of the Human Genome Project; (2) Issues Regarding the Intramural Program; (3) Priority Setting; and (4) Issues Related to Clinical Trials and the Clinical Trials Database. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language

interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 27, 1998.

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31158 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 of Committee: National Cancer Institute Special Emphasis Panel, Novel Immunotherapeutic Strategies for the Prevention and Treatment of Cancer.

Date: December 9–11, 1998.

Time: 7:00 PM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hotel La Jolla, 7955 La Jolla Shores Drive, La Jolla, CA 92037.

Contact Person: Florence E. Farber, PhD., Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31160 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 of Committee: National Cancer Institute Special Emphasis Panel, Request for proposal—Development and Manufacture of Oral Dosage Forms.

Date: December 9, 1998.

Time: 8:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C.M. Kerwin, Ph.D., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31168 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group Research Centers In Minority Institutions Review Committee.

Date: February 8–9, 1999.

Open: February 8, 1999, 8:00 am to 10:00 am.

Agenda: To discuss program planning and program accomplishments.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: February 8, 1999, 10:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Grace S. Ault, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31159 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel Clinical Research.

Date: December 1, 1998.

Time: 11:00 AM to Ajournment.

Agenda: To review and evaluate grant applications.

Place: 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bela J. Gulyas, PhD., Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892, 301–435–0811.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93,333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31164 Filed 11–20–98; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Cardiovascular Complications from Cocaine Abuse in HIV Infection.

Date: December 2, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Crystal City, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: S. Charles Selden, PhD, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Gene Delivery and Vectors for Cardiovascular Diseases.

Date: December 2, 1998.

Time: 8:30 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Valerie L. Prenger, PhD, Scientific Review Administrator, Review Branch, DEA, NHLBI, NIH, Two Rockledge Centre, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Sarcoidosis Genetic Linkage Consortium.

Date: December 4, 1998.

Time: 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Diane M. Reid, MD, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Coronary Artery Disease Risk Development in Young Adults (CARDIA) Study.

Date: December 9, 1998.

Time: 9:00 am to 12:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: C. James Scheirer, PhD, Chief, Review Branch, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, 301/435–0266.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Minority Research Training Award.

Date: December 15, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: S. Charles Selden, PhD, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31157 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 18–20, 1998.

Time: 1:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Capitol, 550 C Street, SW, Washington, DC 20024.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 20, 1998.
Time: 12:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: Parklawn Building—Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).
Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 23, 1998.
Time: 4:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).
Contact Person: Mary Sue Krause, BA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: December 7, 1998.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: December 10, 1998.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31153 Filed 11–20–98; 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.
Date: November 19, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.
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.

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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31154 Filed 11–20–98; 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 Behavioral Strategies to Prevent Osteoporosis.
Date: December 13–14, 1998.
Time: 7:30 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Anne Krey, 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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31156 Filed 11–20–98; 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, Imaging in Medical Rehabilitation.

Date: December 7–8, 1998.

Time: 9:30 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne Krey, 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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31161 Filed 11–20–98; 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 First and Second Trimester Evaluation of Risks of Aneuploidy.

Date: December 4, 1998.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, 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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31162 Filed 11–20–98; 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 Molecular Basis of Male Infertility.

Date: November 30–December 1, 1998.

Time: 7:30 p.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD., Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31163 Filed 11–20–98; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel RFP–DMID–99–03 Non-Human Primate Animal Models for Experimental Research on Chronic Lyme Neuroborrelliosis.

Date: November 23, 1998.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6003 Executive Blvd., Solar Bldg.—Room 3B05, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Madelon C. Halula, Ph.D., Chief, Special Review Branch, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C16, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–2636.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31165 Filed 11–20–98; 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 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: December 2, 1998.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Sheehy, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS, Fed Bldg., RM. 9C10, 7550 Wisconsin Avenue, MSC 9175, National Institutes of Health, Rockville, MD 20892–9175, 301–496–9223, ps32h@nih.gov.

(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: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31166 Filed 11–20–98; 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 6 (J2).

Date: December 3, 1998.

Time: 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

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.

(Catalog 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: November 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31167 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 1998.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–2 4 M.

Date: November 23, 1998.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 23, 1998.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31155 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1998.

Time: 1:00 PM to 2:30 PM

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal C. Sharma, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BM–2 3 S.

Date: November 19, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 25, 1998.

Time: 11:15 AM to 1:15 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperaccelerated Award/Mechanisms in Immune Disease Trials.

Date: November 30, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Corman Weinblatt, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30–December 2, 1998.

Time: 6:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Penn Tower Hotel, on the University of Penn Campus, Philadelphia, PA 19104–4385.

Contact Person: Nancy Lamontagne, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 1998.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol A. Campbell, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7848, Bethesda, MD 20892, (301) 435–1257.

(Catalog of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, 93.306, Comparative Medicine, 93.306, National Institutes of Health, HHS)

Dated: November 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31169 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Delegations of Authority; Public Law 80–566, 62 Stat. 281; Correction

AGENCY: Department of Health and Human Services, National Institutes of Health.

ACTION: Notice; correction.

SUMMARY: On February 19, 1997 (62 FR 7459), the Department of Health and Human Services (HHS) published notice of a January 28, 1997 delegation of authority from the Secretary of HHS to the Director of the National Institutes of Health (NIH), which delegated the authorities in 40 U.S.C. 318, 318a and 318b to provide for the protection of the property and persons at the NIH's National Cancer Institute, Frederick Cancer Research and Development

Center. However, that notice omitted reference to the authority in 40 U.S.C. 318, also related to the protection of property and persons. The purpose of this correction is to correct the paragraph of that February 19, 1997, notice by adding to it the authority in 40 U.S.C. 318, which should have been included in the notice.

FOR FURTHER INFORMATION CONTACT: William G. Ketterer, Senior Attorney, NIH (301) 496–6043.

Correction: Accordingly, in the **Federal Register** of February 19, 1997, in FR Doc. 97–4037, on page 7459, in the first column, correct the paragraph entitled ''Authorities Delegated'' to read:

Authorities Delegated: Authorities relating to the protection of Federal property vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 486(d), 40 U.S.C. 318, 318a, and 318b, and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, are hereby delegated to the Director, National Institutes of Health (NIH), for the protection of the property and persons at NIH, National Cancer Institute's (NCI) facilities in the Frederick Cancer Research and Development Center (''NCI parcel'') located in Frederick, MD.

DATES: Upon date of signature this correction is retroactive to January 28, 1997.

Dated: November 12, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–31107 Filed 11–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: Validity of Self-Reported Drug Use in Population Surveys—New—During the period July 1999 through June 2000, SAMHSA and the National Institute on Drug Abuse (NIDA) will conduct a field Study to test the validity of obtaining drug use data through a combination of computer assisted personal interviewing and audio computer-assisted self interviewing. A random sample of approximately 22,000 households (from households listed, but not used, in the National Household Survey on Drug Abuse (NHSDA) sample segments) will be selected for screening.

Approximately 3,333 persons form the civilian, non-institutionalized population of the United States ages 12–25 will be selected to be interviewed. First, a questionnaire (using a subset of the 1999 NHSDA questions, with a special set of questions for the validity study) will be administered to determine: (1) The reported prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs, and (2) recent environmental exposures to tobacco and marijuana smoke. Then, permission will be sought to obtain hair and urine samples from respondents. Under a NIDA grant, these samples will be chemically analyzed to validate respondents' self-reports of drug use (about 2,000 respondents are expected to provide biological specimens). Respondents will be paid an incentive upon receipt of the hair/urine samples. The results will be used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to estimate the extent of under-reporting on drug use surveys such as the NHSDA conducted by SAMHSA.

The estimated annualized burden for a one-year data collection period is summarized below.

	Number of respondents	Number of responses/ respondent	Average burden/ response (hours)	Total burden hours
Household screener	22,000	1	0.05	1,100
Questionnaire:				
No specimen	1,333	1	1.00	1,333
With specimens	2,000	1	1.50	3,000
Total				5,433

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 16, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–31201 Filed 11–20–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–10]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of Policy Development and Research, 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: December 23, 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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph Riley, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8222, Washington, DC 20410, telephone 202–708–9426, extension 5861. This is not a toll-free number. Copies of the proposed forms and other available documents may be obtained from Joseph Riley.

SUPPLEMENTARY INFORMATION: The Department will submit 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 if 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 that will reduce respondent burden (e.g., permitting electronic submission of responses).

This Notice also provides the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.5 million households covered by Public Housing and Section 8 housing subsidies. The QC process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, and third-party income verifications are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program offices are then responsible for designing and implementing corrective actions. Error rates will be compared with error rates from the first QC study, which was completed in 1995, to measure whether corrective actions initiated after the first study have had impacts and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 form data collected by the Department, which is why HUD and other agencies with means-tested program have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. This study will provide information on the quality of tenant interviewing (e.g., whether they are being asked about all sources of income) and the reliability of eligibility determinations and income verification. It is anticipated successive studies will be done on a two year cycle to provide updates on the nature and extent of errors and the effectiveness of error reduction strategies.

Members of the Affected Public: Recipients of Public Housing and Section 8 housing assistance subsidies.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will survey approximately 388 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey, 2,800 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but it estimated to require less than 50 minutes per interview.

The time estimates provided are based on the first QC survey. This survey will make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they are known to reduce interview times. The above interview time estimates are therefore higher than likely actual interview times, but until questionnaire software development is completed we are unable to provide a good estimate of the extent to which interview times will be reduced.

Status of the Proposed Information Collection: To be submitted to OMB for approval subsequent to receiving comments from this notice.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 1998.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 98–31105 Filed 11–20–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–41]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 23, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of proposal: Assessment of resident satisfaction with their living conditions.

Office: Real Estate Assessment Center.

OMB approval number: 2535–xxxx.

Description of the need for the information and its proposed use: HUD is conducting this survey to assess the living conditions of residents. The survey will assess the overall satisfaction of residents with their housing conditions.

Form number: 2535–xxxx.

Respondents: Individuals or Households.

Frequency of submission: Annually.

Reporting Burden

Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
75,000		1		.25		18,750

Total estimated burden hours: 18,750.

Status: New Collection.

Contact: Christine Jenkins, HUD, (202) 755–2082 x134; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 16, 1998.

[FR Doc. 98–31104 Filed 11–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Extension of Comment Period for Final Programmatic Environmental Assessment and Draft Comprehensive Conservation Plan for Cabeza Prieta National Wildlife Refuge and Wilderness

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is extending the comment period through close of business Monday, November 30, 1998, for the Final Programmatic Environmental Assessment and associated Draft Comprehensive Conservation Plan (CCP) for the Cabeza Prieta National Wildlife Refuge and Wilderness, Ajo, Arizona. A Finding of No Significant Impact (FONSI) was issued consequent to the issuance of the Final Programmatic Environmental Assessment (EA). A notice was published in the **Federal Register** notifying release of the document on September 28, 1998. The Service is furnishing this notice to ensure that interested parties have every opportunity to offer input, comments, and suggestions with respect to the Service's proposed management objectives and strategies detailed in the draft CCP document attached to the Final Programmatic EA.

DATES: The Service will be open to written advice and comment on the draft CCP Objectives and Strategies through November 30, 1998.

ADDRESSES: Comments may be sent to: Mr. Tom Baca, Natural Resource Planner, U.S. Fish and Wildlife Service, Southwest Region, Division of Refuges and Wildlife, P. O. Box 1306, Albuquerque, NM 87103.

SUPPLEMENTARY INFORMATION: It is the U.S. Fish and Wildlife Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered and will continue to consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Continued public input into this planning process is essential. The CCP document when finalized will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

The Service anticipates that a Final CCP will be available by December 30, 1998.

Dated: November 17, 1998.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 98–31187 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; F–020174, F–35871, F–35872]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army has filed applications to extend the withdrawal of approximately 869,862 acres of public lands for the Fort Wainwright Yukon Training Area, the Fort Greely West Training Area, and the Fort Greely East Training Area. The lands were originally withdrawn by Public Law 99–606 of November 6, 1986. The withdrawal will expire on November 5, 2001, unless extended. This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158, commonly known as the Engle Act. The lands are currently withdrawn from all forms of appropriation under the public land laws, the mining laws, the mineral leasing laws, and the geothermal leasing laws pursuant to Public Law 99–606.

DATES: Comments should be received on or before February 22, 1999.

ADDRESSES: Comments should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 907–271–5049.

SUPPLEMENTARY INFORMATION: On November 5, 1998, the Department of the Army filed applications to extend the withdrawal for the Fort Wainwright Yukon Training Area (formerly known as the Fort Wainwright Maneuver Area), the Fort Greely West Training Area (formerly known as the Fort Greely Maneuver Area), and the Fort Greely East Training Area (formerly known as the Fort Greely Air Drop Zone). The Army has determined there is a continuing military need for the lands and filed the applications for extension in accordance with Section 8 (a)(1) and (2) of Public Law 99–606. The legal descriptions for the lands are as published in the 52 FR 5506–5507, February 23, 1987; 52 FR 8405, March 17, 1987; 52 FR 17485, May 8, 1987; and the 54 FR 48782, November 7, 1989. The areas described aggregate approximately 869,862 acres.

A copy of the legal descriptions are available by contacting Robbie J. Havens at the address or phone number listed above.

The Fort Wainwright Yukon Training Area, the Fort Greely West Training Area, and the Fort Greely East Training Area, are used by the Army for military maneuvering, training, artillery firing, aerial gunnery, infantry tactics, equipment development and testing, as well as other defense related purposes. The sites are used to train in an extremely cold environment and to test the effect of this environment on military equipment, and are used by the Army, the Air Force, and other military units.

This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Alaska State Director of the Bureau of Land Management.

There will be three public meetings. The purpose of these meetings is for interested persons to comment on the proposed extension of the withdrawal and the associated draft legislative environmental impact statement. Each meeting for the public hearings will be conducted as open houses that will begin at 2:00 p.m. and continue until 8:00 p.m. People interested in the proposed extension of the land withdrawal and the associated draft legislative environmental impact statement will have the opportunity to make formal remarks.

The three meetings will be conducted at the following locations on the dates indicated:

January 5, 1999, Diamond Willow Club, Delta Ave. & First Street, Building 701, Fort Greely, Alaska.

January 6, 1999, Carlson Center, Pioneer Room, 2010 Second Avenue, Fairbanks, Alaska.

January 7, 1999, William A. Egan Civic and Convention Center, Board Room, 555 West Fifth Avenue, Anchorage, Alaska.

Michael W. Haskins,

Acting Supervisor, Lands and Minerals Group, Division of Lands, Minerals, and Resources.

[FR Doc. 98–31259 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Oregon Caves National Monument Final General Management Plan/ Environmental Impact Statement, Oregon

AGENCY: National Park Service, DOI.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: This notice announces the availability of the final general management plan/environmental impact statement (FEIS) for Oregon Caves National Monument, Oregon. The FEIS presents the proposed action and alternatives for management of the Monument for the next 15 years. The proposed action best satisfies the Monument and NPS mission, as well as the Monument's long-term management objectives.

The draft environmental impact statement (DEIS) for this action was released for public review on January 16, 1998 (**Federal Register**, Vol. 63, No. 11) and the public comment period closed on March 13, 1998. The FEIS includes the four alternative strategies for the protection, public use and management of Monument resources that were in the DEIS, with modifications based on public comment received, additional issues raised, and further impact analysis.

The FEIS is contained in two volumes. The four alternatives and environmental consequences are in Volume I; letters and summaries of oral comments received from agencies, elected officials, and organizations are reprinted in Volume II. Letters from individuals and responses to substantive comments also are included in Volume II.

SUPPLEMENTARY INFORMATION: The no-action period on this FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**. All who submitted substantive comments on the DEIS will receive a copy of the FEIS. In addition, public reading copies of the FEIS will be available for review at the following locations: Office of Public Affairs, National Park Service, Department of the Interior, 1849 C St., NW., Washington, DC 20240, phone: 202–208–6843; Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523, phone (541) 592–2100; Josephine County Public Library, 200 NW ''C'' St., Grants Pass, OR 97526, phone (541) 474–5480; Illinois Valley Branch Library, P.O. Box 190, Cave Junction, OR 97523, phone (541) 592–3581; Multnomah County Central Library, 801 SW 10th Ave., Portland, OR 97205, phone (503) 248–5123; Columbia Cascades Support Office, National Park Service, 909 First Ave., Seattle, WA 98104–1060, phone: 206–220–4154. For further information contact Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523, phone (541) 592–2100.

Dated: November 10, 1998.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 98–31204 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–70–P

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 November 14, 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 December 8, 1998.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Benton County

Rogers Commercial Historic District (Boundary Increase), (Benton County MRA), 120 S. Second St., Rogers, 98001482

Florida

Palm Beach County
Guaranty Building, 120 S. Olive Ave., West Palm Beach, 98001483

Georgia

Turner County
Wesleyan Methodist Campground and Tabernacle, 321 Gordon St., Ashburn, 98001485
Wayne County
Ritch—Carter—Martin House, Jct. of US 341, GA 27, and Tillman St., Odum, 98001484

Kentucky

Bell County
P–38–F (Lockheed Lightning # 17630), Bell County Airport, Middlesboro, 98001494
Bourbon County
Cooper's Run Rural Historic District, Roughly along and included within Clay Kiser Rd., Paris-Cynthiana Rd., and US 460, Paris vicinity, 98001493
Hardin County
State Theatre, 205 W. Dixie Ave., Elizabethtown, 98001492
Henderson County
Audobon School, 1400 Clay St., Henderson, 98001497
Geibel House, 327 N. Main St., Henderson, 98001491
Henderson Cotton Mill Workers Housing District, Roughly bounded by Washington, Letcher, and Powell Sts., and Rankin Ave., Henderson, 98001495
Prichett House, 311 N. Main St., Henderson, 98001490
Stewart House, 827 S. Green St., Henderson, 98001496
Jefferson County
Brown, J.T.S., and Son's Complex, 105, 107–109 W. Main St., Louisville, 98001489
Eitel, Otto F., House (Jefferson County MRA) 12004 LaGrange Rd., Anchorage vicinity, 98001488
Kenton County
Northern Bank of Kentucky, 241–45 Scott Blvd., Covington, 98001487
Mason County
Peers, Henry Perviance, House, 325 W. Third St., Maysville, 98001486

Maryland

Queen Anne's County
Mattapax, 106 Shipping Creek Rd., Stevensville, 98001498

Missouri

Boone County
Hackman, Samuel E., Building, 30 S. Second St., Hartsburg, 98001501
Cedar County
Stockton Community Building, Jct. of Spring and North Sts., Stockton, 98001502
Dade County
Greenfield Opera House Building, Jct. of Water and Allison Sts., Greenfield, 98001504
Dunklin County
Little River Lake Discontiguous Archeological District, Address Restricted, Kennett vicinity, 98001499
Jackson County
President Gardens Apartments Historic District, Roughly along President Ave., 83rd St., and 82nd Terrace bet. Lydia and Troost Aves., Kansas City, 98001503
Ralls County
Saverton School, Jct. of Cty. Rtes. N and E, Saverton, 98001505
Texas County
Cole, Arthur W., and Chloe B., House, 5803 Rocky Branch Rd., Houston vicinity, 98001500

North Carolina

Franklin County
Andrews—Moore House, 95 Simon Collie Rd., Bunn vicinity, 98001506

Tennessee

Montgomery County
Johnson—Hach House (Clarksville, Tennessee MPS), 403 Greenwood Ave., Clarksville, 98001507

A Request for a Waiver of the Comment Period has been Received for the following resource:

Arkansas

Pulaski County
Trinity Hospital, Jct. of Main and 20th Sts., Little Rock, 98001481

[FR Doc. 98–31198 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 15, 1998 (8:45 a.m. to 5:00 p.m.).

Location: Pan American Health Organization (PAHO), Auditorium A, 525 23rd Street, N.W., Washington, D.C.

This meeting will feature an interactive discussion, in the format of a moderated dialogue between speakers and the audience, on the role of civil society organizations in sustainable development. The afternoon will consist of break-out groups engaging U.S. PVOs and NGOs in discussing USAID's policy toward civil society organizations and ways of working together to strengthen the civil society sector.

The meeting is free and open to the public. *However, Notification by December 11, 1998 Through the Advisory Committee Headquarters is Requested.* Persons wishing to attend the meeting should fax their name, organization and phone number to Lisa J. Harrison on (703) 741–0567.

Dated: November 10, 1998.

Noreen O'Meara,

Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 98–31170 Filed 11–20–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 18, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096, ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, ETA, ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection Systems.

OMB Number: 1218–0209 (extension).

Agency Number: OSHA Form 196A; OSHA Form 196B.

Frequency: Annually.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 82,250.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 36,425.

Total Annualized Capital/Startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: The 1999 OSHA Data Collection will request 1998 injury and illness data from 82,250 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR Part 1904.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska.

OMB Number: 1205–0352 (extension).

Agency Number: ETA 9033–A.

Frequency: Annually.

Affected Public: Business or other for-profit.

Estimated Time Per Respondent: 3 hours.

Number of Respondents: 350.

Total Burden Hours: 1,050 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore activities at locations in the State of Alaska will permit the Department to meet federal responsibilities for program administration, management and oversight.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefit for Student.

OMB Number: 1215–0073 (extension).

Frequency: On Occasion.

Agency Number: LS–266.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 43.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 22 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: The Form LS–266 is submitted by the parent or guardian of the dependent for whom the benefit is sought and is used by the Department of Labor to determine if the continuation of benefits is justified.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–31193 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of seven information collections. Four of the information collections are conducted by the Office of Workers' Compensation Programs, and three are conducted by the Wage and Hour Division. The collections are: (1) Claim for Continuance of Compensation, CA–12; (2) Pre-Hearing Statement, LS–18; (3) Miner's Claim for Benefits Under the Black Lung Benefits Act, CM–911, Employment History, CM–911A, Miner Reimbursement Form, CM–915; (4) Overpayment Recovery Questionnaire, OWCP–20; (5) Housing Occupancy Certificate Under the Migrant and Seasonal Worker Protection Act, WH–520; (6) Application for Special Industrial Homeworker's Certificate, WH–2, Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, WH–226–MIS, Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, WH–226A–MIS; and (7) Worker Information-Terms and Conditions of Employment, WH–516 English and Spanish Versions. A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 25, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Claim for Continuance of Compensation, CA–12

I. Background

Under the provisions of the Federal Employees' Compensation Act, eligible dependents of deceased Federal employees receive compensation on account of the employee's death. The Office of Worker's Compensation Programs monitors death benefits for criteria which qualify the beneficiary as the employee's dependent under the law. The CA–12 is designated for this purpose.

II. Current Actions

The Department of Labor (DOL) seeks approval of the extension of this information collection in order to carry out its responsibility to ensure that

death benefits are being paid correctly, and that no payments are being made to ineligible survivors.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Agency Number(s): CA–12.

Affected Public: Individuals or households.

Total Respondents: 6,054.

Frequency: Annually.

Average Time per Response: 5 minutes.

Total Burden Hours: 505.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $2,118.90.

Pre-Hearing Statement, LS–18

I. Background

The Longshore and Harbor Workers' Compensation Act provides benefits to certain workers injured in maritime employment. Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. Before a case is transferred to the Administrative Law Judge, each of the parties or their representatives must be provided with a copy of a pre-hearing statement form, which they must complete and return to Longshore. Longshore then transmits them to the Office of the Chief Administrative Law Judge with all available evidence which the parties intend to submit at the hearing. The LS–18 is the form used to refer cases for formal hearing.

II. Current Actions

The Department of Labor (DOL) seeks approval of the extension of this information collection in order to carry out its responsibility to prepare cases for hearing and to establish and clarify the issues involved.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number(s): LS–18.

Affected Public: Individuals or households, Business or other for-profit.

Total Respondents: 6,800.

Frequency: On occasion.

Average time per Response: 10 minutes.

Estimated Total Burden Hours: 1,088.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $2,456.50

Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History CM–911a), Miner Medical Reimbursement Form (CM–915)

I. Background

Title IV of the Federal Mine Safety and Health Act of 1977, and its subsequent amendments, provide for the payment of benefits to a coal miner who is totally disabled by black lung disease, and to certain eligible survivors of the miner. The CM–911 is the application form. The CM–911a, which is completed along with the CM–911, renders a complete history of employment and is used to establish employment criteria for benefit eligibility. Under the program, miner payees are eligible for reimbursement of out-of-pocket medical expenses for treatment and for medical expenses incurred in the development of a claim. The CM–915 is used to request such reimbursement.

II. Current Actions

The Office of Workers' Compensation Programs seeks the extension of this currently approved information collection in order to carry out its responsibility to pay benefits to eligible claimants.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History (CM–911a), Miner Medical Reimbursement Form (CM–915).

OMB Number: 1215–0052.

Agency Numbers: CM–911, CM–911a, CM–915.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On occasion.

Form	No. of respondents	Average Min. per response	Burden hours
CM–911	4,800	45	3,600
CM–911a	5,900	40	3,933
CM–915	9,500	10	1,583

Total Respondents: 20,200.

Estimated Total Burden Hours: 9,116.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $3.841.30

Overpayment Recovery Questionnaire, OWCP–20

I. Background

Both the Federal Coal Mine Health and Safety Act and the Federal Employees' Compensation Act provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the overpayment or any part can be recovered, to identify possible concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment.

II. Current Actions

The Department of Labor seeks the extension of this currently approved information collection in order to carry out its responsibility under law to resolve overpayments made under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number(s): OWCP–20.

Affected Public: Individuals or households.

Total Respondents: 4,500.

Frequency: On occasion.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $1,575.

Housing Occupancy Certificate Under the Migrant and Seasonal Agricultural Worker Protection Act, WH–520

I. Background

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that owner or controller of a facility used for housing migrant agricultural workers must obtain and post on site, a certificate of occupancy. The WH–520 is a form used to gather information to determine whether or not the facility meets the applicable safety and health standards, and also serves as the certificate of occupancy.

II. Current Actions

The Department of Labor seeks the extension of this information collection in order to inspect and certify a migrant housing facility as meeting applicable safety and health standards under the law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Housing Occupancy Certificate Under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1215–0158.

Agency Number(s): WH–520.

Affected Public: Farms; Individuals or households, Businesses or other for-profit.

Total Respondents: 60.

Frequency: On occasion.

Average Time per Response (Reporting): 3 minutes.

Average Time per Response (Recordkeeping): 1 minute.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $0.

Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226a–MIS)

I. Background

The Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum wage requirement of the Act. The FLSA also provides that the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall provide for the employment of learners at subminimum wage rates. The FLSA also provides for the employment of workers with disabilities at subminimum wages in order to prevent curtailment of employment opportunities for such individuals. The WH–2 is used by employers to obtain certificates to employ individual homeworkers in one of the restricted homework industries: knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries. The WH–226 and WH–226a–MIS are used by employers to obtain authorization to employ workers with disabilities in competitive employment, in sheltered workshops, and in hospitals and institutions, at subminimum wages.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to carry out its responsibility to make a determination whether to grant or to deny an employer's request for subminimum wage and/or homeworker employment authorization.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authority to Employ Workers with Disabilites at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226a–MIS).

OMB Number: 1215–0005.

Agency Numbers: WH–2, WH–226–MIS, WH–226a–MIS.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, local or Tribal government.

Frequency: On occasion.

Form	No. of respondents	Average min. per response	Burden hours
WH–2	100	30	50
WH–226–MIS	8,500	45	6,375
WH–226a–MIS	8,500	45	15,000

Total Respondents: 8,600.

Estimated Total Burden Hours: 21,425.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $3,010.

Worker Information-Terms and Conditions of Employment (WH–516, English and Spanish Versions)

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker ProtectionAct (MSPA), requires each farm labor contractor, agricultural employer, and agricultural association to disclose in writing the terms and conditions of employment, to migrant and seasonal agricultural workers. Public Law 104–49 provides for the disclosure of certain information regarding State workers' compensation insurance to the employee. The information must be disclosed to workers in writing, but there is no particular format required. The WH–516 is provided as an optional form which a farm labor contractor, agricultural employer, or agricultural association may use to disclose the required information.

II. Current Actions

The Department of Labor seeks the extension of this information collection to carry out its statutory responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Worker Information-Terms and Conditions of Employment.

OMB Number: 1215–0187.

Agency Number(s): WH–516.

Affected Public: Farms; Individuals or households, Businesses or other for-profit.

Total Respondents: 160,000.

Frequency: Third Party Disclosure.

Average Time per Response: 32 minutes.

Estimated Total Burden Hours: 85,333.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $23,625.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 1998.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98–31192 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN: 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of

Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Washington, D.C., on Monday through Wednesday, December 7 through December 9, 1998.

DATES: The meeting will be held December 7, from 10 a.m. to approximately 6 p.m; on December 8, from 8 a.m. to approximately 5 p.m; and on December 9, from 9 a.m. to approximately 4 p.m.

ADDRESSES: The Committee will meet at the Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036. Telephone: (202) 296–2100.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U. S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, at the times and location indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 693–1999 (Fax: 202–693–1634) no later than November 30, 1998, to obtain appropriate accommodations.

Meeting Agenda

The Committee will discuss the NIOSH small business exposure study, industry profile data, air sampling methods, and cancer studies related to metalworking fluids. In addition, work group reports will include medical surveillance issues.

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante at the address provided above. Submissions received by November 27, 1998, will be provided to the members of the Committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Dr. Peter Infante at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–31272 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–26–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Pathfinder Mines Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact Notice of Opportunity for Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–442 to authorize Pathfinder Mines Corporation (PMC) to reclaim the Shirley Basin uranium mill site located in Carbon County, Wyoming. This license currently authorizes PMC to possess byproduct material in the form of uranium waste tailings generated by the licensee's milling operations at the site. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of PMC's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action of approval of a reclamation plan.

SUPPLEMENTARY INFORMATION:

Background

The PMC's Shirley Basin facility is licensed by the NRC under Source Material License SUA–442 to possess byproduct material in the form of uranium waste tailings generated by the licensee's milling operations. Uranium milling started at the Shirley Basin site in 1971, and continued until 1992. A total of 8,564,130 tons of ore was milled using a conventional acid leaching process. The mill has been dismantled, windblown tailings have been retrieved and placed on the tailings pile, and placement of the interim cover to decrease the potential for tailings dispersal and erosion has been completed. Based on its review of PMC's mill decommissioning plan and its supplemental environmental report, the NRC staff had prepared a supplemental environmental assessment in accordance with the requirements of 10 CFR Part 51, and published in the **Federal Register** on April 3, 1996, the conclusion of the assessment. The conclusion was a FONSI. The current site activities include surface reclamation and continuation of the ground water corrective action program.

PMC submitted a reclamation plan by its letter dated May 22, 1996, and provided additional information by subsequent submittals. The reclamation of the site consists of stabilizing the tailings for at least 1,000 yrs and ensuring that the radon emanation from the tailings pile will not exceed 20 pCi/m^2/s. The tailings pile will incorporate excavated materials from other areas that are contaminated above the release limit. The reclamation plan requires consolidation and movement of all the contaminated materials from the processing area to the tailing piles.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the reclamation plan for the Shirley Basin site, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license amendment would authorize PMC to stabilize and cover the tailings as proposed. In conducting its appraisal, the NRC staff considered the following information: (1) PMC's 1996 license amendment request, and PMC's subsequent submittals providing additional information; (2) previous environmental evaluations of the facility; (3) data contained in the required environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the facility; and (6) consultations with the U.S. Fish and Wildlife Service, and the Wyoming State Historic Preservation Officer. The technical aspects of the reclamation plan will be discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with

the reclamation of the Shirley Basin site, and has determined that the requested amendment of Source Material License SUA–442, authorizing implementation of the reclamation plan, will not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

(1) An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits;

(2) Present and potential risks of environmental damage from the proposed reclamation were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–442, for reclamation of the Shirley Basin site, as requested by PMC. Therefore, the principal alternatives available to NRC are to:

(1) Approve the license amendment request as submitted; or

(2) Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(3) Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of PMC's future operations or the denial of the license amendment. Additionally, in the TER for this action, the staff will document its evaluation of the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of Source Material License SUA–442. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The NRC hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

FOR FURTHER INFORMATION CONTACT: Mohammad Haque, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, D.C. 20555. Telephone 301/415–6640.

Dated at Rockville, Maryland, this 16th day of November 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31217 Filed 11–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23538; File No. 812–11310]

DG Investor Series, et al.; Notice of Application

November 16, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under Section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from Section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, DG Investor Series (''DG Series'') and The Infinity Mutual Funds, Inc. (''Infinity Funds''), request an order to permit certain series of Infinity Funds to acquire all of the assets and liabilities of certain series of DG Series. Because of certain affiliations, applicants may not rely on Rule 17a–8 under the Act.

FILING DATES: The application was filed on September 18, 1998. Applicants have agreed to file an amendment during the

notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: DG Series, 5800 Corporate Drive, Pittsburgh, PA 15237–7071; Infinity Funds, 3435 Stelzer Road, Columbus, OH 43219–3035.

FOR FURTHER INFORMATION CONTACT: Deepak Pai, Senior Counsel, at (202) 942–0574, or Edward Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–9080).

Applicants' Representations

1. DG Series is a Massachusetts business trust registered under the Act as an open-end management investment company and composed of nine separate series, two of which are seeking the requested relief: the DG Limited Term Government Income Fund and the DG Treasury Money Market Fund (the ''Acquired Funds'').

2. Infinity Funds is a Maryland corporation registered under the Act as an open-end management investment company and composed of twenty separate series, two of which are seeking the requested relief: the ISG Limited Duration U.S. Government Portfolio and the ISG U.S. Treasury Money Market Portfolio (the ''Acquiring Funds''). The Acquired Funds and Acquiring Funds are collectively referred to as ''Funds''.

3. First American National Bank (''FANB''), a national banking association and a subsidiary of First American Corporation, serves as the investment adviser to the Acquiring Funds. FANB is not required to register under the Investment Advisers Act of 1940 (the ''Advisers Act''). ParkSouth Corporation (''ParkSouth''), an indirect subsidiary of First American Corporation, serves as the investment adviser to the Acquired Funds. ParkSouth is registered under the Advisers Act. FANB, as a fiduciary for its customers, owns of record more than 25% of the outstanding voting securities of each of the Funds.

4. On May 14, 1998, and September 18, 1998, the boards of directors or trustees of the Funds (the ''Boards''), including a majority of the directors or trustees who are not ''interested persons'' under section 2(a)(19) of the Act (''Independent Board Members''), approved for each Fund a plan of reorganization (the ''Plans''). Under the Plans, ISG Limited Duration U.S. Government Portfolio and ISG U.S. Treasury Money Market Portfolio will acquire the assets, and assume the liabilities, of DG Limited Term Government Income Fund and DG Treasury Money Market Fund, respectively, in exchange for shares of the Acquiring Funds (the ''Reorganization''). As a result of the Reorganization, each Acquired Fund will receive Acquiring Fund shares having an aggregate net asset value (''NAV'') equal to the aggregate NAV of the corresponding Acquired Fund's shares held by that shareholder calculated as of the close of business immediately prior to the date on which the Reorganization will occur. Applicants expect that the Reorganization will occur on or about December 11, 1998 (the ''Closing Date'').

5. Each Acquired Fund has one class of shares. ISG Limited Duration U.S. Government Portfolio has three classes of shares: Classes A, B, and Trust Shares. ISG U.S. Treasury Money Market Portfolio has two classes of shares: Classes A and Trust Shares. Acquired Funds' shareholders generally will receive Class A shares of the Acquiring Funds. Trust Shares will be issued to Acquired Funds' shareholders who are eligible to purchase Trust Shares. Class B shares will not be exchanged in the Reorganization.

6. Class A shares of ISG Limited Duration U.S. Government Portolio are subject to a front-end sales charge, a contingent deferred sales charge (''CDSC''), and an asset-based distribution fee. Shares of DG Limited Term Government Income Fund are subject to a front-end sales load. Trust Shares are not subject to any front-end sales charge or CDSC. Each Acquired Fund has adopted an asset-based distribution plan. Class A shares of the ISG U.S. Treasury Money Market Portfolio and Trust Shares of the Acquiring Funds are not subject to an asset-based distribution fee. Shares of the Acquired Funds and Class A shares and Trust Shares of the Acquiring Funds are subject to a service fee.

7. The Board of each Fund, including a majority of the Independent Board Members, approved the Reorganization as in the best interests of the shareholders and determined that the interests of existing shareholders will not be diluted as a result of the Reorganization. The Boards considered, among other things, (1) the compatibility of the Funds' investment objectives and policies; (2) the shareholder services offered by the Funds; (3) the terms and conditions of the Reorganization; (4) expense ratios, fees and expenses of the Funds; and (5) the tax-free nature of the Reorganization. No sales charge will be imposed in connection with the Reorganization. FANB will pay the expenses of the Reorganization.

8. The Plans may be terminated by the Board of DG Series or Infinity Funds if circumstances should develop that in the opinion of the Board makes proceeding with the Reorganization inadvisable or if any condition precedent to the terminating party's obligations has not been met and it appears that such condition precedent will not or cannot be met.

9. A registration statement on Form N–14 containing the preliminary combined prospectus/proxy statement for the Reorganization was filed with the SEC on September 18, 1998. A final prospectus/proxy was mailed to shareholders of the Acquired Funds on October 28, 1998. A special meeting of the Acquired Funds' shareholders will be held on or about December 11, 1998, to approve the Reorganization.

10. The consummation of the Reorganization under the Plans is subject to a number of conditions precedent, including: (1) The Plans have been approved by the Acquired Funds' shareholders in the manner required by applicable law; (2) on the Closing Date, no action, suit or other proceeding is pending before any court or governmental agency in connection with the Reorganization; (3) the Funds have received an opinion of counsel stating, among other thing, that the Reorganization will not result in federal income taxes for the Funds or their shareholders; (4) the Funds have received from the SEC an order exempting the Reorganization from the provisions of section 17(a) of the Act; and (5) the registration statement on Form N–14 has been declared effective.

Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell any security to, or purchase any security from the company. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (d) if the other person is an investment company, any investment adviser of the person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that they cannot rely on rule 17a–8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. The Funds may be affiliated persons of each other because FANB, as fiduciary for its customers, owns of record 25% or more of the outstanding securities of each Fund.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that (a) the terms of the proposed transaction including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions is consistent with the policy of each registered investment company concerned, and (c) the proposed transaction is consistent with the general purposes of Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the provisions in section 17(b) of the Act. Applicants state that the Boards have determined that the Reorganization is in the best interests of each Fund's shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the exchange of the Acquired Funds' shares for the Acquiring Funds' shares will be based on the relative NAVs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31229 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23537; 812–11320]

Kemper Global/International Series, Inc., et al.; Notice of Application

November 17, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Kemper Global/International Series, Inc. (the ''Company'') and Scudder Kemper Investments, Inc. (the ''Adviser'') seek an order to permit in-kind redemptions of shares of The Growth Fund of Spain (the ''Fund''), a portfolio of the Company, by certain affiliated shareholders of the Fund.

APPLICANTS: Company and Adviser.

FILING DATES: The application was filed on September 23, 1998 and amended on November 12, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 10, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o William J. Kotapish, Esq., Dechert Price & Rhoads, 1775 Eye Street, N.W., Washington, D.C. 20006–2401.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company and operates as a series company. The Fund will be established as a new series of the Company and will be a successor to The Growth Fund of Spain, Inc., a closed-end management investment company that will convert to an open-end management investment company and reorganize as the Fund. The reorganization is expected to occur on December 11, 1998. The Fund will invest primarily in equity securities of Spanish issuers. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund.

2. Applicants state that four shareholders are expected to own 5% or more of the outstanding shares of the Fund.[1] Applicants request relief to permit the Fund to satisfy redemption requests made by any shareholders of the Fund who, at the time of such redemption requests, are ''affiliated persons'' of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares (''Affiliated Shareholders'') by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are ''affiliated persons'' of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. The Fund's prospectus and statement of additional information provide that, in limited circumstances, the Fund may satisfy all or part of a redemption request by distribution in-

[1] These shareholders are: Bankgesellshaft Berlin AG (11.30%), Cargill Financial Markets PLC (9.34%), FMR Corporation (5.31%), and Stichting Azko Pensioenfonds (5.5%).

kind of portfolio securities. The board of directors of the Fund (''Board''), including all of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, has determined that it would be in the best interests of the Fund and its shareholders to pay to an Affiliated Shareholder the redemption price for its shares in-kind.[2]

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines an ''affiliated person'' to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolios securities (of which the Fund is not the issuer) by an Affiliated Shareholder, the proposed redemption in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purpose of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Affiliated Shareholders to redeem their shares in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Affiliated Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Affiliated Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed in the proposed in-kind redemptions will be valued according to an objective, verifiable standard and the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Affiliated Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed to Affiliated Shareholders on a *pro rata* basis after excluding: (a) Securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposits, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market, or, if there is no such reported price, the average of the most recent bid and asked price (or, if no such price is available, the last quoted bid price).

4. The Board, including a majority of the directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the Fund, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of the Fund as reflected in the prospectus. In addition, the Board shall make and approve such changes as the Board deems necessary in its procedures for monitoring applicants' compliance with the terms and conditions of this application.

5. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each redemption that includes the identity of the Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31228 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

[2] The Fund has elected to be governed by the provisions of rule 18f–1 under the Act.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23536; No. 812–10694]

Variable Insurance Funds, et al.; Notice of Application

November 16, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an amended order [1] to permit shares of each existing and future series of the Variable Insurance Funds Trust and any other investment company that is designed to fund variable insurance products and for which BISYS Fund Services, or any of its affiliates, may serve as principal underwriter or administrator to be sold to and held by: (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (c) the manager of a Fund or certain related corporations (''Adviser''); and (d) the general account of any life insurance company, or certain related corporations, whose separate account holds, or will hold, shares of the Funds (''General Accounts'').

Applicants: Variable Insurance Funds (''Trust''), BISYS Fund Services (''BISYS''), Branch Banking and Trust Company (''BB&T''), and AmSouth Bank (''AmSouth'').

FILING DATE: The application was filed on June 5, 1997, and amended on June 2, 1998. Applicants have agreed to file another agreement, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 9, 1998, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o BISYS, 3435 Stelzer Road, Columbus, Ohio 43219–3035.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The Trust is a business trust organized under the laws of Massachusetts on July 20, 1994. It is registered under the 1940 Act as an open-end management investment company and currently consists of four separate series, each with their own investment objectives and policies. The Trust may in the future establish additional series.

2. BISYS, a division of BISYS Group, Inc., is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. BISYS serves as the administrator and the principal underwriter for each series of the Trust. When the Commission granted the Original Order, BISYS operated under its former name, The Winsbury Company.

3. BB&T, a bank in North Carolina, is the principal bank affiliate of BB&T Corporation, a bank holding company whose headquarters are in North Carolina. BB&T serves as Adviser to two series of the Trust.

4. AmSouth is the principal bank affiliate of AmSouth Bancorporation, whose headquarters are in the mid-south region. AmSouth serves as Adviser to two series of the Trust.

5. The Funds currently are offered to one or more separate accounts of Hartford Life Insurance Company (''Hartford''), to serve as the investment medium for variable annuity contracts issued by Hartford. The Trust intends, however, to offer shares of its existing and future series to separate accounts of other insurance companies, including companies that are not affiliated with Hartford, to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, ''variable contracts''). Insurance companies whose separate account or accounts may in the future own shares of the Trust or any other Fund are referred to herein as ''participating insurance companies.''

6. Each participating insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract issued by such company.

7. Fund shares also may be offered directly to Qualified Plans described in Treasury Regulation § 1.817–(f)(3)(iii).

8. The Qualified Plans may choose any of the Funds as the sole investment under the Plan or as one of several investments. Qualified Plan participants may or may not be given the right to select among the Funds, depending on the Qualified Plan itself. Fund shares sold to Qualified Plans will be held by the trustees of such Qualified Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). No Adviser will act as investment adviser to any of the Qualified Plans that will purchase shares of a Fund advised by that Adviser.

9. Fund shares also may be offered to General Accounts whose separate account holds, or will hold shares of the Fund and to certain related corporations, pursuant to Treasury Regulation § 1.817–5(f)(3)(i).

10. Fund shares may also be offered to Advisers and to certain related corporations, pursuant to Treasury Regulation § 1.817–(f)(3)(ii).

11. Applicants anticipate that sales made pursuant to Treasury Regulation § 1.817(f)(3) (i) and (ii) generally will be made to Advisers, and generally for the purpose of providing the capital required under Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Funds to be sold to Qualified Plans, Advisers and General Accounts. Applicants state that the

[1] Applicants seek an amendment of a prior order issued by the Commission in connection with File No. 812–9236 (''Original Order''), which granted exemptive relief to certain of the Applicants from the same provisions of the 1940 Act and rules thereunder from which Applicants now seek exemptive relief.

Commission previously granted the first element of the requested relief in the Original Order.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the ''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company * * *'' (emphasis added).

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single life insurance company (or of two or more affiliated life insurance companies) is referred to as ''mixed funding.'' The use of a common management company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to as ''shared funding.'' The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, General Accounts or Advisers.

6. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where the underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *'' (emphasis added). Thus while Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, it does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans or Advisers or General Accounts.

7. Applicants state that the current tax law permits the Funds to increase their asset base through the sale of shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants also state that the current tax law permits the Funds to sell shares to Advisers and General Accounts. Treasury regulations permit such sales as long as the return on shares held by a General Account or Adviser is computed in the same manner as for shares held by a separate account, and the General Account or Adviser does not intend to sell Fund shares held by it to the public. As to Advisers, Treasury regulations also require that the Advisers may only hold the shares in connection with the creation or management of the Fund.

9. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a Fund to be held by the trustee of a Qualified Plan, an Adviser, or General Account without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of a Fund to separate accounts through which variable life insurance contracts are issued and Qualified Plans, its Adviser or General Accounts could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

10. Applicants assert that if the Funds were to sell shares only to Qualified Plans, Advisers and General Accounts, or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, Advisers or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is required in the application only because some of the separate accounts that will invest in the Funds may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place.

11. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii) provide partial

exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

12. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e-3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts.

13. Applicants further state that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding. Applicants maintain that the relief previously granted in the Original Order and requested herein will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans, Advisers or General Accounts. Applicants state that the insulation of the Funds from those individuals who are disqualified under the 1940 Act remains in place, and that since Qualified Plans, Advisers, and General Accounts are not investment companies and will not be deemed to be affiliates solely by virtue of their shareholdings, no additional relief is necessary.

14. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to management investment company shares held by a separate account to permit the insurance company to disregard the voting instructions of its contract holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

16. Applicants further represent that the sale of Fund shares to Qualified Plans, Advisers, or General Accounts does not affect the relief previously granted by the Commission in the Original Order and requested herein in this regard. Shares of the Funds sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Similarly, Advisers and General Accounts are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, Advisers or General Accounts.

17. Applicants note that Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' Applicants state that if a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Applicants state that Section 817(h) provides, in effect, that the diversification test will be applied at the underlying fund level rather than the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * * .'' Applicants state that Treasury Regulation 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general accounts, ''qualified pension or retirement plans'' and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations nor revenue rulings thereunder present any inherent conflicts of interest if Advisers, General

Accounts, Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants state that there are no conflicts of interest between the contract owners of the separate accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one Fund and invest in another. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should the interests of contract owners and the interests of Qualified Plans conflict, the conflicts can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

20. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in a Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

21. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that these differences may produce.

22. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when an insurance company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if a particular insurance company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the insurance company may be required, at a Fund's election, to withdraw its separate account's investment in that Fund. No charge or penalty will be imposed as a result of such a withdrawal.

23. Applicants submit that there is no reason why the investment policies of a Fund, or a series thereof, would or should be materially different from what they would or should be if such Fund or series funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants state that each type of insurance product is designed as a long-term investment program, and Applicants represent that each Fund, or series thereof, will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular participating insurer or type of insurance product.

24. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans, Advisers, and General Accounts does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan, an Adviser, or an insurer. Regardless of the rights and benefits of participants under the Qualified Plans or contract owners, the Qualified Plans, Advisers, General Accounts and the separate accounts have rights only with respect to their respective shares of the Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, Advisers, and General Accounts. The transfer agent will inform each participating insurance company of its share ownership in each separate account, as well as inform the trustees of Qualified Plans, Advisers and insurers of their holdings. The participating insurance company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

26. Applicants assert that permitting a Fund to sell its shares to its Adviser(s) or to the general account of a participating insurance company in compliance with Treasury Regulation § 1.817–5 will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Trust may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Applicants state that they anticipate that many other Funds may lack an insurance company promoter. Accordingly, Applicants state that such Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

27. Applicants assert that given the conditions of Treas. Reg. § 1.817–5(f)(3) and the ''harmony of interest'' between a Fund and its Adviser or a participating insurance company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by Advisers or General Accounts will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost

of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, a number of smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns for smaller life insurance companies because participating insurance companies and Qualified Plans will benefit not only from the investment and administrative expertise of BB&T, AmSouth, any other Adviser and BISYS, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and permitting the purchase of fund shares by Qualified Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that mixed and shared funding also should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Funds. Applicants assert that this also may benefit variable contract owners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible.

30. Applicants believe that mixed and shared funding and sales of Fund shares to Qualified Plans, Advisers, and General Accounts will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors (''Board'') of each Fund shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or director, then the operator of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund and of Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund or series are being managed; (e) a difference in voting instructions given by owners of variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. In the event that a Qualified Plan shareholder should become an owner of 10% or more of the assets of a Fund selling its shares in reliance on the requested exemptive relief, such Qualified Plan shareholder will execute a fund participation agreement providing for the conditions of this Application (to the extent applicable) with such Fund. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

4. Participating insurance companies (on their own behalf as well as by virtue of any investment of general account assets in a Fund), BISYS, the Adviser, and any Qualified Plan that executes a fund participation agreement (collectively ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in a Fund under their agreements governing participation in the Fund, as well as a contractual obligation of any Qualified Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, as appropriate, Qualified Plan participants.

5. If a majority of the Board, or a majority of its disinterested trustees or directors, determine that a material irreconcilable conflict exists, the relevant participating insurance companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of the Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a charge; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The reponsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies and Plans that have executed participation agreements under their agreements

governing participation in the Fund. These responsibilities shall be carried out with a view only to the interests of contract owners and Plan participants, as appropriate.

6. For purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of variable contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such participating insurance companies will vote shares of each Fund or series thereof held in its registered separate accounts in a manner consistent with voting instructions timely received from contract owners. In addition, each participating insurance company will vote shares of each Fund, or series thereof, held in its registered separate accounts for which it has not received timely voting instructions, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating insurance companies will be responsible for assuring that each of their registered separate accounts participating in a Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all participating insurance companies under the agreements governing their participation in the Fund. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. Each Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) its shares are offered to insurance company separate accounts that fund both annuity and life insurance contracts; (b) differences in tax treatment or other considerations may cause the interests of various contract owners participating in the Fund to conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then each Fund and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. Each Fund will comply with all the provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, each Fund either will provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, each Adviser and insurance company general account will vote its shares in the same proportion as all contract owners having voting rights with respect to that Fund, provided, however, that the Adviser or insurance company general account shall vote its shares in such other manner as many be required by the Commission or its staff.

14. No less than annually, the Participants shall submit to a Board such reports, materials or data as the Board may reasonably request so that such Board may carry out fully the obligations imposed upon it by the conditions contained in this application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all participating insurance companies and any Qualified Plan that has executed a participation agreement under the agreements governing their participation in each Fund.

15. A participating insurance company, or any affiliate, will maintain at its home office, available to the Commission, (a) a list of its officers, directors and employees who participate directly in the management or administration of the Funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40681; File No. SR–Phlx–98–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Exchange Rule 1080 To Permit Automatic Execution of U.S. Top 100 Index Options Orders for the Accounts of Broker Dealers

November 16, 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 October 20, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Phlx proposes to amend Exchange Rule 1080 to permit orders for U.S. Top 100 Index (''TPX'') options for the accounts of broker-dealers to be made eligible for execution on the Automatic Execution System (''AUTO–X''), a feature of the Phlx Automated Options Market (''AUTOM'').[3]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is an electronic order routing system for options orders. *See* Phlx Rule 1080.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The U.S. Top 100 Index is a capitalization-weighted, broad-based stock index composed of 100 of the most highly capitalized, widely held U.S. common stocks representing a variety of industries including, but not limited to, technology, manufacturing, and service industries, of which ninety-six are listed on the New York Stock Exchange and four are Nasdaq National Market securities.[4] Currently, with respect to TPX options, broker-dealer orders may be entered into AUTOM, but are not eligible for AUTO–X.[5] AUTO–X is a feature of AUTOM that automatically executes agency market and marketable limit orders up to the number of contracts permitted by the Exchange in equity and index options.[6] As stated above, only agency orders are eligible for AUTO–X.[7] Agency orders for up to 500 TPX option contracts are eligible for AUTOM.[8] For purposes of AUTOM and AUTO–X eligibility, an agency order is an order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.[9]

The Phlx is proposing to provide AUTO–X eligibility for broker-dealer orders for TPX options for up to 50 contracts. Presently, the maximum AUTO–X agency order size is currently 50 contracts.[10] Thus, the 50-contract aspect of the proposal is consistent with the current order size provisions of Rule 1080. The Phlx believes that providing AUTO–X eligibility for TPX option orders entered by broker-dealers should expand to liquidity of, and add depth to, the Phlx marketplace by attracting additional institutional investors to TPX.

The Phlx believes that the TPX, typically a high-priced options index, appeals to institutional investors more so than to individual investors. Therefore, automatic execution at higher contract levels is particularly important to institutional investors. The Phlx believes that permitting broker-dealer TPX options orders to be executed via AUTO–X will allow broker-dealers to benefit from prompt and efficient automatic execution and reporting.[11] This, in turn, should add depth and liquidity to the Phlx's marketplace for TPX options by attracting orders from broker-dealers who seek immediate, automatic executions through AUTO–X. The Exchange is only proposing to permit broker-dealer orders to be AUTO–X eligible in TPX options, recognizing that broker-dealer access to a small order execution system is new.[12] The Exchange believes that TPX is particularly well-suited for this endeavor because of the composition of the index and the investor participants and trading patterns it generates.

2. Statutory Basis

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to add depth and liquidity to the marketplace for TPX options, and to facilitate execution and reporting of broker-dealer orders for TPX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[4] *See* Securities Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (order approving File No. SR–Phlx–95–07). Telephone conversation between Richard Rudolph, Counsel, Phlx, and David Sieradzki, Attorney, Division of Market Regulation, Commission on November 3, 1998 (''Telephone Conversation'').

[5] *See* Securities Exchange Act Release No. 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (order approving File No. SR–Phlx–95–35). Other than broker-dealer orders in TPX options, only agency options orders are eligible for AUTOM. *Id.*

[6] *See* Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (order approving SR–Phlx–97–24).

[7] Telephone Conversation, *supra* note 4.

[8] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving SR–Phlx–95–30).

[9] *See supra* note 6.

[10] *See* Exchange Rule 1080(c).

[11] Telephone Conversation, *supra* note 4.

[12] *Id.*

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 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 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 Phlx. All submissions should refer to File No. SR–Phlx–98–44 and should be submitted by December 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 98–31226 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3147]

State of Florida

As a result of the President's major disaster declaration on November 6, 1998, I find that Monroe County in the State of Florida constitutes a disaster area due to damages caused by Tropical Storm Mitch beginning on November 4, 1998 and continuing through November 5, 1998. Applications for loans for physical damage may be filed until the close of business on January 5, 1999 and for economic injury until the close of business on August 6, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Florida may be filed until the specified date at the above location: Dade and Collier.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 314711 for physical damage and 9A5300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31230 Filed 11–20–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated November 10, 1998, the above-numbered Declaration is hereby amended to include Douglas County, Kansas as a disaster area due to damages caused by severe storms and flooding beginning October 30, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Jefferson, Leavenworth, and Shawnee in the State of Kansas may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 4, 1999 and for economic injury the termination date is August 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31231 Filed 11–20–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4770]

Implementation Focus and Coordination Team for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is holding a public meeting to hear information concerning implementation requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). The Coast Guard recently established an STCW Implementation Focus and Coordination Team to monitor and coordinate nationwide implementation of STCW. The Coast Guard encourages you to provide ideas, comments, and questions on implementing the provisions of the

[13] 17 CFR 200.30–3(a)(12).

STCW Convention. Your input will help the team develop an STCW implementation focus and coordination plan to ensure that affected parties meet the STCW implementation deadlines.

DATES: The meeting will be held on December 16, 1998, from 9 a.m. to 3 p.m. We will begin the meeting at the scheduled time; however, it may end early if all issues have been addressed. Comments must reach the Docket Management Facility on or before January 15, 1999.

ADDRESSES: The meeting will be held in room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20593–0001. You may mail comments to the Docket Management Facility, [USCG–1998–4770], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the address in this section between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice or to make an oral presentation at the meeting, please contact Lieutenant Commander George H. Burns III, Maritime Personnel Qualifications Division (G–MSO–1), telephone 202–267–0550, fax 202–267–4570, or e-mail *gburns@comdt.uscg.mil*. Questions concerning the STCW Implementation Focus and Coordination Team should be directed to the Team Leader, Captain Robert L. Skewes (G–MSO), telephone 202–267–0212, fax 202–267–4570, or e-mail *rskewes@comdt.uscg.mil*. Questions concerning STCW requirements and enforcement should continue to be directed to the Coast Guard National Maritime Center at (703) 235–0018. Captain William C. Bennett, e-mail *wbennett@ballston.comdt.mil*, retains responsibility for administering the Mariner Licensing and Documentation Program, including STCW. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this request by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–4770] and the specific section of this document to which each comment or question applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management. Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact LCDR Burns at the phone numbers listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

In 1991, the United States became a party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. The primary intent of STCW is to set minimum international qualifications for masters, officers, and watchkeeping personnel on seagoing merchant ships. The Convention does not apply to mariners on inland merchant vessels, but does apply to mariners on domestic voyages if the vessel operates beyond the boundary line.

In 1993, the International Maritime Organization (IMO) began a comprehensive revision of STCW to establish more detailed standards of competence for mariners, and to address the increased awareness of human error as a major cause of maritime casualties. Before the IMO conference, the Coast Guard held seven public meetings. The information from these meetings helped us to determine the position of the U.S. delegation and to exchange views about the STCW amendments that were under discussion. We received input from advisory committee meetings to discuss developments relating to the STCW amendments and the domestic implementation of these amendments. The advisory committees included the Merchant Personnel Advisory Committee (MERPAC), the Towing Safety Advisory Committee (TSAC), and the Navigation Safety Advisory Council (NAVSAC).

On July 7, 1995, a Conference of Parties adopted a package of amendments to STCW. These amendments went into force on February 1, 1997. Currently, there are 132 parties to STCW representing almost 96 percent of the world's merchant-ship tonnage.

On March 26, 1996, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 13284) on the implementation of the 1995 STCW amendments. We received over 500 comment letters in response to the NPRM and held four more public meetings.

We published an interim rule with request for comments in the **Federal Register** on June 26, 1997 (62 FR 34506). The interim rule incorporated the 1995 STCW amendments into U.S. regulation.

The STCW amendments adopted in July 1995—

- Concern port-state control, communication of information to IMO to allow for mutual oversight, company responsibilities, watchkeeping arrangements, and responsibilities of all parties to ensure that seafarers meet objective standards of competence;
- Require candidates for certificates (licenses and merchant mariner document endorsements) to establish competence through both subject-area examinations and practical demonstrations of skills; and
- Require all training assessment and certification activities to be monitored by a Quality Standards System (QSS).

The Coast Guard finds that many practical demonstrations of competency already occur in existing formal training programs and in on-the-job training aboard ships. However, we will need a focus and coordination plan to monitor the adequacy of these training programs to meet STCW minimum requirements.

Comment Issues

We are seeking comments on issues related to implementing the STCW provisions to help in the development of an STCW implementation focus and coordination plan. Please include your recommendations on how to address or resolve the issues. Specifically, we would like your input on the following questions:

1. Should the U.S. maritime industry have a standard record of training and assessment for ratings (unlicensed personnel) forming part of the watch?

2. How do we establish all the training program outlines that must meet STCW requirements?

3. How do we establish and document performance standards and measures to assess a mariner's practical proficiency in areas required under STCW?

4. How should we keep a record of the mariner's current training and assessment in the four elements of basic safety—basic firefighting, elementary first aid, personal survival, and personal safety and social responsibility?

5. How can we revise the merchant mariner license exams to make them a useful method of assessing competence?

6. How should we establish national medical fitness standards for U.S. merchant mariners?

7. Besides Coast Guard course approval, what other alternatives should be available meeting the STCW quality standards systems (QSS) that apply to maritime training and assessment of competence?

8. How can we monitor the entire U.S. training, assessment, and certification system under a quality standards system (QSS)? Also, how can we ensure that the U.S. training, assessment, and certification system is evaluated under the QSS every five years?

9. How do we establish simulator performance standards for maritime training and assessment of proficiency?

10. How do we ensure that all active U.S. merchant mariners who are required to hold a 1995 STCW endorsement for service do so on or after February 1, 2002?

11. How do we provide STCW-related information to all mariners?

12. How can we encourage designated personnel to actively participate in training junior personnel on the ship and sign off on training record book entries?

13. Which skills should not be verified by shipboard personnel? Also, which entries in the training record books should be made only at a shore side training facility?

14. How can we account for all the requirements for the various segments of the marine industry in the focus and coordination plan?

Public Meeting

Members of the public can make oral presentations with advance notice, and as time permits. If you wish to make an oral presentation, you should contact LCDR Burns at the numbers listed under **FOR FURTHER INFORMATION CONTACT** no later than December 1, 1998. Please provide your name, you affiliation, and the issue(s) you would like to discuss. We may limit the length of your presentation to ensure that there is enough time to hear everyone who wishes to present comments.

Dated: November 16, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–31213 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Assessment and Finding of No Significant Impact for Sarasota-Bradenton International Airport, Florida, and Invitation to Public Meeting and to Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Invitation to Public Meeting and to Comment.

SUMMARY: In March 1996, a Noise Compatibility Program (NCP) was published for the Sarasota-Brandenton International Airport (SRQ). The NCP was prepared by and on behalf of the Sarasota-Manatee Airport Authority (SMAA), owner and operator of SRQ. Included in the NCP was a recommendation for the FAA to implement a revised air traffic procedure for departures utilizing Runway 32 (RWY 32).

In compliance with FAA Order 1050.1D, ''Policies and Procedures for considering Environmental Impacts'', the EA was prepared to address the potential impacts of implementing the revised procedures for RWY 32 departures from SRQ. Although no other alternative than the proposed departure procedure was examined as part of this EA, numerous other alternatives were evaluated as part of the NCP. Those alternatives, along with a no action alternative were dismissed, as they did not meet the purpose and need identified in the NCP.

Based on the evaluation in the EA, no significant impacts associated with the revised procedure were identified. Therefore, no environmental impact statement will be prepared and a FONSI is being issued.

DATES: Public meeting will be held on December 18, 1998. Comments will be received until January 17, 1999.

ADDRESSES: Comments on the EA/FONSI may be delivered or mailed to; Federal Aviation Administration, Attention: Nancy Shelton, Manager, Airspace Branch, ASO–520, Air Traffic Division, Southern Region Headquarters, 1701 Columbia Ave., College Park, GA. 30337.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Shelton at the address listed above or telephone (404) 305–5490.

SUPPLEMENTARY INFORMATION: Environmental regulations allow for implementation of the revised procedures without further public involvement. However, due to concerns expressed by residents of Long Boat Key, Florida, the FAA will host a public meeting to explain the findings of the EA. The purpose of this meeting is to assist the public in understanding the revised procedures and eliminate any potential controversy.

Additionally, the EA contains explanations and graphics depicting the no action alternative and the proposed alternative for years 1995 and 2000, and the no action alternative for 2013. To assist in the public's understanding of the potential impacts from implementation of the proposed alternative, at the public meeting the FAA will also have handouts and graphics displaying the potential impacts for out-years 2000 and 2005.

The public meeting will be held on Friday, December 18, from 4:00 PM until 7:00 PM. The meeting location and time are as follows: The Sudakoff Center, University of South Florida at Sarasota/Manatee and New College of USF, 5700 North Tamiami Trail, Sarasota, FL 34243.

Any person may obtain a copy of the EA/FONSI and the information relating to the out-year forecasts by submitting a request to Ms. Shelton.

The EA/FONSI and out-year forecasts will also be available for review at the following public libraries:

Sarasota County Selby Public Library, 1001 Boulevard of The Arts, Sarasota, FL 34236.

Manatee County Public Library, 1301 Barcarrota Blvd. West, Bradenton, FL 34205.

Longboat Key Library, 555 Bay Isles Rd., Longboat Key, FL 34228.

History

The current procedure for northbound aircraft departing RWY 32 is to turn left at 0.9 distance measuring equipment (DME) to intercept the SRQ very-high frequency omni-directional range (VOR) 295 degree radial. Aircraft continue on this radial until reaching an altitude of 3,000 feet. At that point they are released to turn north by air traffic control (ATC).

The current procedure for southbound aircraft is to turn left at 0.9 DME to a heading of 270 degrees for radar vectors

by ATC to on course. Aircraft typically make the turn to the south either within Sarasota Bay (commuter aircraft) or west of the beaches of LongBoat Key to over the Gulf of Mexico (air carrier aircraft).

The NCP recommended the existing procedures be modified so that all aircraft weighing over 25,000 pounds and all jet aircraft departing RWY 32 be instructed to turn left at 0.9 DME to join the SRQ VOR 270 degree radial outbound. Aircraft would then continue on the SRQ VOR 270 degree radial until they are at least 7 DME, then proceed on course or as instructed by ATC. This would ensure that all jet aircraft are beyond the barrier island and over the Gulf of Mexico prior to turning either north or south.

The EA evaluates the proposed implementation of the revised departure procedures for RWY 32 at SRQ. These proposed procedures are designed to reduce aircraft noise impacts in two ways: first, by directing aircraft over the least populated area, and, secondly, by maximizing the aircraft flyovers above the residential buyout area identified in the NCP.

The FAA had previously approved the NCP. With issuance of the EA/FONSI, the FAA is approving the revised departure procedure for RWY 32 for implementation. However, implementation of the revised procedure will be delayed until training of ATC personnel and until publication of the appropriate documentation can be accomplished.

Issued in Washington, DC on November 17, 1998.

William J. Marx,

Manager, Office of Air Traffic Airspace Management, Environmental Programs Division.

[FR Doc. 98–31209 Filed 11–18–98; 4:08 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for December 10 and 11, 1998, beginning at 8:30 a.m. on December 10. Arrange for oral presentations by December 3, 1998.

ADDRESSES: Aerospace Industries Association, 1250 Eye Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is given of an ARAC meeting to be held December 10–11, 1998 at Aerospace Industries Association, 1250 Eye Street, NW., Washington, DC.

The agenda will include:

Thursday, December 10, 1998

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities (JAA) Report.
- Transport Canada Report.
- Executive Committee (EXCOM) Meeting Report.
- Harmonization Management Team Report.
- Harmonization Program Plan Update.
- Seat Test HWG Report.
- Proposed Human Factors Terms of Reference (TOR) Update.
- Flight Test Harmonization Working Group (HWG) Report.
- Ice Protection HWG Report and Approval of Concept Plan.
- Engine HWG Report and Vote.
- Airworthiness Assurance HWG Report and Vote.
- System Design and Analysis HWG.
- Flight Guidance System HWG Report.

Friday, December 11, 1998

- Avionics Systems HWG Report.
- General Structures HWG Report.
- Electromagnetic Effects HWG Report and Vote.
- Loads and Dynamics HWG Report.
- Flight Control HWG Report.
- Electrical Systems HWG Report.
- Mechanical Systems HWG Report.
- Review Action Items.

The Ice Protection HWG will present a concept plan that addresses installation of ice detectors, aerodynamic performance monitors, or other acceptable means to warn flightcrews of ice accumulation on critical surfaces. The Engine HWG is requesting a vote for formal FAA legal review for a draft advisory circular that addresses compliance with the overspeed requirements of turbine, compressor, fan, and turbosupercharger rotors. The Airworthiness Assurance HWG is requesting a vote to forward a recommendation to the FAA to develop regulations and advisory material to ensure that no large transport category airplane operate beyond a specified flight cycle limit unless an aging aircraft program has been incorporated in the operator's maintenance program. The Electromagnetic Effects HWG is requesting a vote for formal economic and legal review of a proposed notice and advisory circular on lightning protection.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 3, 1998, to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 17, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–31268 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4771]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request approval for three years of a new information collection entitled Subsidy Voucher—Operating Differential Subsidy (Bulk & Liner Cargo Vessels).

DATES: Comments should be submitted on or before January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of

Cost and Rates, 400 Seventh Street, SW, Room 8117, Washington, D.C. 20590. Telephone 202–366–2324 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Subsidy Voucher—Operating Differential Subsidy (Bulk & Liner Cargo Vessels).

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0024.

Form Number: MA–790, SF–1034 and Supporting Schedules.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936, the Secretary of Transportation is authorized to provide financial aid in the operation of contract vessels for bulk or liner cargo carrying services that help promote, develop, expand and maintain the foreign commerce of the United States and for national defense and other national requirements.

Need and Use of the Information: The information data will be prepared by subsidized bulk and liner operators and submitted to the Maritime Administration (MARAD). MARAD will utilize the information to determine subsidy payable to operators for voyages performed in accordance with their Operating-Differential Subsidy (ODS) Agreements.

Description of Respondents: Bulk and Liner Vessel Operators.

Annual Responses: 120 responses.

Annual Burden: 240 hours.

Comments: Signed written comments should refer to the dock number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By order of the Maritime Administrator.

Dated: November 18, 1998.

Edmund T. Sommer, Jr.,

Acting Secretary.

[FR Doc. 98–31263 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9:00 a.m., on Tuesday, December 2, 1998, at The Worthington Hotel, 200 Main Street, Fort Worth, Texas. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 30, 1998, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 17, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–31206 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 16–59]

Determination of Eligible Types of Collateral Acceptable to Secure Deposits of Public Moneys and Other Financial Interests of the Government; Valuation of Such Collateral

November 12, 1998.

1. *Delegation.* By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, the Commissioner, Bureau of the Public Debt, is delegated the authority to determine the eligible types of collateral, and methods of valuation thereof, that are acceptable to be pledged to secure deposits of public moneys and other financial interests of the government pursuant to 12 U.S.C. 90, 12 U.S.C. 265–266, 12 U.S.C. 391, 12 U.S.C. 1452(d), 12 U.S.C. 1464(k), 12 U.S.C. 1789a, 12 U.S.C. 2013, 12 U.S.C. 2122, 31 U.S.C. 323, 31 U.S.C. 3303, 31 U.S.C. 9301, and 31 U.S.C. 9303, and other similar law under the jurisdiction of the Secretary of the Treasury, and to perform any functions necessary to effect such determination. The Commissioner, Bureau of the Public Debt, shall be responsible for referring to the Fiscal Assistant Secretary any matters on which action should be appropriately taken by the Fiscal Assistant Secretary.

2. *Redelegation.* The Commissioner, Bureau of the Public Debt, may redelegate this authority in writing to officials of the Bureau of the Public Debt, and it may be exercised in the individual capacity and under the individual title of each official receiving such authority.

3. *Regulations.* The issuance of any regulations pursuant to this Directive shall be by the Commissioner of the Public Debt in accordance with Treasury Directive 28–01, ''Preparation and Review of Regulations.''

4. *Authorities.* a. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

b. 12 U.S.C. 90; 12 U.S.C. 265–266; 12 U.S.C. 391; 12 U.S.C. 1452(d); 12 U.S.C. 1464(k); 12 U.S.C. 1789a; 12 U.S.C. 2013; 12 U.S.C. 2122; 31 U.S.C. 323; 31 U.S.C. 3303; 31 U.S.C. 9301; and 31 U.S.C. 9303.

5. *Expiration Date.* This Directive expires three years from the date of issuance unless cancelled or superseded by that date.

6. *Office of Primary Interest.* Government Securities Regulations Staff, Office of the Commissioner, Bureau of the Public Debt.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–31267 Filed 11–20–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 98–17]

FEDERAL RESERVE SYSTEM

[Docket No. R–1022]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No. 98–93]

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of interagency policy statement.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting a uniform interagency policy statement regarding intercompany tax allocation agreements for banking organizations and savings associations (institutions) that file an income tax return as members of a consolidated group. The intent of this interagency policy statement is to provide guidance to institutions regarding the allocation and payment of taxes among a holding company and its depository institution subsidiaries. In general, intercorporate tax settlements between an institution and its parent company should be conducted in a manner that is no less favorable to the institution than if it were a separate taxpayer. This policy statement is the result of the Agencies' ongoing effort to implement section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), which requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies.

DATES: This interagency policy statement is effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: *OCC:* Gene Green, Deputy Chief Accountant, (202/874–4933), or Tom Rees, Senior Accountant, (202/874–5411), Office of the Chief Accountant, Core Policy Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Charles Holm, Manager, (202/452–3502), or Arthur Lindo, Supervisory Financial Analyst, (202/452–2695), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: For supervisory issues, Robert F. Storch, Chief, (202/898–8906), or Carol L. Liquori, Examination Specialist, (202/898–7289), Accounting Section, Division of Supervision; for legal issues, Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, NW, Washington, DC 20429.

OTS: Timothy J. Stier, Chief Accountant, (202/906–5699), or Christine Smith, Capital and Accounting Policy Analyst, (202/906–5740), Accounting Policy Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(3) of the of the CDRI Act directs the Agencies, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, to work jointly to make uniform regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the CDRI Act also requires the Agencies to review their regulations and written policies and to streamline those regulations where possible.

In 1978, the FDIC, the OCC, and the Board each published a separate policy statement regarding the allocation and payment of income taxes by depository institutions which are members of a group filing a consolidated income tax return. The OTS provides supervisory guidance on this subject in its Holding Company Handbook. As part of the ongoing effort to fulfill the section 303 mandate, the Agencies have reviewed, both internally and on an interagency basis, the present policy statements and the supervisory guidance that has developed over the years. As a result of this review, the Agencies identified minor inconsistencies in the policy statements and supervisory guidance. Although largely limited to differences in language and not to the substance of the policies and guidelines themselves, the Agencies determined that it would be beneficial to adopt a uniform interagency policy statement regarding intercorporate tax allocation in a holding company structure.

II. Policy Statement

This interagency policy statement reiterates and clarifies the position the Agencies will take as they carry out their supervisory responsibilities for institutions regarding the allocation and payment of income taxes by institutions that are members of a group filing a consolidated return. The interagency policy statement reaffirms that intercorporate tax settlements between an institution and the consolidated group should result in no less favorable treatment to the institution than if it had filed its income tax return as a separate entity. Accordingly, tax remittances from a subsidiary institution to its parent for its current tax expense should not exceed the amount the institution would have paid had it filed separately. The payments by the subsidiary to the parent generally should not be made before the subsidiary would have been obligated to pay the taxing authority had it filed as a separate entity. Similarly, an institution incurring a tax loss should receive a refund from its parent. The refund should be in an amount no less than the amount the institution would have received as a separate entity, regardless of whether the consolidated group is receiving a refund. However, adjustments for statutory tax considerations which may arise in a consolidated return are permitted as long as the adjustments are made on a basis that is equitable and consistently applied among the holding company affiliates. Regardless of the method used to settle intercorporate income tax obligations, when depository institution members prepare regulatory reports, they must provide for current and deferred income taxes in amounts that would be reflected as if the institution had filed on a separate entity basis.

An institution should not pay its deferred tax liabilities or the deferred portion of its applicable income taxes to its parent since these are not liabilities required to be paid in the current reporting period. Similarly, transactions in which a parent ''forgives'' any portion of a subsidiary institution's deferred tax liability should not be reflected in the institution's regulatory reports. This is because a parent cannot relieve its subsidiary of this potential future obligation to the taxing authorities, since these authorities can collect some or all of a group liability

from any of the group members if tax payments are not made when due.

Finally, the Agencies recommend that financial institution members of a consolidated group have a written, comprehensive tax allocation agreement to address intercorporate tax policies and procedures.

This interagency policy statement revises and replaces the Board's ''Policy Statement on Intercorporate Income Tax Accounting Transactions of Bank Holding Companies and State Member Banks,'' (43 FR 22782, May 26, 1978); the OCC's ''Statement of Policy on Income Tax Remittance to Holding Company Affiliates,'' (Banking Circular No. 105, May 22, 1978); the FDIC's Statement of Policy on ''Income Tax Remittance by Banks to Holding Company Affiliates'' (43 FR 22241, May 24, 1978); and the OTS's ''OTS Tax-Sharing Policy,'' (Section 500, ''Funds Distribution,'' OTS Holding Companies Handbook). This interagency policy statement does not materially change any of the guidance previously issued by any of the Agencies.

The text of the interagency policy statement follows:

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (''the Agencies'') are issuing this policy statement to provide guidance to banking organizations and savings associations regarding the allocation and payment of taxes among a holding company and its subsidiaries. A holding company and its depository institution subsidiaries will often file a consolidated group income tax return. However, each depository institution is viewed as, and reports as, a separate legal and accounting entity for regulatory purposes. Accordingly, each depository institution's applicable income taxes, reflecting either an expense or benefit, should be recorded as if the institution had filed on a separate entity basis.[1] Furthermore, the amount and timing of payments or refunds should be no less favorable to the subsidiary than if it were a separate taxpayer. Any practice that is not consistent with this policy statement may be viewed as an unsafe and unsound practice prompting either informal or formal corrective action.

Tax Sharing Agreements

A holding company and its subsidiary institutions are encouraged to enter into a written, comprehensive tax allocation agreement tailored to their specific circumstances. The agreement should be approved by the respective boards of directors. Although each agreement will be different, tax allocation agreements usually address certain issues common to consolidated groups. Therefore, such an agreement should:

- Require a subsidiary depository institution to compute its income taxes (both current and deferred) on a separate entity basis;
- Discuss the amount and timing of the institution's payments for current tax expense, including estimated tax payments;
- Discuss reimbursements to an institution when it has a loss for tax purposes; and
- Prohibit the payment or other transfer of deferred taxes by the institution to another member of the consolidated group.

Measurement of Current and Deferred Income Taxes

Generally accepted accounting principles, instructions for the preparation of both the Thrift Financial Report and the Reports of Condition and Income, and other guidance issued by the Agencies require depository institutions to provide for their current tax liability or benefit. Institutions also must provide for deferred income taxes resulting from any temporary differences and tax carryforwards.

When the depository institution members of a consolidated group prepare separate regulatory reports, each subsidiary institution should record current and deferred taxes as if it files its tax returns on a separate entity basis, regardless of the consolidated group's tax paying or refund status. Certain adjustments for statutory tax considerations that arise in a consolidated return, e.g., application of graduated tax rates, may be made to the separate entity calculation as long as they are made on a consistent and equitable basis among the holding company affiliates.

In addition, when an organization's consolidated income tax obligation arising from the alternative minimum tax (AMT) exceeds its regular tax on a consolidated basis, the excess should be consistently and equitably allocated among the members of the consolidated group. The allocation method should be based upon the portion of tax preferences, adjustments, and other items generated by each group member which causes the AMT to be applicable at the consolidated level.

Tax Payments to the Parent Company

Tax payments from a subsidiary institution to the parent company should not exceed the amount the institution has properly recorded as its current tax expense on a separate entity basis. Furthermore, such payments, including estimated tax payments, generally should not be made before the institution would have been obligated to pay the taxing authority had it filed as a separate entity. Payments made in advance may be considered extensions of credit from the subsidiary to the parent and may be subject to affiliate transaction rules, i.e., Sections 23A and 23B of the Federal Reserve Act.

A subsidiary institution should not pay its deferred tax liabilities or the deferred portion of its applicable income taxes to the parent. The deferred tax account is not a tax liability required to be paid in the current reporting period. As a result, the payment of deferred income taxes by an institution to its holding company is considered a dividend subject to dividend restrictions,[2] not the extinguishment of a liability. Furthermore, such payments may constitute an unsafe and unsound banking practice.

Tax Refunds From the Parent Company

An institution incurring a loss for tax purposes should record a current income tax benefit and receive a refund from its parent in an amount no less than the amount the institution would have been entitled to receive as a separate entity. The refund should be made to the institution within a reasonable period following the date the institution would have filed its own return, regardless of whether the consolidated group is receiving a refund. If a refund is not made to the institution within this period, the institution's primary federal regulator may consider the receivable as either an extension of credit or a dividend from the subsidiary to the parent. A parent company may reimburse an institution more than the refund amount it is due on a separate entity basis. Provided the

[1] Throughout this policy statement, the terms ''separate entity'' and ''separate taxpayer'' are used synonymously. When a depository institution has subsidiaries of its own, the institution's applicable income taxes on a separate entity basis include the taxes of the subsidiaries *of the institution* that are included with the institution in the consolidated group return.

[2] These restrictions include the Prompt Corrective Action provisions of section 38(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(d)(1)) and its implementing regulations: for insured state nonmember banks, 12 CFR part 325, subpart B; for national banks, 12 CFR 6.6; for savings associations, 12 CFR part 565; and for state member banks, 12 CFR 208.45.

institution will not later be required to repay this excess amount to the parent, the additional funds received should be reported as a capital contribution.

If the institution, as a separate entity, would not be entitled to a current refund because it has no carryback benefits available on a separate entity basis, its holding company may still be able to utilize the institution's tax loss to reduce the consolidated group's current tax liability. In this situation, the holding company may reimburse the institution for the use of the tax loss. If the reimbursement will be made on a timely basis, the institution should reflect the tax benefit of the loss in the current portion of its applicable income taxes in the period the loss is incurred. Otherwise, the institution should not recognize the tax benefit in the current portion of its applicable income taxes in the loss year. Rather, the tax loss represents a loss carryforward, the benefit of which is recognized as a deferred tax asset, net of any valuation allowance.

Regardless of the treatment of an institution's tax loss for regulatory reporting and supervisory purposes, a parent company that receives a tax refund from a taxing authority obtains these funds as agent for the consolidated group on behalf of the group members.[3] Accordingly, an organization's tax allocation agreement or other corporate policies should not purport to characterize refunds attributable to a subsidiary depository institution that the parent receives from a taxing authority as the property of the parent.

Income Tax Forgiveness Transactions

A parent company may require a subsidiary institution to pay it less than the full amount of the current income tax liability that the institution calculated on a separate entity basis. Provided the parent will not later require the institution to pay the remainder of the current tax liability, the amount of this unremitted liability should be accounted for as having been paid with a simultaneous capital contribution by the parent to the subsidiary.

In contrast, a parent cannot make a capital contribution to a subsidiary institution by ''forgiving'' some or all of the subsidiary's deferred tax liability. Transactions in which a parent ''forgives'' any portion of a subsidiary institution's deferred tax liability should not be reflected in the institution's regulatory reports. These transactions lack economic substance because the parent cannot legally relieve the subsidiary of a potential future obligation to the taxing authorities. Although the subsidiaries have no direct obligation to remit tax payments to the taxing authorities, these authorities can collect some or all of a group liability from any of the group members if tax payments are not made when due.

Dated: October 14, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 29, 1998.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of November, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 14, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31179 Filed 11–20–98; 8:45 am]

BILLING CODE 4810–13–P, 6210–01–P, 6714–01–P, 6720–01–P

[3] See 26 CFR 1.1502–77(a).

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 22, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1515–0220.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annualized Cost to the Public: N/A.

Dated: November 16, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–31237 Filed 11–20–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object to be included in the exhibit ''A Cylinder Recounting Sennacherib's Third Campaign Against Judah, .c. 700 B.C.E.'', imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit object at The Museum of Jewish Heritage, New York, New York, from on or about November 23, 1998, to on or about October 15, 2003, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: November 17, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–31194 Filed 11–20–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 225

Monday, November 23, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD-FRL-6149-5]

RIN 2060-AE35

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

Correction

In rule document 98–22657, beginning on page 48806, in the issue of Friday, September 11, 1998, make the following correction:

§ 59.104 [Corrected]

On page 48817, in the second column, § 59.104 (a)(2), the equation is corrected to read as set forth below:

$$VOC_{multi} = \frac{VOC_{bc} + \sum_{i=0}^{M} VOC_{mci} + 2\ (VOC_{cc})}{M + 3}$$

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AH61

Federal Employees Health Benefits Program: Disenrollment

Correction

In rule document 98–29330, beginning on page 59457, in the issue of Wednesday, November 4, 1998, make the following corrections:

1. On page 59458, in the second column, in the fourth full paragraph, in the third line from the bottom, ''expect'' should read ''ask''.

2. On page 59458, in the third column, in the first full paragraph, in the 11th line from the bottom, after ''rolls'' add ''as their student status changes.''.

3. On page 59459, in the first column, in the 11th line, ''they'' should read ''OPM''.

§ 890.110 [Corrected]

4. On page 59459, in the second column, in § 890.10 (b), in the fourth line, ''aggregate'' should read ''total''.

BILLING CODE 1505-01-D

federal register

Monday
November 23, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Security Programs of Foreign Air Carriers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–1998–4758; Notice No. 98–17]

RIN 2120–AG13

Security Programs of Foreign Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); notice of public meeting.

SUMMARY: The FAA proposes to amend the existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The proposed rule would implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996. The proposed rule would condition the Administrator's acceptance of a foreign air carrier's security program on a finding that the security program requires adherence to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to. The proposed rule is intended to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States. In addition, the FAA is announcing a public meeting on the NPRM to provide an additional opportunity for the public to comment.

DATES: Comments must be submitted on or before March 23, 1999.

A public meeting will be held on February 24, 1999.

ADDRESSES: The public meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, D.C., in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *Meeting:* 9:00 a.m.–5:00 p.m.

Comments on this proposed rulemaking should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4758, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. FAA–1998–4758, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Moira A. Lozada, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–5961.

Requests to present a statement at the public meeting on the Security Programs of Foreign Air Carriers NPRM and questions regarding the logistics of the meeting should be directed to Elizabeth I. Allen, Federal Aviation Administration, Office of Rulemaking (ARM–105), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8199; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this document may be changed in response to comments received. Comments received on this proposal will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. However, the Assistant Administrator has determined that air carrier security programs required by parts 108 and 129 contain sensitive security information. As such, the availability of information pertaining to airport security programs is governed by 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974).

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1998–4758.'' The postcard will be date-stamped and mailed to the commenter.

In order to give the public an additional opportunity to comment on the NPRM, the FAA is planning a public meeting.

Requests from persons who wish to present oral statements at the public meeting on the Security Programs of Foreign Air Carriers NPRM should be received by the FAA no later than February 17, 1999. Such requests should be submitted to Elizabeth I. Allen as listed in the section titled **FOR FURTHER INFORMATION CONTACT.** Requests received after February 17, will be scheduled if time is available during the meeting; however the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The public meeting will be held on February 24, 1999, at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *meeting:* 9:00 a.m.–5:00 p.m.

The following procedures are established to facilitate the public meeting on the NPRM.

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be

necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. FAA–1998–4758). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the interim final rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Security Programs of Foreign Air Carriers is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the NPRM. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Government Printing Office's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, D.C. 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Current FAA Security Program for Foreign Air Carriers

The FAA's present Civil Aviation Security Program was initiated in 1973. Part 129 of Title 14 of the Code of Federal Regulations governs the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under 49 U.S.C. Subtitle VII, section 41301 or that hold another appropriate economic or exemption authority issued by DOT.

The foreign air carrier security regulations were promulgated in 1976 (41 FR 30106; July 22, 1976). In 1989, the FAA issued an amendment to § 129.25(e) (41 FR 11116; March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The submitted programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the security of persons and property traveling in air transportation. The rule applies to foreign air carrier operations at U.S. airports and at foreign airports that are a last point of departure before landing in the United States.

For airports that are last points of departure to the United States and for which a government authority on the carrier's behalf performs certain security procedures, the FAA's policies allow the foreign air carrier to refer the FAA to the appropriate foreign government authority that performs those security procedures (54 FR 25551; June 15, 1989).

Currently, 171 foreign air carriers are required to have a security program that is acceptable to the Administrator. The programs contain sensitive security procedures and are not available to the public, in accordance with 14 CFR Part 191 (41 FR 53777; December 9, 1976), which establishes the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974 (Public Law 93–366).

Recent Changes To Tighten Security

The Aviation Security Improvement Act of 1990 (Pub. L. 101–604), enacted on November 16, 1990, after the bombing of Pan Am Flight 103 (December 1988), mandated many changes to air carrier security programs. It was the intent of Congress to ensure that all Americans would be guaranteed adequate protection from terrorist attacks on international flights arriving in or departing from the United States, regardless of the nationality of the air carrier providing the service. The 1990 Act required the FAA to ensure that foreign air carriers operating under security programs provide a similar level of security to that of programs required of U.S. carriers. Accordingly, current § 129.25(e), as amended in 1991 (56 FR 30122; July 1, 1991), requires that a foreign air carrier's security program must provide passengers with a level of protection similar to the level provided by U.S. air carriers serving the same airports.

Since 1990, the meaning of the term ''similar'' has been considered by some to be ambiguous. On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132) (the Antiterrorism Act) was enacted. Subtitle B, section 322 of that Act, amends 49 U.S.C. section 44906, to clarify the ambiguous term by requiring the following:

> The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the Administrator to impose additional security measures on a foreign air carrier or an air carrier when the Administrator determines that a specific threat warrants such additional measures. The Administrator shall prescribe regulations to carry out this section.

In accordance with the Antiterrorism Act, Congress intends that the FAA will establish a level of necessary security measures for international flights from each airport that both foreign and U.S. carriers will be required to employ.

Moreover, Congress does not in any way intend the Antiterrorism Act to restrict the ability of the FAA to impose additional measures on any airline at any time that a particular threat warrants additional measures. (Conference Report 104–518, Terrorism Prevention Act, pg. 113–114, Government Printing Office, Washington, D.C., April 1996.)

This notice proposes to amend § 129.25(e) to reflect the recent legislation by stating that a security program of a foreign air carrier is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to.

Role of the European Civil Aviation Conference

The European Civil Aviation Conference (ECAC) requested, and was granted, an opportunity to present to the Associate Administrator for Civil Aviation Security its observations on the underlying issues and potential solutions associated with FAA implementation of section 322 of the Antiterrorism Act.

In October 1996, the ECAC expressed disagreement with several underlying issues associated with the proposed revision to part 129. First, according to ECAC, the implementation of the proposed revision to part 129 is the ''unequivocal imposition of extraterritorial legislation.'' Instead of using domestic legislation to adjust implementation of aviation security, the ECAC believes enhanced security cooperation can be best achieved through consultation. The ECAC voiced its concern that the implementation of revisions of part 129 as required by the domestic legislation will lead to divisiveness among countries.

Second, the ECAC believes that amendments to rulemaking and security program requirements associated with part 129 have historically been tied to changes in the nature and scope of the threat posed to the security of the aircraft. This proposal does not appear to be consistent with a threat-based standard, according to the ECAC.

Third, ECAC analysis shows that practical and physical implementation of the security measures associated with the proposed revision to part 129 is ''impossible'' at many European airports. The ECAC estimates that the costs associated with the implementation of the proposed revisions to part 129 at a single airport in the Netherlands would be prohibitive.

Fourth, the ECAC is attempting to implement comprehensive security measures at all airports. In the estimation of the ECAC, the implementation of ''identical measures'' would inhibit such a comprehensive approach by introducing requirements generating distinctive security requirements to a selected portion of air carriers.

Finally, the ECAC expressed concern that the implementation of security measures ''identical'' to those required of U.S. air carriers at last points of departure to the U.S., may have the unintended effect of lowering the current security measures of some foreign air carriers. For example, a non-European air carrier operating an originating flight from a region with political instability or strife would need to implement extraordinary security measures. These security measures reflect the higher associated threat to its aircraft than the threat associated with a U.S. air carrier not originating operations from the same region, but departing the same airport for the United States.

The FAA values the opportunity to have heard the preliminary observations of the ECAC regarding the legislative mandate for ''identical security measures.'' Through such frank discussions, as well as from comments received from this Notice, the FAA anticipates the assistance of the affected parties to implement the Congressional mandate. The concerns of the ECAC are addressed in the following section.

Discussion of the Proposal in Response to ECAC Concerns

Questions have been raised about the implementation of this proposed rule. Specifically, certain foreign governments have expressed concern about the FAA seeking security programs from foreign air carriers which would include the procedures at foreign airports where government authorities implement security measures. These governments believe that the more appropriate source of security programs for these operations is the responsible foreign government, not the foreign air carriers.

The proposed rule would be consistent with U.S. international obligations. As the FAA has stated in the past, the applicability of this rule to foreign air carrier operations at foreign airports that are a last point of departure to the United States is necessary for the FAA to assure that foreign air carrier operations into the U.S. territory are secure. This rule is an exercise of authority recognized in the Convention on International Civil Aviation (Chicago Convention) and U.S. air transport agreements and is not intended to undermine the sovereignty of other nations. Under the Chicago Convention and U.S. bilateral air transport agreements, foreign air carriers are required to comply with the laws and regulations governing admission to or departure from the United States and the operation and navigation of those aircraft while within U.S. territory. The provisions of the proposed rule are within the scope of those laws and regulations. Moreover, the implementation of this proposed rule will be done in accordance with these international obligations.

Historically, the aviation community implemented security measures based upon the assumption that the threat to an aircraft was directly related to the specific nationality of the air carrier. The implication of the Act is that the terrorist threat to U.S. interests relates not only to U.S. air carriers but also to air carriers of any nationality engaged in commerce with the United States. Therefore, security measures for U.S. and foreign air carriers operating at last points of departure to the U.S. or from airports in the United States should be identical.

In accordance with the Conference Report on the Act, the FAA intends to identify Annex 17 to the Chicago Convention as the baseline of necessary security measures required of foreign air carrier operations to and from the United States. Currently, the majority of foreign air carrier flights to and from the United States operate under this standard.

Under existing authority, the FAA will review and update the security requirements that need to be levied on U.S. carriers. This will be done on a country-by-country basis, and in some cases an airport-by-airport basis within a country. To implement this proposed rule, the FAA would then impose identical security measures on all foreign carriers flying from those airports as last points of departure to the United States.

The FAA has found that similar levels of protection, for practically all foreign carriers' flights from the United States, and most flights from overseas, have been provided by meeting the standards of Annex 17. However, the FAA's assessments in the past of terrorist threats have indicated the necessity for some foreign flag carriers to implement additional measures to afford a level of protection similar to that of U.S. carriers.

The foreign flag carriers may initiate implementation of the additional measures based on their own national threat assessments, or the foreign air carriers and their respective national authorities may agree to the implementation of additional security measures following consultations with the FAA.

If, however, specific temporary threats affect a particular foreign air carrier or U.S. air carrier, the FAA may require it to implement additional appropriate security measures. In such instances, the FAA intends that any additional security measures will not apply to airlines that are not threatened.

The FAA does not intend to diminish the security measures of any foreign air carrier that may currently exceed the security measures required of U.S. air carriers serving the same airport and the proposed rule language so states.

The FAA will consult the foreign government authority whenever changes to security measures are deemed necessary at a foreign airport.

Proposed Implementation of the Proposal

The FAA would initiate implementation of the ''identical measures'' provisions of the Antiterrorism and Effective Death Penalty Act of 1996 by amending § 129.25(e) and by amending the foreign air carriers' security programs. The FAA anticipates publication of the final rule in the **Federal Register** by the end of June 2000. The effective date of the regulation would be at least a month from publication.

The final stage of implementation of a final rule would occur with amendment to the security programs of the regulated foreign air carriers. Toward that end, the FAA anticipates development of specific security amendments in a parallel process to the public rulemaking. The process will be predicated on a revalidation of the currently required security measures for air carriers. The FAA will retain all of the security measures for which there is a continuing security justification. The FAA will evaluate how identical measures may be implemented by foreign air carriers in the most effective manner from a security standpoint. Special attention will be paid to the more complex measures, such as profiling.

The FAA has devoted considerable resources toward developing security standards and regulations as well as the type of equipment that helps to keep international civil aviation secure for not only the citizens of the United States, but for all persons using the international civil aviation system. The FAA believes that it is through such continued international cooperation that all flights can be more secure in an increasingly dangerous world.

Regulatory Evaluation Summary

The FAA has determined that this proposed rule is a ''not significant rulemaking action,'' as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this proposed rule.)

Because the Antiterrorism Act prohibits the Administrator from approving any security program of a foreign air carrier ''unless the security program requires the foreign air carrier * * * to adhere to identical security measures'' that apply to U.S. carriers serving the same airports, the FAA has determined that there are not any potentially effective and reasonably feasible alternatives to the proposed regulation that need to be assessed. However, the FAA has drafted the proposed rule to permit flexibility in two respects. It would allow a foreign air carrier to exceed the security measures required of U.S. carriers. The proposal also would permit a foreign air carrier to refer the FAA to appropriate foreign government authorities that perform security functions on the carrier's behalf in lieu of specifying the procedures.

Cost of Compliance

The FAA has performed an analysis of the expected costs and benefits of this regulatory proposal. In this analysis, the FAA estimated costs for a 10-year period, from 1998 through 2007. As required by the Office of Management and Budget (OMB), the present value of this stream was calculated using a discount factor of 7 percent. All costs in this analysis are in 1995 dollars.

To calculate the costs, the FAA examined the differences between the Air Carrier Standard Security Program (ACSSP), which sets the security standards and procedures that all certificated U.S. air carriers use, and the Model Security Program (MSP), which sets the security standards and procedures that all certificated part 129 (foreign) air carriers use. These differences were examined at both domestic airports and foreign airports that serve as the last point of departure (LPD) to the U.S. Due to the sensitive nature of these documents, most of these specific differences cannot be discussed in this economic summary or the regulatory analysis (both of which are public documents). The Associate Administrator for Civil Aviation Security (ACS–1) has determined that this information is sensitive to Civil Aviation Security operations; the disclosure or dissemination of this information is prohibited in accordance with 14 CFR Part 191. Sensitive security details related to the cost section of this Regulatory Evaluation are available to regulated foreign air carriers and their national regulatory authorities upon request. A request made by the foreign air carrier should be directed to its Principal Security Inspector (PSI); requests by the appropriate national regulatory authority should be made to the FAA's Civil Aviation Security Liaison Officer (CASLO) for that country.

Total ten year costs sum to $1.19 billion (net present value, $826 million). Given that in 1997, 42.3% of passengers on foreign flag air carriers were U.S. citizens, the impact on the U.S. economy would average $50.7 million a year.[1] Hence, because this proposed rule would not impose costs exceeding $100 million annually on the U.S. economy, this proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866 (Regulatory Planning and Review).

Because security requirements at each location are subject to change, it is impossible to know, at any given time, which aviation security procedures foreign air carriers are performing and on which flights. Accordingly, all differences were calculated assuming that no foreign air carrier is currently performing any security functions in excess of the minimum required under the MSP. This may lead to an overstatement of costs, as some carriers may already perform some functions not currently required.

The FAA consulted the Official Airline Guide (OAG) to determine the number of scheduled part 129 flights, with more than 60 seats, from U.S. gateway airports and from foreign last point of departure airports where U.S. air carriers also operate. An annual growth rate of 5.2% was applied to these flights over the ten year period of time. The number of passengers affected was calculated by multiplying the average number of passengers per U.S. international flight by the number of international flights. The analysis also assumed an average of 2 checked bags and 2 carry-on bags per international passenger.

[1] This is calculated by multiplying 42.3% times $1.19 billion and dividing by ten.

Foreign air carriers would need additional equipment and personnel for these new requirements. Equipment needs were based, in part, on peak hour requirements at U.S. airports. In the absence of information about wages, employment growth rates, and annual employee turnover rates in each individual country, this analysis used the equivalent rates of U.S. employees; this may overstate costs, assuming that U.S. wages exceed those in most other countries. All hourly wage rates were increased by 26% to account for all fringe benefits. Since additional training would be needed for some of the new proposed requirements, the number of additional classes was calculated assuming 20 people per class. The FAA also assumed, in most cases, an average of one supervisor for every nine employees and that the supervisor salary was, on average, 20 percent higher than the employee salary.

The FAA is requesting information on one of the new measures that could result from the proposal. This measure would limit air carriers to accepting baggage only inside the terminal building for flights to the U.S. from foreign LPD's where U.S. air carriers also operate. Currently, the FAA does not have adequate data on which air carriers would be affected by such a measure and no data on the additional terminal capacity (facilities, labor, etc.) that would be necessary to accommodate the checked baggage that is currently handled outside the airport terminal. Additional information needed also includes the percent of passengers who currently check their baggage outside the terminal building.

The FAA also requests cost information on any other airport or terminal space issues that could result from this proposed rule.

Analysis of Benefits

The primary benefit of the proposed rule would be to strengthen air carrier security and the safety of all passengers on foreign air carriers. Aviation security is achieved through an intricate set of interdependent requirements. It would be difficult to separate out any current existing requirement or any proposed change, and identify to what extent any requirement or any change, alone, would have on preventing a criminal or terrorist act in the future.

Since 1987, the FAA has initiated rulemaking and promulgated security-related amendments that have amended parts 107 (airport operator security), 108 (air carrier security), and 129 (foreign air carriers). These amendments have added to the effectiveness of all these parts by addressing certain aspects of the total security system directed at preventing criminal and terrorist activities.

Some benefits can be quantified—prevention of fatalities and injuries and the loss of aircraft and other property. Other benefits, no less important, are probably impossible to quantify. Since the mid-1980's, the major goals of aviation security have been to prevent bombing and sabotage incidents. Preventing an explosive or incendiary device from getting on board an airplane is one of the major lines of defense against an aviation-related criminal or terrorist act. In the ten year period from 1986 through 1995, eleven separate explosions occurred on commercial airlines. These eleven incidents of sabotage (of which nine occurred on foreign airlines) caused a total of 722 fatalities and at least 112 injuries. In addition, in December 1993, a hijacking incident occurred on a U.S.-bound foreign airline.

An example of the type of explosion that aviation security is trying to prevent is the Pan Am 103 tragedy that occurred over Lockerbie, Scotland in 1988. A conservative estimate of the costs associated with this accident is $1.4 billion.

Comparison of Costs and Benefits

This proposed rule would cost approximately $1.19 billion (net present value, $826 million) over ten years. This cost needs to be compared to the possible tragedy that could occur if an explosive or incendiary device were to get onto an airplane and cause a catastrophe. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to twelve American airplanes being destroyed by explosive devices in Asia in early 1995.

Congress has mandated that the FAA take action to require security measures identical to those required of U.S. air carriers for all foreign air carrier operations to and from any U.S. airport where U.S. air carriers operate. Congress, which reflects the will of the American public, has determined that this proposed regulation is in the best interest of the nation.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended May 1996, requires regulatory agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.'' The Small Business Administration suggests that ''small'' represent the impacted entities with 1,500 or fewer employees.

The proposed amendments to the regulations would not apply to any small domestic air carriers and, therefore, the FAA has initially determined that they would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

These proposed regulations would make the security requirements between U.S. and foreign air carriers identical. Foreign air carriers would incur costs. However, mandating identical security measures for both foreign and domestic operators would give neither U.S. nor foreign carriers a competitive advantage; both U.S. and foreign carriers would have to follow identical security measures to accomplish passenger and aircraft safety and security.

The international trade implications of this rulemaking are difficult to predict at this time. A number of foreign governments expressed strong opposition to the legislation, on both legal and policy grounds, during and after its passage by the Congress. Officials of the European Civil Aviation Conference (ECAC) have informed the FAA that its members strongly oppose any regulatory action to implement the statute. This rulemaking could be a factor in future bilateral negotiations, but any attempt to quantify possible impacts on U.S. carriers would be premature and speculative.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for

inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

Federalism Implications

The rule proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In this proposed amendment to part 129—Operations: Foreign Air Carriers and Foreign Operators of U.S. Registered Aircraft Engaged In Common Carriage, § 129.25 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of this proposed section to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed to estimate the costs to foreign air carriers with accepted security programs: (1) to check radiation leakage on x-ray equipment used for property security screening at part 107 airports at least annually; (2) to report aircraft piracy as part of the required security program; and (3) to maintain training records for personnel involved in security activities.

It is estimated that this proposal will affect 171 part 129 aircraft operators annually. The estimated annual reporting and recordkeeping burden hours is estimated to be 5,193 hours and is broken down as follows:

(1) Reporting and recordkeeping requirements for foreign air carriers' security programs requiring:

(i) Preparation of new security program documentation—6 hours for each new part 129 air carrier operator; and,

(ii) Necessary security amended program documentation—1.5 hours for each part 129 air carrier operator.

(2) Maintaining copies and availability of the security programs for use by civil aviation security inspectors of the FAA upon request—1 hour for each part 129 air carrier operator.

(3) Reporting and record keeping requirements for the training records for crew members, air carrier security representatives, and individuals performing security-related functions—24 hours for each part 129 air carrier operator. (This includes preparation and record keeping of training records for personnel applying extraordinary security requirements for flights departing from designated overseas locations.)

(4) Record keeping by the air carrier of each x-ray survey conducted for use by FAA officials upon request—.5 hours for each part 129 air carrier operator.

(5) Reporting of acts or suspected acts of aircraft piracy to the FAA. This report is not normally in written form and it is determined to be a request for assistance—.2 hours for each part 129 air carrier operator.

Individuals and organizations may submit comments on the information collection requirements by January 22, 1999, to the address for comments listed in the **ADDRESSES** section of this document. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the equality, utility, and clarity of the information to be collected can be enhanced; and, how the burden of the collection can be minimized.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 129

Air carriers, Aircraft, Airports, Aviation safety, Weapons.

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend part 129 of title 14 of the Code of Federal Regulations (14 CFR part 129) as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

2. Section 129.25 is amended by revising the introductory text of paragraph (e) to read as follows:

§ 129.25 Airplane security.

* * * * *

(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier's security program is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to. A foreign air carrier is not considered to be in violation of this requirement if its security program exceeds the security measures required of U.S. air carriers serving the same airport. The following procedures apply for acceptance of a security program by the Administrator:

* * * * *

Issued in Washington, D.C., on November 13, 1998.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 98–30934 Filed 11–19–98; 8:45 am]

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federal register

Monday
November 23, 1998

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to List the Arkansas River Basin Population of the Arkansas River Shiner (Notropis girardi) as Threatened; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC62

Endangered and Threatened Wildlife and Plants; Final Rule to List the Arkansas River Basin Population of the Arkansas River Shiner (*Notropis girardi*) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine the Arkansas River basin population of the Arkansas River shiner (ARS) (*Notropis girardi*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act).

The ARS is a small fish found in the Canadian River in New Mexico, Oklahoma, and Texas and the Cimarron River in Kansas and Oklahoma, both rivers in the Arkansas River basin. A non-native, introduced population occurs in the Pecos River in New Mexico; however, we did not propose listing of this population and are not including it in this final rule. The Arkansas River basin population is threatened by habitat destruction and modification from stream dewatering or depletion due to diversion of surface water and groundwater pumping, construction of impoundments, and water quality degradation. Competition with the non-indigenous Red River shiner (*Notropis bairdi*) contributed to diminished distribution and abundance in the Cimarron River. Incidental capture of the ARS during pursuit of commercial bait fish species may also contribute to reduced population sizes. Drought and other natural factors also threaten the existence of the ARS.

We originally proposed to list the ARS as endangered. However, since publication of the proposed rule for this species, we decided to list this species as threatened due to lesser immediacy and magnitude of threats to its existence. New information received during the public comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. In addition, new information shows that the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith are less than originally believed and that the aggregations of Arkansas River shiners in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule. This action will implement Federal protection provided by the Act for the ARS. We have determined that designation of critical habitat for the ARS is not prudent.

EFFECTIVE DATE: December 23, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Oklahoma Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127–8909.

FOR FURTHER INFORMATION CONTACT: Ken Collins at the above address, telephone 918/581–7458, or facsimile 918/581–7467).

SUPPLEMENTARY INFORMATION:

Background

A. I. Ortenburger discovered the Arkansas River shiner (ARS) in 1926 in the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). The ARS is a small, robust shiner with a small, dorsally flattened head, rounded snout, and small subterminal mouth (Miller and Robison 1973, Robison and Buchanan 1988). Adults attain a maximum length of 51 millimeters (mm) (2 inches (in)). Dorsal, anal, and pelvic fins all have eight rays, and there is usually a small, black chevron present at the base of the caudal fin. Dorsal coloration tends to be light tan, with silvery sides gradually grading to white on the belly.

The ARS historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and larger streams of the Arkansas River basin (Gilbert 1980). Adults are uncommon in quiet pools or backwaters, and almost never occur in tributaries having deep water and bottoms of mud or stone (Cross 1967). Specifically, Polivka and Matthews (1997) found that the ARS in the South Canadian River of central Oklahoma, like most fishes occurring in the highly variable environments of plains streams, used a broad range of microhabitat features. They also found only a weak relationship between selected environmental variables and occurrence of the species within the stream channel. Water depth, sand ridge and midchannel habitats, dissolved oxygen, and current were the environmental variables most strongly associated with the distribution of ARS within the channel. Juvenile ARS associated most strongly with current, conductivity (total dissolved solids), and backwater and island habitat types (Polivka and Matthews 1997).

Cross (1967) believed that adults preferred to orient into the current on the ''lee'' sides of transverse sand ridges and feed upon organisms washed downstream. Researchers have only recently described the feeding preferences and diets of the ARS. In studies on the South Canadian River near Norman, Oklahoma, Polivka and Matthews (1997) found that gut contents were dominated by sand/sediment and detritus (organic matter). Invertebrate prey were only an incidental component of the diet. Polivka and Matthews (1997) concluded that the ARS is a generalist feeder in which no particular invertebrate dominated the diet. In the Canadian River of Texas, the diet of ARS was dominated by detritus, aquatic invertebrates, and sand and silt (Bonner *et al.* 1997). With the exception of the winter season when larval flies were consumed much more frequently than other aquatic invertebrates, no particular invertebrate taxa dominated the diet. This led Bonner *et al.* (1997) to similarly conclude that the ARS is a generalized forager, feeding on both items suspended in the water column and items lying on the substrate. In the Pecos River, fly larvae, copepods, immature mayflies, insect eggs, and seeds were the dominant items in the diet of ARS (Keith Gido, University of Oklahoma, *in litt.* 1997).

The ARS spawns in July, usually coinciding with flood flows following heavy rains (Moore 1944). However, recent studies by Polivka and Matthews (1997) and Texas Tech University (Gene Wilde, Assistant Professor, pers. comm. 1998) neither confirmed nor rejected the hypothesis that ARS spawn during rises in the river stage. The ARS appears to be in peak reproductive condition throughout the months of May, June and July (Polivka and Matthews 1997) and may actually spawn several times during this period (Gene Wilde, pers. comm. 1998). Arkansas River shiner eggs are non-adhesive and drift with the swift current during high flows.

The mean number of mature ova for ARS in Texas varied between 120.8 and 274.4, with some large females containing over 400 (Bonner *et al.* 1997). Hatching occurs within 24–48 hours after spawning. The larvae are capable of swimming within 3–4 days; they then seek out backwater pools and quiet water at the mouth of tributaries where food is more abundant (Moore 1944). Both Moore (1944) and Cross (1967) inferred that this species will not spawn unless conditions are favorable to the survival of the larvae.

Maximum longevity is unknown, but Moore (1944) speculated that the species' life span is likely less than 3 years in the wild. The age structure of ARS collected from the Pecos River in New Mexico included three, and possibly four, age classes (Bestgen *et al.* 1989). The majority of the fish captured were juveniles (Age-0) and first-time spawners (Age-I). Most of the fish in spawning condition were Age-I. Bestgen *et al.* (1989) thought mortality of post-spawning fish was extremely high based on the absence of Age-I and older fish from collections made after the spawning period (late July and August).

Historically, the ARS was widespread and abundant throughout the western portion of the Arkansas River basin in Kansas, New Mexico, Oklahoma, and Texas. In New Mexico, surveys and collection records establish that the ARS historically inhabited the Canadian River from the Texas-New Mexico State line as far upstream as the Sabinoso area in central San Miguel County, New Mexico (Sublette *et al.* 1990), a distance of over 193 river-kilometers (river-km) (120 river-miles (river-mi)). The ARS also occurred in Ute and Revuelto creeks and the Conchas River.

In Texas, the Arkansas River shiner occurred throughout the Canadian River from State line to State line, a distance of about 370 river-km (230 river-mi). The first reported captures of ARS from Texas were in 1954 (Cross *et al.* 1955, Lewis and Dalquest 1955). The species was captured at several sites extending from near the Texas-New Mexico State line at the Matador Ranch in Oldham County downstream to the Texas-Oklahoma State line (Lewis and Dalquest 1955).

Arkansas River shiners (9 specimens) were first reported from Kansas in 1926 from near Kinsley (Hubbs and Ortenburger 1929), although fish collection records from as early as 1884 exist. More extensive collections from the mainstem Arkansas River first occurred in 1952 at Holcomb in Finney County, Great Bend in Barton County, and Wichita in Sedgwick County (Cross *et al.* 1985). Arkansas River shiners were present but scarce at all 3 sites—41 specimens at Holcomb, 11 specimens at Great Bend, and 4 specimens at Wichita. Cross *et al.* (1985) believed ARS inhabited the full length of the Arkansas River mainstem in Kansas at that time, a distance of over 640 river-km (400 river-mi); although the species was already suspected to be in decline. In the Cimarron River basin of Kansas, ARS were first reported from Crooked Creek, Meade County in 1941. Earliest records from the mainstem Cimarron were from 1955 near Ulysses, Grant County, and in 1956 from near Kismet, Seward County (William H. Busby, Kansas Biological Survey, University of Kansas, *in litt.* 1990). In all, ARS specimens exist from 17 counties and eight rivers or streams, including several tributaries of the Arkansas and Cimarron rivers (Larson *et al.* 1991, Cross *et al.* 1985, William H. Busby, *in litt.* 1990).

Records of occurrence for the ARS are most extensive from Oklahoma where the majority of the historical range occurs. Collections from as early as 1926 exist for 43 counties (Luttrell *et al.* 1993, Larson *et al.* 1991, Pigg 1991, Hubbs and Ortenburger 1929). Records exist for the major rivers in the Arkansas River basin and many of the smaller tributaries. A record (one individual) also exists for the Red River basin in Oklahoma (Cross 1970), possibly originating from a release of bait fish by anglers. Historically, the ARS inhabited over 2,700 km (1,700 mi) of habitat in the larger rivers (e.g., Arkansas, Cimarron, North Canadian, and Canadian rivers) plus an unknown amount in the smaller tributaries.

Records from Arkansas are scarce. There is one record of several specimens from the Arkansas River at the mouth of Piney Creek in Logan County, Arkansas (Black 1940, as cited in Robison and Buchanan 1988). The ARS is presumed to have been extirpated from (become extinct in) Arkansas.

Researchers conducted comprehensive surveys for the ARS at 155 localities within the Arkansas River basin from 1989 to 1991 (Larson *et al.* 1991). They collected fish at 128 of 155 localities; the remaining 27 sites were dry. The researchers captured 1,455 ARS from 23 localities—14 in Oklahoma, 5 in Texas, and 4 in New Mexico. No ARS were captured in Kansas. These data, plus related surveys from 1976 to 1997 (Kevin R. Bestgen, Larval Fish Laboratory, Colorado State University, *in litt.* 1998; Polivka and Matthews 1997; Bonner *et al.* 1997; Eric Berg, Wildlife Biologist, L.W. Reed Consultants, Inc., *in litt.* 1995; Luttrell *et al.* 1993; Eric Altena, Fisheries Biologist, Texas Parks and Wildlife Department (TPWD), *in litt.* 1993; Pigg 1991; and Eugene Hinds, Regional Director, Bureau of Reclamation (Bureau), *in litt.* 1984), confirm that the ARS has disappeared from over 80 percent of its historical range within the last 35 years.

The ARS is now almost entirely restricted to about 820 km (508 mi) of the Canadian River in Oklahoma, Texas, and New Mexico. An extremely small population may still persist in the Cimarron River in Oklahoma and Kansas, based on the collection of only nine individuals since 1985. A non-native population of the ARS has become established in the Pecos River of New Mexico within the last 20 years (Bestgen *et al.* 1989). The decline of this species throughout its historical range may primarily be attributed to inundation and modification of stream discharge by impoundments, channel desiccation (drying out) by water diversion and excessive groundwater pumping, stream channelization, and introduction of non-native species.

The ARS began to decline in the Arkansas River in western Kansas prior to 1950 due to increasing water diversions for irrigation and completion of John Martin Reservoir in 1942 (Cross *et al.* 1985). The Arkansas River between Coolidge to near Great Bend, Kansas, is frequently dewatered (Cross *et al.* 1985). Habitat alteration following construction of Kaw and Keystone reservoirs on the Arkansas River in Oklahoma, in conjunction with completion of the McClellan-Kerr Navigation System in 1970, greatly reduced ARS habitat in Oklahoma and Arkansas. The ARS is no longer believed to occur in the Arkansas River in Arkansas, Kansas, and Oklahoma, a loss of over 1,240 km (770 mi) of previously occupied habitat.

The ARS was once common throughout the Cimarron River and its tributaries (Pigg 1991). The abundance of the ARS in the Cimarron River declined markedly after 1964 (Felley and Cothran 1981). The Red River shiner, a small minnow endemic to the Red River, was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1985) and from the Cimarron in Oklahoma in 1976 (Marshall 1978). Cross *et al.* (1985) believed the Red River shiner was first introduced into the Cimarron River sometime between 1964 and 1972. Since that time, the Red River shiner has essentially replaced the ARS. Habitat alteration and resulting flow modification also have contributed to the decline of the species from the Cimarron River. A small, remnant population may still persist in the Cimarron River.

The ARS was first reported from the North Canadian River drainage in 1926 (Hubbs and Ortenburger 1929). Collections between 1947 and 1976 indicated that the ARS occurred in large numbers in the river and some larger tributaries despite the construction of Optima and Canton reservoirs (Pigg 1991). This fish was still sporadically collected from the North Canadian River until 1987. Several collection attempts at 15 localities over the next 2 years failed to result in the capture of any

ARS (Pigg 1991). In 1990, four specimens were collected from the river south of Turpin, Beaver County, Oklahoma (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Environmental Quality, pers. comm., 1993). Commercial bait dealers were observed flushing their holding tanks in the vicinity of the site where the ARS specimens were captured and may have been responsible for the unintentional release of this species back into the North Canadian River. The species has not been captured from the North Canadian River since 1990 (J. Pigg, pers. comm., 1997), indicating a probable loss of over 1,046 km (650 mi) of previously occupied habitat.

Historically, the species occurred in the Canadian River from its confluence with the Arkansas River near Sallisaw, Sequoyah County, Oklahoma as far upstream as the Sabinoso area in central San Miguel County, New Mexico (Pigg 1991, Sublette *et al.* 1990). Construction and operation of Ute and Conchas reservoirs in New Mexico, Lake Meredith in Texas, and Eufaula Reservoir in Oklahoma altered or eliminated sections of riverine habitat and diminished the range of ARS within the Canadian River. Eufaula Reservoir isolated Canadian River populations from the Arkansas River and, in combination with Lake Meredith and Ute Reservoir, confined ARS to two restricted segments of the Canadian River—a 218-km (135-mi) section from Ute Dam to the upper reaches of Lake Meredith; and 601 river-km (373 river-mi) downstream of Lake Meredith (near Canadian, Texas) to the upper reaches of Eufaula Reservoir in Oklahoma. The reservoirs function as barriers, significantly inhibiting dispersal and interchange between the two segments.

Consideration as a "Species" Under the Act

Section 3(15) of the Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife . . ." On February 7, 1996, the Fish and Wildlife Service and the National Marine Fisheries Service published a joint policy (DPS policy) (61 FR 4722) to clarify our interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the Act. The policy identifies the following three elements to be considered in deciding whether to list a possible DPS as endangered or threatened under the Act: The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; the significance of the population segment to the species or subspecies to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing.

Discreteness of the Population Segment: According to our DPS policy, a population segment may be considered discrete if it satisfies either one of the following conditions: it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or it is delimited by international governmental boundaries across which there is a significant difference in control of exploitation, management of habitat, or conservation status. The Arkansas River basin population is discrete based on natural, geographic isolation from the non-native, introduced population in the Pecos River.

Significance of the Population Segment: Our DPS policy states that the consideration of the significance of the population segment to the taxon to which it belongs may include, but is not limited to, the following: persistence of the discrete population in an ecological setting unusual or unique for the taxon; evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The Arkansas River basin population is significant because it represents the only surviving natural occurrence of the taxon.

Because it is both discrete and significant, the Arkansas River basin population of the ARS qualifies as a distinct population segment under the Act. Although it is discrete, the Pecos River population of the ARS is not significant because it is an introduced population located outside of the species' historic range and, at this time, is not essential for recovery of the species within its historic range. Therefore, the Arkansas River basin population of the ARS is a listable entity under the Act, and the non-native, introduced Pecos River population is not a listable entity under the Act.

Furthermore, protection of the non-native Pecos River population of the ARS would conflict with the preservation of the Pecos bluntnose shiner (*Notropis simus pecosensis*) and possibly the Rio Grande silvery minnow (*Hybognathus amarus*). Management of native Pecos River fishes will focus on the preservation and restoration of habitat conditions favored by these species. Restoration of historic flow conditions in the Pecos River and control of competitive, non-indigenous fishes, including the ARS, may be necessary in recovery efforts for the Pecos bluntnose shiner. While the non-native, introduced Pecos River population of the ARS could be important in efforts to supplement native populations of the ARS within the species' historical range, protection of the Pecos River population would not improve the status of the ARS within the species' historical range.

Previous Federal Action

We included the ARS in our September 18, 1985, Review of Vertebrate Wildlife (50 FR 37958) as a category 2 candidate for listing. At that time, category 2 comprised those taxa for which information indicated that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. Our January 6, 1989, revised Animal Notice of Review (54 FR 554) retained this status for the ARS.

We first received detailed information on the status of the species in 1989 (Pigg 1989). A partial status survey by Larson *et al.* (1990) was a source of additional information. We subsequently prepared a status report on this species (U.S. Fish and Wildlife Service 1990). Following this report, Larson *et al.* (1991) and Pigg (1991) provided comprehensive status survey information. In our November 21, 1991, Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58804), we reclassified the ARS as a category 1 candidate. At that time, category 1 comprised taxa for which we had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened.

In the August 3, 1994, **Federal Register**, we published a proposed rule to list the Arkansas River basin population of the ARS as endangered and invited public comment (59 FR 39532). We based the proposal primarily on status information from reports to the Oklahoma Department of Wildlife Conservation (ODWC). We also used collections and observations made by Dr. Frank Cross, Mr. Jimmie Pigg, the TPWD, and the Bureau and our own collections and observations in preparing the proposed rule.

The enactment of Public Law 104–6 in April, 1995, and subsequent series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium on issuing final listings or critical habitat designations. During that time, we were prohibited from making final determinations on listing proposals. Following this delay, we reopened the comment period on the proposal to list the ARS on December 5, 1997 (62 FR 64337), to solicit any new relevant data and to allow the public to review and comment on data we had obtained since publication of the proposed rule.

Since publication of the proposed rule for the ARS, we have determined that the Arkansas River basin population of the Arkansas River shiner, which we proposed to list as endangered, should be listed as threatened due to a lesser immediacy and magnitude of threats to its existence. New information received during the comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. Also, the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith is less than originally believed. In addition, we discovered that the aggregations of ARS in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule. The most recent information on the status of the ARS is discussed in the ''Summary of Factors Affecting the Species'' section.

The processing of this final rule conforms with our listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25503). This guidance further clarifies the order in which we will process the remaining backlog of rulemakings resulting from the 1995–1996 moratorium. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing petitions, and delisting or reclassifications (Tier 2). The guidance assigns the lowest priority (Tier 3) to processing of proposed or final designations of critical habitat. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the August 3, 1994, proposed rule (59 FR 39532), associated notifications, and in subsequent notices to extend or reopen the public comment period, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. The original public comment period closed on October 3, 1994, but we reopened it from January 6, 1995, to February 3, 1995 (60 FR 2070) to accommodate three public hearings. We reopened the comment period a second time from December 5, 1997 to January 5, 1998 (62 FR 64337). We contacted numerous Federal and state agencies, county governments, municipalities, scientific organizations, knowledgeable individuals, and other interested parties and requested them to comment during the comment periods. We published newspaper notices during all comment periods in the *Dodge City Globe* (KS), the *Hutchinson News Herald* (KS), the *Quay County Sun* (Tucumcari, NM), the *Daily Oklahoman* (Oklahoma City, OK), the *Tulsa World* (OK), *Woodward News* (OK), and the *Amarillo Globe* (TX), inviting general public comment and attendance at public hearings. In addition, we published a notice in the *Lubbock Avalanche-Journal* (TX) announcing the reopening of the comment period on December 5, 1997.

We received 114 requests for public hearings—46 from interested parties in Kansas, 40 from Oklahoma, and 28 from Texas. We received 16 other requests for public hearings after the 45-day period for requesting hearings had expired. We held public hearings on January 23, 1995, in Meade, Kansas; January 24, 1995, in Woodward, Oklahoma; and January 25, 1995, in Amarillo, Texas.

In Meade, 154 people attended and 25 commented; in Woodward at least 45 attended and 29 commented; and in Amarillo 381 attended and 27 commented. Thirty-seven individuals at the Amarillo hearing did not have an opportunity to make oral comments because of time limitations. However, many of these individuals did submit written comments at the conclusion of the hearing. In addition, the High Plains Underground Water Conservation District Number One sponsored a public meeting in which an unknown number of individuals attended. The District provided a video tape and transcript of this meeting containing the comments of 25 individuals.

We received a total of 734 comments (letters and oral testimony) from Federal (12) and State (45) agencies/elected officials, local governments (62), and private organizations, companies, and individuals (615) during the comment periods. The total number of entities providing comments was 671, with several individuals submitting more than one comment. We also received three letters containing numerous signatures opposing listing of the ARS.

We address written and oral comments received during the comment periods in the following summary. Comments from all respondents, including the invited peer reviewers, are combined. These comments addressed a diversity of economic, social, and political issues. Because multiple respondents offered similar comments in some cases, comments of a similar nature are grouped. Most comments opposed listing or favored delaying the listing. Of those actually stating a position, 380 specifically opposed listing and 8 supported listing. The remainder, while not specifically stating a position on the rule, often expressed concerns over what impact the listing would have on various activities. Some comments were non-substantive or dealt with matters of opinion or legal history, which are not relevant to the listing decision. The substantive comments and our responses, grouped by issue category, are as follows:

Issue 1: Procedural Concerns

Comment: Thirty commenters noted that the Act expired in 1992 and has not yet been reauthorized, leaving us without authority from Congress to implement it. These commenters believed that, therefore, we should either postpone listing or take no action until the Act has been reauthorized.

Service Response: The Act remains in place unless unfunded in the annual Congressional appropriations process. With the exception of the recision of listing funds described earlier, Congress has continued to fund the Act. We prepared this final rule using funds specifically appropriated by Congress for conducting the Act's listing activities.

Comment: Seven commenters believed that we fail to use common sense in implementing the Act, relying on regulation instead of innovation, leaving landowners with no incentive to protect listed species and their habitat.

Service Response: By **Federal Register** notice on July 1, 1994 (59 FR 34272), the Secretaries of the Interior and Commerce set forth an interagency policy to minimize social and economic impacts of the Act consistent with timely recovery of listed species. Therefore, we will work closely with stakeholders throughout the Arkansas River basin to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the ARS.

Comment: One commenter stated that we do not have the authority to list the ARS in only a portion of the species'

known range. Another individual stated that if we can exclude listing of the Pecos River population, we could exclude listing of the ARS population upstream of Lake Meredith.

Service Response: As described previously, our policy published in the **Federal Register** on February 7, 1996 (61 FR 4721), established that to qualify as a distinct population segment, the population must be both discrete in relation to the remainder of the species to which it belongs, and significant to the species to which it belongs. In the case of the ARS, the Arkansas River basin population is clearly separate from the Pecos River population and represents the only surviving natural occurrence of the species. Thus the Arkansas River basin population segment is both discrete and significant.

With respect to the Canadian River segment upstream of Lake Meredith, we do not believe it would be prudent to consider these aggregations of ARS as a distinct population segment. Although Lake Meredith is a human-made barrier to dispersal, the ARS aggregations upstream of Lake Meredith are not markedly separated from those in the remainder of the Arkansas River basin.

Comment: Eighteen commenters requested a longer comment period or stated that we did not give adequate time for public comment. Five commenters thought we were unwilling to disclose pertinent information or denied access to materials which the rule was based on. One commenter requested that all data, information, and results of investigations, including information on occurrence of Red River shiners in the Canadian River, be available for review by interested parties. Another felt we provided ''Fact Sheets'' only to select individuals.

Service Response: Regulations at 50 CFR 424.16(c)(2) require us to allow a minimum of 60 days for public comment on proposed rules. The first comment period on the ARS proposed rule was open for 60 days. We also provided two additional comment periods, encompassing a total of 59 days. We believe that the comment periods provided were adequate and fulfilled the requirements of the Act.

The proposed rule contained a complete summary of the information available to us regarding the status of the ARS and sources of that information. The cited material was available to the pubic through a variety of sources. We have incorporated new information on the occurrence of the Red River shiner in the Arkansas River basin into this rule and the administrative record. All documents, records, and correspondence relating to this listing, including data, survey results, analyses, supporting information, and public comments, are included in the administrative record and are available for review by the public by appointment, during normal business hours, at the Oklahoma Field Office. Appointments can be made by contacting the Field Supervisor (see **ADDRESSES** section).

In several instances, we provided copies of referenced material, including information on Red River shiners, in response to requests from the public. Also, in accordance with the Act and its implementing regulations, the Administrative Procedure Act, and the Freedom of Information Act (5 U.S.C. § 552), we provided copies of documents to members of the public who requested such information.

We prepared Fact Sheets and distributed them to the public in conjunction with notification letters for the public hearings. We also distributed copies of the Fact Sheets to the public at the three public hearings. Any individual who was not on our mailing list at the time of the hearings or did not attend the public hearings did not receive copies of the Fact Sheets. We would have provided this material to anyone requesting it; however, we have no record of any specific requests for the Fact Sheets following conclusion of the public hearing process.

Comment: Three commenters felt that we had already reached a decision prior to receiving public comment and did not value public participation in the decision-making process. Ten commenters stated that we had not adequately notified the public regarding the hearings or the proposed rule. Commenters specifically stated that we did not contact the TPWD, Texas State elected officials, and affected municipal governments and that newspaper notices were inadequate.

Service Response: We reviewed and evaluated all written and oral comments, as recorded in the public hearing transcripts, before making a final determination on the proposed rule. We have addressed all substantive comments in this section. Based on the comments we received, we revised the status of the shiner and incorporated new information into this final rule.

We conducted an extensive notification process to make the public aware of the proposal. In addition to newspaper and **Federal Register** notices (see discussion at beginning of this section), we mailed 153 separate notifications of the proposed rule to Federal, State, county and city governments, species experts, and other individuals to solicit their input. Subsequently, we mailed 355 separate notifications of the public hearing to species experts, other interested individuals, and Federal, State, county and city government entities. We directly notified all interested parties known to us. We continually updated the mailing list to include all parties who had expressed interest in the rulemaking or had requested to be added to the mailing list. Our mailing list currently contains 1,153 separate entities. We believe our notification process fully satisfied the requirements of the Act.

We first contacted the TPWD concerning the status of the ARS by letter dated May 7, 1993. We sent copies of this letter to Andrew Sansom, the Executive Director; Larry McKinney, then Director of the Resource Protection Division, and David Diamond, Coordinator of the Natural Heritage Program. We received a response from David Bowles, Endangered Species Biologist with TPWD. We also contacted the Federal Congressional delegation and the commissioners and judges within the counties encompassing the ARS historic range during the notification process. Subsequent to this initial mailing, we received over 200 requests for additions to the mailing list. Included in these additions were Texas Senator Teel Bivins, Texas Representatives Warren Chisum and David Counts, and the cities of Brownfield, Canadian, Hereford, Plainview, and Slaton, Texas.

Comment: Some respondents were disappointed with the quality of the hearings, and thought we deliberately misled the public. Others believed the hearings were inadequate to obtain full public input on the proposal or that we had deliberately tried to limit the number of individuals who were allowed to comment.

Service Response: We are obligated to hold at least one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). Considering the number of requests received and the geographic distribution of the species, we decided that holding a single public hearing in each State, excluding New Mexico, would be adequate and would not cause undue inconvenience to those wishing to attend. We selected the locations and times of the public hearings to be convenient to most citizens living within the affected area. We reviewed and considered all oral comments presented at the public hearings. In one instance, we had to limit oral comments; however, all persons were allowed to submit written comments,

which receive equal consideration to oral comments.

Comment: Two respondents wanted to know if information in the proposed rule had been peer reviewed.

Service Response: The information used in determining to propose listing the ARS has been peer reviewed (see ''Peer Review'' section).

Comment: One commenter stated that we must prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule.

Service Response: For the reasons set out in the NEPA section of this document, we have determined that the rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The Federal courts have held in *Pacific Legal Foundation* v. *Andrus*, 657 F2d. 829 (6th Circuit 1981) 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.

Comment: One respondent believed we were being pressured to list the ARS in response to pending litigation.

Service Response: We classified the ARS as a category 1 candidate species independent of any litigation, meaning that we had substantial information on biological vulnerability and threats to support a proposal to list the taxon as endangered or threatened. Our decision to propose the ARS for listing was based on the mandates of the Act and not any ''pressures'' from litigants.

Issue 2: Recovery Planning and Implementation

Comment: Many comments were received regarding our recovery planning process. Twenty-four commenters felt that we should not list the species because recovery of the species is too costly and recovery is not guaranteed by listing or through the recovery process or that we should provide details, costs, and recovery goals of the recovery program before proceeding with the listing. Seventeen commenters requested that we involve stakeholders in meetings and in the development of recovery actions. Sixty-six respondents suggested potential recovery actions or focus areas for recovery, or expressed concern regarding implementation of unfavorable recovery actions.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make listing decisions based on ''the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.'' Neither the Act nor implementing regulations allows us to consider the recovery potential or recovery cost for a species in determining whether a species should be listed.

We solicit active participation by the scientific community, local, State, and Federal agencies, Tribal governments, and other interested parties in the development and implementation of recovery plans (59 FR 34270). We agree that local community support and the cooperation of private landowners is essential to fully protect and recover listed species, and we will work closely with stakeholders in the management and recovery of the ARS to ensure that the concerns of local governments, citizens, and others are considered.

Section 4(f) of the Act authorizes us to develop and implement recovery plans for listed species. A recovery plan delineates reasonable actions which are believed to be required to recover and/or protect listed species and may address measures specifically mentioned during the comment period. Recovery plans do not, of themselves, commit personnel or funds nor obligate an agency, entity, or person to implement the various tasks listed in the plan. Once we develop a recovery plan for the ARS, the plan will be available for public review and comment prior to adoption.

Issue 3: Critical Habitat

Comment: We received many comments regarding the designation of critical habitat. Numerous (110) commenters expressed concern regarding the economic implications of critical habitat designation and often stated that such designation would severely limit a number of land and water uses or affect residents' quality of life and economic growth potential. Seventeen commenters requested we involve stakeholders in any economic analysis conducted during identification of critical habitat. Eleven others urged us to designate critical habitat at the same time the species is proposed for listing. A few (3) suggested locations that should or should not be included as critical habitat.

Service Response: We have determined that designation of critical habitat is not prudent (see ''Critical Habitat'' section).

Issue 4: Pecos River Population

Comment: We received a variety of comments relating to the Pecos River population of the ARS. Fifteen commenters questioned the need to eradicate the Pecos River population stating that it is not in direct adverse competition with native fish fauna, it is valuable in restoration efforts, habitat in the Pecos River is optimal for maintaining a thriving population, and the Act requires protection of the ARS and does not authorize eradication of this population. One individual questioned whether the ARS population in the Pecos River was truly an anomaly or if it was actually a natural event. Another respondent stated that the historic range should be expanded to include the Pecos River. Conversely two commenters stated that our description of the Pecos River population was accurate. Twenty respondents believed the Arkansas River Basin population of the ARS should not be listed because the species is abundant, robust, and thriving in the Pecos River of New Mexico and its habitat is stable and optimal for spawning. Two other commenters stated that the Arkansas River basin population should not be listed if recovery of the Pecos bluntnose shiner is more important than conservation of the ARS.

Service Response: In the ''Background'' section of this rule we included a discussion of the Pecos River population of the ARS that addresses most of these comments. As we explained in that section, the Act clearly authorizes us to list distinct population segments of vertebrate species.

The occurrence of the ARS in the Pecos River is not a natural event. Researchers examined fish collections housed at Eastern New Mexico University in Portales and at the University of New Mexico for evidence of any historical occurrence of ARS in the Pecos River. Two collections from near Ft. Sumner in 1977 and 20 collections from the reach extending from near Santa Rosa to the vicinity of McMillan Reservoir between the years 1974 to 1977 did not contain ARS. A collection taken in September of 1978 downstream of Sumner Dam contained 16 specimens. This led Bestgen *et al.* (1989) to conclude that the initial release of ARS into the Pecos River occurred in 1978 and that the Pecos River population is artificial and not within the historic range of the ARS. We concur with this assessment.

The purpose of the Act is to conserve threatened and endangered species and the ecosystems on which they depend. Non-native, introduced populations, while possibly useful in recovery/restoration efforts, are not a viable substitute for species conservation in native ecosystems. We do not believe listing or active conservation of the introduced Pecos River population is appropriate nor is such conservation required by the Act.

We agree that the Pecos River population could serve as a source of individuals for transplantation into suitable, unoccupied, historic habitat. Consequently, we do not currently intend to aggressively pursue eradication of the ARS from the Pecos River. However, we do not intend to manage the Pecos River as a refugium for the ARS. The feasibility of using ARS from the Pecos River in restoration efforts in the Arkansas River basin will be fully evaluated during the recovery process.

Issue 5: Ecological and Economic Value of the ARS

Comment: Several (21) commenters questioned the economic or ecological value of the ARS, including its use as an indicator of the health of ecosystems, its benefit to society, its value for medicinal purposes, its importance in comparison with other species, and its importance in comparison to the economic benefits of agriculture. Another eight individuals believed the shiner was here to be used as humans deemed necessary.

Service Response: In section 2 of the Act (Findings, Purposes, and Policy), Congress found that numerous species of fish, wildlife, and plants had become extinct, and that other species had become so depleted in numbers that these species were in danger of, or, threatened with, extinction due to a lack of concern for their conservation. Furthermore, Congress found that these species of fish, wildlife and plants are intrinsically valuable to the Nation and its people for reasons of aesthetic, ecological, educational, historical, recreational, and scientific value (section 2(a)(3)). These findings are the basis of the Endangered Species Act, the purpose of which is to conserve threatened and endangered species and the ecosystems on which they depend. To that end, the Act requires the Department of Interior to maintain a list of endangered and threatened species.

The Act requires that listing decisions be based on the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. Although a variety of opinions likely exist as to a particular species' contribution to society, this issue is not among the five factors upon which a listing determination is based. While we cannot consider the intrinsic value of species when making a listing determination under the Act, we believe that protecting these species has a positive effect on society. Society, like the ARS, depends upon reliable supplies of clean water. Conserving water resources will help to provide a necessary resource for future generations of people and maintain a healthy aquatic ecosystem for fish and wildlife.

Comment: Eighteen commenters stated that extinction of the ARS is a natural, evolutionary process and we should not interfere with the process of natural selection.

Service Response: We concur that extinction and the dynamic processes of natural selection, fitness, and evolution are natural, ecological phenomena. Numerous natural, including catastrophic, events over geologic time have resulted in the extinction of many species. However, evolutionary changes rarely occur at rates comparable to those induced by human environmental alteration. Congress clearly recognized human-caused increases in the rate of species extinctions and passed the Act in an attempt to decrease the rate at which human-caused extinction occurs.

Issue 6: Threats

Comment: Forty-six commenters were concerned that corporate swine farms pose a threat to the ARS due to their high usage of surface and ground water which could reduce streamflows in the affected rivers. These same commenters were concerned that waste application from confined swine, poultry, and dairy operations has the potential to contaminate surface and groundwater, constituting a threat to the ARS. Conversely, one commenter stated that we have no information to indicate that commercial livestock operations have impacted the ARS.

Service Response: We concur that water use and waste application or a spill from waste holding facilities represents a potential threat to ARS. Since 1990, the number of swine in Oklahoma has increased from 200,000 to 1.7 million animals, making Oklahoma the eighth largest pork producer in the Nation (''State Legislators Expecting Vote on Hog Farm Bill,'' Mick Hinton, *The Daily Oklahoman*, Oklahoma City, February 11, 1998). The Oklahoma panhandle contains almost one-half of these animals. However, we have no data documenting the effects of concentrated livestock operations on water quality or quality specifically relating to the ARS.

Comment: Four respondents suggested that salt cedar (*Tamarix* sp.), Russian olive (*Eleagnus angustifolia*), mesquite (*Prosopis* sp.), and other phreatophytes (i.e., deep rooted plants that obtain water from the water table or the zone just above it) have invaded river basins and use water, causing streamflows to decline.

Service Response: We agree that various species of phreatophytes have invaded stream channels within the western regions of the Arkansas River basin and that they have the potential to use large quantities of water when growth is extensive. Stinnett *et al.* (1988) documented the effects of vegetation encroachment within the Canadian River (see factor A in ''Summary of Factors Affecting the Species'' section).

Comment: One respondent stated that when the Eastern New Mexico Water Supply Project is completed in the year 2000 (or later), diversions from Ute Reservoir would occur, reducing the frequency and amount of water released from Ute Reservoir.

Service Response: The Bureau has preliminarily evaluated the feasibility of minimum streamflow releases (2 cubic feet per second (cfs)) downstream of Ute Reservoir as a component of the Eastern New Mexico Water Supply Project. Such releases would likely preclude dewatering of the Canadian River below Ute Reservoir, provided the State of New Mexico does not appropriate all of the remaining unappropriated water in the Canadian River downstream of Ute Dam. We will work with the Bureau pursuant to section 7 to ensure that the needs of the ARS are adequately addressed by this project.

Comment: Twenty-five commenters were concerned that we considered agricultural conservation practices a threat to the ARS and would discourage practices such as planting of shelterbelts, conservation farming (e.g., no-till planting and conservation reserve program grass plantings), and construction of terraces, waterways, stockwater ponds, and watershed dams. Many included specific information relating to these practices. Another 13 specifically were concerned about the effect of listing on flood control reservoirs.

Service Response: All of the conservation practices mentioned in this comment, although very effective at reducing run-off, are specifically designed to minimize soil erosion and control sedimentation. Without these practices in place, increased siltation would likely occur in rivers and streams of the Arkansas River basin. Construction of terraces, shelterbelts, grassed waterways, and other vegetative planting for conservation are not likely to significantly impact streamflows and habitat or threaten the survival of the ARS.

The effects of construction of stock ponds and flood water retention structures and other small dams on tributary streams are likely to have a

much different effect on streamflows. The primary goal of most small watershed projects is to provide drainage and relief from flooding in rural areas. Channelization (e.g. channel modification or ''improvement'') is often used to provide drainage and flood relief, while watershed dams and levees primarily provide flood relief. The effects of these activities are discussed in the ''Summary of Factors Affecting the Species'' section.

The Natural Resource Conservation Service (NRCS) Small Watershed Project program is subject to the provisions of section 7 of the Act and any planned projects must first be examined for impacts to listed species before construction may proceed. Private actions, such as construction of a farm pond, would generally be exempt from the regulatory provisions of the Act unless the actions involve Federal funds or Federal authorization, or if the action would result in take of ARS. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. A private party could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to otherwise lawful activities.

Comment: Two commenters expressed concern that we considered open-range grazing a threat to the ARS due to water quality concerns. Two other commenters implied that white-tailed deer have access to streamside zones, have abundant populations, and would cause similar impacts on riparian zones as do domestic livestock.

Service Response: We believe well-managed livestock grazing is compatible with viable ARS populations and that certain types of grazing in riparian zones likely have minimal impacts on the ARS. In fact, low to moderate grazing and seasonal or rotational grazing practices are compatible with many natural resource objectives. However, negative effects of overgrazing remain a concern (see ''Summary of Factors Affecting the Species'' section).

Although white-tailed deer typically inhabit lowland and riparian areas in the Central and Southern Plains (Menzel 1984), the overall impacts of deer and other native ungulates on riparian zones are less than that of livestock. Livestock do not forage, herd, or move in the same manner as native ungulates. Deer do not tend to concentrate in large numbers and do not remain in riparian areas for long periods of time as do cattle. Deer typically do not trample vegetation and streambanks to the same extent as cattle. Where cattle have access to streamside zones, they generally reduce the suitability of the riparian zone for deer, either by consumption of forage or by trampling vegetation (Menzel 1984). Restriction of livestock grazing is one of the principal management tools used for white-tailed deer on public lands. Additionally, the dietary preferences of deer and livestock generally do not overlap to a significant extent. Deer are opportunistic feeders, consuming a wide variety of plant species (Jackson (1961) as cited in Menzel (1984)), and cattle forage almost exclusively on grasses and forbs. Consequently, we do not believe that deer exert the same influence on the riparian zone as do cattle and do not consider use of riparian zones by deer to be a threat to ARS.

Comment: Two individuals were concerned that the Federal government, through construction of reservoirs and support of soil and water conservation practices, was responsible for the decline of the ARS. Three other respondents stated that agriculture was singled out as a threat, even though Federal reservoirs were known to have an impact on ARS.

Service Response: We acknowledge that some Federal actions are, in part, responsible for the threats facing the Arkansas River basin population of the ARS. As a result of listing, those ongoing Federal actions will be subject to consultation under section 7 of the Act.

We did not intentionally single out agriculture as the primary threat to survival of the ARS. We believe a number of threats collectively imperil the ARS, and no single threat likely poses a sufficient threat to the ARS to justify listing. When making a listing determination, we assess the potential impact of all threats, including agriculture, to the species. Although agricultural activities can impact the ARS in various ways, we do not believe agriculture is the primary threat to the ARS.

Comment: Two commenters stated that overcollection for scientific purposes, particularly during spawning periods, is a threat.

Service Response: We have no information indicating that collecting for scientific or educational purposes poses a significant threat to the ARS. However, take by private and institutional collectors could pose a threat, if left unregulated. With the exception of the States of Texas and Arkansas, the ARS is listed as an endangered or threatened species by States within its historical range and take is prohibited without a valid State collecting permit. Such provisions should minimize the threat of overcollecting for scientific or educational purposes. Federal protection of the ARS also will help to reduce illegal and inappropriate take.

Arkansas River shiners are thought to spawn communally (Cross *et al.* 1985) but are not known to make basin-wide migrations to a few traditional spawning areas where large numbers of individuals would be susceptible to a single collection event. Additionally, ARS may spawn several times during the course of the spawning season and even widespread scientific collecting during this period would not likely eliminate the entire reproductive effort for the year.

Comment: Numerous (115) commenters stated that irrigation and groundwater pumping are not a threat to the ARS because water levels have stabilized, primarily due to conservation and more efficient irrigation systems, and the effect on streamflow, where it occurs, is limited. Similarly, 58 commenters stated that we have no evidence to support the assumption that irrigation and pumping from the High Plains (Ogallala) aquifer has diminished flow in the Canadian River or has affected habitat conditions for the ARS. Two commenters stated that we have new information regarding the influence of groundwater on flows in the Canadian River basin. Six others stated that springflow is not reliable or has not been affected by groundwater pumping.

Service Response: We agree that water conservation efforts have had a significant effect on reducing the amount of water used. These efforts have reduced the rate of depletion of the High Plains aquifer in Texas. However, groundwater depletion continues within the Central Regional Subdivision of the High Plains aquifer. Although certain underground water conservation districts have recently shown stabilized groundwater levels within their districts or have shown that average depletions over the past several years have been reduced to less than 10 centimeters (cm) (4 in), these statistics are not indicative of the entire western region of the Arkansas River basin. Dugan and Sharpe (1996) state that water level declines in the Central High Plains subregion from 1980 to 1994 were the largest, both in area and magnitude of decline, of any in the entire High Plains. A nearly continuous area including much of southwestern Kansas, portions of the Oklahoma Panhandle, and much of the northern Panhandle of Texas has shown a decline of more than 3 meters (m) (10 feet (ft))(see factor A in ''Summary of Factors Affecting the Species'' section).

Regarding the influence of water level declines on streamflow, specific, regionwide data are lacking. We concur

that groundwater pumping has likely had a minimal effect on streamflow in the Canadian River upstream of Lake Meredith. We evaluated new information provided during the public comment period and concluded that pumping has reduced spring flow but the overall effect on flow in the Canadian River between Ute Reservoir and Lake Meredith has been relatively minor. This new information has been incorporated into this rule (see factor A in ''Summary of Factors Affecting the Species'' section).

Information on the contribution of springs to flow in the Canadian River below Lake Meredith and the effects of groundwater pumping on this springflow is generally unavailable. However, we believe that, based on the predevelopment discharge from the aquifer within the Arkansas River basin (Luckey and Becker 1998), continuing groundwater depletion will affect streamflow in the Arkansas River basin.

Comment: Seven commenters stated that, based on the rate at which water moves through the High Plains aquifer, the aquifer would not contribute to streamflow. Similarly, one respondent stated that water level contour maps of the aquifer show that water only moves toward the river within the area described as the ''breaks.''

Service Response: The rate at which water moves through the aquifer has no bearing on the contribution of the aquifer to streamflow. The aquifer is an underground body of water that resembles a ''reservoir;'' the water bearing strata are a mixture of gravel and sands. A withdrawal from one end of the ''reservoir'' affects water levels in the entire reservoir. Water within the aquifer exists in balance with the rate of recharge, that is, natural discharge to streams equals recharge, at least under predevelopment conditions. Pumping from the aquifer essentially represents an artificial discharge from the aquifer. When this artificial discharge exceeds recharge, natural discharges must decline accordingly.

Comment: Five commenters stated that the Canadian River was below the elevation of the High Plains aquifer and thus not connected.

Service Response: We partly agree with this comment. The Canadian River has cut below the elevation of the Ogallala formation upstream of the Hutchinson-Roberts County line in Texas (Dugan and Sharpe 1996). Downstream of this point the Canadian River is confined within the sediments of the Ogallala formation (see factor A in ''Summary of factors Affecting the Species'' section).

Comment: One respondent stated that the threat analysis is incorrect because very little surface water is diverted from the Canadian River in Texas.

Service Response: We agree that very little diversion of stream surface water occurs in the Canadian River of Texas. However, surface water is diverted from Lake Meredith via the Canadian River Project. Diversion of surface water also occurs within other Arkansas River tributaries. Our threat analysis includes threats occurring in other portions of the Arkansas River basin, not just those in Texas.

Comment: Seven commenters expressed opposing views concerning the influence of predation on the ARS. Four individuals stated that predation is a threat and three commenters did not believe that existing information suggested that predation was a threat.

Service Response: Studies on the impact of disease or predation upon the ARS have not been conducted and the significance of these threats is unknown. While neither disease nor predation are thought to be a significant threat to a healthy ARS population, they could, in certain localized areas, occur more frequently or have a more significant impact and hinder recovery of the ARS. This threat is addressed in more detail under factor C in the ''Summary of Factors Affecting the Species'' section.

Comment: One commenter stated that illegal dumping of oil field brines in the 1960s caused fish kills, and fish populations never recovered. Two commenters stated that a major threat to the ARS and other aquatic species was water quality degradation. Two others stated that we have no information that any chemical has been introduced into ARS habitat. One commenter stated that changes in turbidity and salinity were not threats to the ARS.

Service Response: Dumping of oil field brines was suspected to have partially accounted for the decline of the ARS from the North Canadian River in the vicinity of Oklahoma City, Oklahoma (Pigg *et al.* 1997a). Nutrient enrichment from municipal waste water effluent, particularly in the North Canadian River, also may have contributed to degradation of water quality. Pigg *et al.* (1992) stated that 64 municipal sewage treatment plants, 34 industries, and 2 electric power plants discharge into the North Canadian River. Matthews and Gelwick (1990) examined fish communities within a highly urbanized reach of the North Canadian River in Oklahoma City that received concentrated feedlot runoff and secondary treated sewage effluent. Dumping of construction materials and a smaller secondary sewage source occurred at a site approximately 30 river-km (18 river-mi) downstream of that site. Although ARS were not collected during that study, fish communities in these reaches did not appear to be significantly depressed by urbanization (Matthews and Gelwick 1990).

Advancements in waste water treatment facilities and reductions in other sources of pollution have occurred since passage of the Clean Water Act in 1972. Species which are less tolerant of degraded conditions would generally not occur in stream reaches affected by urbanization. Where water quality degradation has dramatically altered ARS habitat, we would agree that such events have played a role in the decline of this species. However, we have very little specific information documenting the effects of poor water quality on ARS and cannot conclude that these types of pollution are a significant factor contributing to the decline of the ARS. The effects of changes in turbidity or salinity on the ARS are unknown.

Comment: Three commenters stated that drought is the main threat to the ARS and is responsible for its decline; twelve others stated that minnows inhabiting plains streams are adapted to withstand a variety of harsh conditions, such as dewatered and drought conditions, and lack of streamflow is not a threat.

Service Response: Arkansas River shiners evolved under natural cycles of flooding and drought, and are adapted to a wide variety of physical and chemical conditions. Fish populations in such systems tend to be cyclic in nature, responding to such natural factors as weather events, disease, and predation. Natural events, however, including long-term drought or extreme rainfall, have less of a negative effect overall on a species when that species is widely and continuously distributed. Where populations are small, fragmented, or isolated by various human-related factors, they are more vulnerable to extirpation by naturally occurring or random events and cumulative effects.

Construction of mainstream dams hinder natural expansion and contraction of populations, preventing fish from recolonizing dewatered reaches when flows return. This may have contributed to the extirpation of aggregations of the ARS. Drought also accentuates the effect of human-caused events (Matthews 1998), such as overallocation of streamflows and overdraft of groundwater resources. Stream dewatering combined with long-term drought could result in permanent

elimination of ARS from a large part of the Arkansas River drainage. Although the species as a whole has persisted to date, we do not believe remaining populations are secure. Considering the species' ability to withstand harsh conditions within prairie streams, the fact that this species has disappeared from over 80 percent of its historical range suggests that the effects of natural events are exacerbated by human influences.

Comment: Two commenters thought introductions of non-native species was a primary reason for the disappearance of the ARS. Five individuals stated that introductions of Red River shiner did not affect aggregations of ARS because the species had already declined and the Red River shiner simply replaced the ARS. Two others stated that reduced flows or drought, not introductions of non-native fishes, was the primary threat. Six commenters stated that introductions of Red River shiners only affected a small portion of the historical range and thus are not a primary threat to remaining populations.

Service Response: The introduction of the Red River shiner represents a potentially serious threat to the ARS; however, we do not believe introductions of the Red River shiner have had a detrimental effect on any ARS aggregations other than those in the Cimarron River. The primary threat to ARS aggregations is streamflow alterations due to reservoir construction and water withdrawals (see ''Summary of Factors Affecting the Species'' section).

Comment: Seven respondents stated that the ARS is not likely to be affected by commercial bait harvest. One commenter stated that using ARS as fish bait should be illegal.

Service Response: We agree that abundance of the ARS is not likely to be seriously impacted by commercial harvest of bait fish. The ARS is not a highly prized bait fish, and it is not selectively harvested as bait. Arkansas River shiners may occasionally be captured incidental to capture of other commercial bait fishes (see factor B in ''Summary of Factors Affecting the Species'' section). The ARS is already listed as threatened or endangered in the States of Kansas, New Mexico, and Oklahoma, and collection is prohibited without a valid permit. The greatest potential threat to the ARS from commercial bait operations is the possible accidental release of non-indigenous fishes into the Arkansas River basin.

Comment: Twenty-two commenters requested clarification or documentation that reservoirs and impoundments were a threat to the ARS. Four of these individuals stated that construction and operation of John Martin Reservoir in Colorado had affected streamflow within the Arkansas River in Kansas. Conversely, one individual stated that the threat from John Martin Reservoir is speculative and inconclusive. One individual stated that construction of Medford Dam was a threat. Another stated that construction of Forgan Reservoir on the Cimarron River was no longer a threat. Four individuals stated that reservoirs were beneficial and that we should consider these benefits in the analysis. Two others stated that our assessment of the impacts of dams was inconsistent. One individual asked if we had considered the effects of releases from Keystone Reservoir on ARS spawning requirements. Conversely, one individual stated that flood pulses still occur below dams and reproduction should still occur. Five individuals stated that damming has diminished habitat but the effects are short-term and the river will stabilize allowing populations to persist. Another individual stated that streamflows following impoundment have stabilized and are not going to decline. One individual stated that Lake Meredith was the primary threat.

Service Response: Cross *et al.* (1985) stated that irrigation diversions and flow regulation by John Martin Reservoir led to declines in several species of fish in western Kansas, including ARS. They found that the initial effect of impoundment by John Martin Reservoir was a moderation of flow extremes (e.g., reduction peak flows and increase in minimum flows) between 1943 and 1965. After 1965, streamflow generally ceased after July and did not resume until January or February. Although these declining streamflow conditions cannot be entirely attributed to John Martin Reservoir, this reservoir definitely contributed to flow alterations in the western portion of the Arkansas River.

We could not verify the existence of a Medford Dam and cannot address this comment.

In its Northwest Oklahoma Water Supply Study (Bureau 1991), the Bureau proposed the construction of Forgan Reservoir, to be located near the Kansas-Oklahoma State line on the Cimarron River. This reservoir would impound about 8 km (5 mi) of the Cimarron River. Although this reservoir has not been authorized, and planning has been deferred, we consider this reservoir a potential threat to the ARS.

We disagree that reservoirs have had a beneficial effect on the ARS. Reservoirs function as barriers, significantly inhibiting dispersal and interchange between populations. Reservoirs also have inundated, dewatered, or otherwise directly altered considerable sections of riverine habitat once inhabited by ARS (see factor A in ''Summary of Factors Affecting the Species'' section). It is possible that, under certain conditions, fragmentation of ARS habitat by reservoirs could help reduce the probability that a release of Red River shiners would impact all ARS aggregations within a river basin. However, such protection is minimal considering the popularity of recreational fishing in the basin and the lack of specific regulations prohibiting bait-bucket releases of non-native fishes. We believe that the known adverse effects of reservoirs far outweigh any such potential small benefit.

We have not evaluated the implications of releases from Keystone Dam on ARS reproduction. The specific spawning requirements of ARS are not yet known. However, we suspect that these releases are not compatible with ARS spawning requirements and that these flow modifications are largely responsible for the decline of ARS below the reservoir. We anticipate that once reproductive requirements are known, we will initiate discussions with the Tulsa District of the Army Corps of Engineers (Corps) to evaluate whether releases from the reservoir could be modified to benefit ARS.

We agree that flood pulses necessary to support reproduction by ARS still occur below some impoundments. Reproducing populations of ARS persist downstream of Lake Meredith and Ute Reservoir; however, neither of these impoundments provide regular downstream releases. Runoff and tributary inflow during precipitation events within these river segments provide stage rises sufficient to induce spawning in these populations. In the eastern regions of the Arkansas River basin, reservoir releases often cause streamflows to fluctuate on a daily basis which is not conducive to spawning by ARS.

Flow fluctuations caused by releases from reservoirs tend to attenuate or dampen with distance downstream of the dam. Thus, at some point, the effects of such releases on the aquatic community would be minor and reproduction could occur. However, in the absence of sufficient river length or without modification of existing releases, regulated flows rarely mimic those which occurred prior to impoundment. Under these conditions, reproduction will not occur, and populations will not likely persist.

We agree that Lake Meredith has exerted the greatest influence over ARS aggregations in Texas. However, Lake Meredith is not the primary threat to ARS. The decline of the ARS is due to a variety of factors, many of which act synergistically. The cumulative and synergistic effects of all of the identified threats are responsible for the present and threatened destruction of ARS habitat and its diminished range.

Comment: One respondent stated that minimal alterations of the flow regime did not directly cause the ARS to diminish in range and abundance, and thus are of little consequence.

Service Response: We agree that very minor alterations in streamflow are not likely to be a significant threat to the ARS. However, the commenter did not state what constitutes minimal streamflow alterations. As discussed under factor A of the ''Summary of Factors Affecting the Species'' section, certain alterations of the natural flow regime are detrimental to the ARS.

Comment: One commenter stated that a present threat must be demonstrated and asked to what extent reservoirs now impact or threaten the ARS.

Service Response: The Act requires us to consider ''the present or threatened destruction'' of a species' habitat or range. The lack of streamflow downstream of a reservoir would qualify as a present, ongoing threat because if streamflows were restored, downstream populations could recolonize those areas that are presently unsuitable. For example, if releases were made from Lake Meredith, these flows, under certain conditions, could be beneficial and allow shiner aggregations which exist downstream to recolonize the entire reach of the river. Withholding these releases prevents this from occurring and is a present, ongoing threat to ARS habitat downstream of the reservoir, particularly in Texas. Similarly, where reservoir releases have modified ARS habitat such that these reaches can no longer be inhabited, the present, ongoing operation of these reservoirs prevents ARS from recolonizing these stream reaches.

Comment: One individual commented that the decline of the ARS is due to channelization of the Cimarron River below Tulsa for navigation.

Service Response: We suspect this commenter mistakenly referred to the Cimarron River instead of the Arkansas River. The Cimarron River has not been modified to support navigation. We agree that modification of the Arkansas River for navigation eliminated habitat for the ARS (see ''Summary of Factors Affecting the Species'' section).

Issue 7: Sufficiency of Information

Comment: Eighty commenters questioned why we were listing the ARS, either rangewide or within the State of Texas. Few of these commenters provided substantive new information relevant to making risk assessments or assessing the status of the species. Forty-six commenters stated that the proposed rule contained inadequate, incomplete, inaccurate, or unclear information concerning the need to list the ARS. Three commenters stated that the listing is premature and that the need for listing has not been fully researched. Two others believed that the listing should be postponed until more information outlining why the species continues to survive in the Canadian River has been obtained. One individual felt that the listing should be delayed until more studies have been completed on habitat requirements. Eighteen individuals requested that we provide life history information on the species or conduct additional studies.

Service Response: Section 4(b)(1)(A) of the Act requires us to make listing determinations on the basis of the best scientific and commercial data available. Although we consider historical habitat loss and rates of decline, we also consider many other factors, including current rates of decline, potential and imminent threats, number and status of populations, and amount and quality of remaining habitat. We use historical habitat loss and rates of decline to ascertain whether a species is undergoing a precipitous or gradual decline. Reduced abundance, loss of habitat, and extirpation of ARS aggregations from a variety of causes have been documented. This information shows that the range of the ARS in the Arkansas River basin has been reduced by over 80 percent.

In preparing both the proposed and final rules on this listing, we have used information received from a variety of sources including museum collections, knowledgeable biologists, groundwater hydrologists, and studies specifically directed at gathering information on the distribution and threats to the ARS. This rule summarizes all of the available information on the status of and threats to the ARS.

We have incorporated in this rule all substantive new data, including an investigation of ARS habitat requirements, obtained since the species was first proposed for listing in 1994. This new information caused us to reassess our analysis of the nature and immediacy of threats affecting the species. Specific justification for listing the species is summarized in factors A through E in the ''Summary of Factors Affecting the Species'' section.

We have summarized all of the available life history information in this rule. We agree that many aspects of the biology of this species are unknown and need further study. This is true for most species of fishes, including common species that have been studied extensively. However, we are not required to address all of the biological and ecological requirements of the species in order to list it. In fact, delaying listing in order to complete a large, long-term biological or ecological research effort could seriously compromise the survival of the Arkansas River basin population of the ARS.

Comment: Four commenters were concerned that we had not used all of the available information in preparing the proposed rule; specifically status information from the TPWD and the Bureau, collections of commercial bait dealers, and groundwater depletion records from underground water conservation districts in Texas.

Service Response: We examined data from the TPWD (Lewis and Dalquist 1955 and Eric Altena, *in litt.* 1993) and the Bureau (Eugene Hinds, *in litt.* 1984) but did not specifically cite them in the proposed rule. We used harvest data from the commercial minnow dealers, to the extent possible. However, this information is not always reliable (see factor B in ''Summary of Factors Affecting the Species'' section). We used information available from the U.S. Geological Survey (USGS) to document groundwater depletion in the High Plains aquifer. During the comment period, we received additional information on groundwater depletion from several underground water conservation districts. We also obtained additional information from the USGS. We have incorporated all of the information from these sources into this final rule.

Comment: One individual stated that there is currently more water in the Canadian River than there was before the reservoir was constructed.

Service Response: This commenter did not specify which portion of the Canadian River, above or below Lake Meredith, now has more water. An analysis of streamflow records for the period of record up to 1963 (USGS 1963) above Lake Meredith, shows that average annual discharge was 12.4 cubic meters per second (cubic m/s) (439 cfs) as measured at the gage north of Amarillo. This measurement included some regulation by Conchas Reservoir, but was prior to construction of Ute Reservoir. Analysis of flows in the

Canadian River, as measured at Logan, New Mexico in 1961 (USGS 1961) shows that flows averaged 11.1 cubic m/s (392 cfs) prior to construction of Conchas Reservoir and 7.6 cubic m/s (270 cfs) after construction. The average annual discharge at Amarillo for the period of record up to 1996 has been reduced to 8.1 cubic m/s (286 cfs).

Streamflow records up to 1996, as measured at Canadian, Texas, approximately 121 river-km (75 river-mi) downstream of Lake Meredith, show that the average annual discharge was 15.5 cubic m/s (549 cfs) before Lake Meredith was built and 2.4 cubic m/s (83.7 cfs) after the reservoir was built. Flow in both reaches of the river may now be perennial, due to seepage from Ute and Sanford dams, but there is not more water in the river now compared to years prior to construction of Lake Meredith.

Comment: One individual stated that the proposed rule was incorrect because water quality improves rather than declines as the river flows from Ute Reservoir to Lake Meredith.

Service Response: We recognize that water quality for human consumptive purposes improves as the river flows into Lake Meredith because salinity concentrations are diluted by tributary inflows. The existing salinity levels in this section of the Canadian River do not appear to have an adverse effect on ARS populations. However, the proposed rule actually referred to water quality within the entire Canadian River in Texas, not just the segment upstream of Lake Meredith (see factor A in ''Summary of factors Affecting the Species'' section).

Comment: Five commenters stated that additional surveys should be conducted because one survey was not sufficient. Similarly, three individuals stated that a complete census of the ARS should be conducted.

Service Response: We did not rely on one survey to document the status of the ARS in the Arkansas River basin. We used data from the TPWD, Bureau, University of New Mexico, Oklahoma State University, University of Kansas, University of Oklahoma, University of Michigan, Westark Community College, and the Oklahoma Department of Environmental Quality in assessing the current status of the ARS.

Complete census data for fishes are extremely difficult, if not impossible, to obtain with non-lethal survey techniques. Use of lethal techniques are not appropriate for surveys of rare species. Additionally, even lethal techniques, such as fish toxicants, are not 100 percent accurate. We often must rely on data collected from numerous sites, often by several individuals, over several years. The protocols used in these surveys and in analyzing the data are generally accepted by the scientific community as appropriate for sampling fish populations (Nielsen and Johnson 1983, Schreck and Moyle 1990).

Comment: Seventeen commenters stated that a one-time introduction of Red River shiners would not constitute a catastrophic event sufficient to cause extirpation of the entire Arkansas River basin population of the ARS. One other individual stated that the rangewide loss of an annual reproductive cycle is remote.

Service Response: Lake Meredith is an effective artificial barrier to movement of stream fishes and potentially could provide a small degree of protection to ARS aggregations upstream of Lake Meredith from introductions of non-native fishes which might occur downstream of the reservoir. However, aggregations of ARS upstream of Lake Meredith are much less numerous than those in the remainder of the Canadian River and the risk of extinction for the entire Arkansas River basin population would increase if Red River shiners became established downstream of Lake Meredith. We have reassessed the vulnerability of the Arkansas River basin population of the ARS to a single, catastrophic event and no longer consider the entire population susceptible to extinction from a single, catastrophic event at this time. However, as the range and abundance of ARS continue to decline, the vulnerability of the ARS to catastrophic events and the likelihood that a catastrophic event would lead to extinction of the species increases.

Comment: Thirteen individuals stated that existing Federal and State laws and regulatory mechanisms are adequate to protect the ARS.

Service Response: Although certain laws and regulations provide some water quality and quantity benefits, they do not alleviate all of the identified threats to the ARS. Flow modification below Federal dams is ongoing and prevents ARS from recovering. Irrigation withdrawals have dewatered the Beaver River in the Oklahoma Panhandle, as well as considerable sections of the Arkansas River in Kansas. Existing regulations did not prevent these events from occurring. Existing regulations also were ineffective in preventing the introduction of non-native fishes into the Cimarron River. With the exception of the State of Kansas, none of the States protect ARS habitat. The State of Texas does not list the ARS as threatened or endangered and provides no special protection. We believe that existing regulatory mechanisms do not currently provide adequate protection for the ARS. Additional discussion of existing regulations can be found under factor D of the ''Summary of Factors Affecting The Species'' section.

Comment: Nineteen commenters believed we did not adequately demonstrate that the threats identified in the proposed rule were actually affecting ARS aggregations in the Arkansas River basin. One commenter stated that ongoing activities within the river basin were not likely to change in the foreseeable future.

Service Response: For the reasons explained in this rule, sufficient, ongoing threats exist for us to justify listing the Arkansas River basin population of the ARS. Although specific studies documenting the influence of a particular threat on the ARS may not have been conducted, sufficient information exists to demonstrate that ARS are vulnerable to the identified threats. We have presented ample evidence for a reasonable person to conclude that a definite cause and effect relationship exists. Under section 4 (b)(1) of the Act, we must make listing decisions based on the best scientific and commercial data available. We have met these requirements in this listing decision.

Comment: Nine respondents questioned the influence of the reproductive characteristics of the ARS during the threat assessment. One individual stated that southernmost populations of the ARS may spawn repeatedly, giving them an advantage over those populations in the northern portion of the range. Two individuals wanted to know how much water was necessary to ensure spawning by ARS. Another individual stated that the ARS should persist because the species is very fecund. One individual requested we explain how stream channelization affects spawning of the ARS. Two individuals stated that data do not demonstrate that flood pulses are needed to induce spawning. Two individuals stated that reproduction is not restricted to only Age-I fish.

Service Response: There is no information in the scientific literature which even speculates that reproductive potential varies among those ARS aggregations in the Arkansas River and those from the Canadian River.

We do not know what specific flow regimes are necessary to trigger spawning in the ARS. As previously discussed, the Act does not require us to address all of the biological and ecological requirements of the species in order to list it.

Cross *et al.* (1985) stated that female ARS develop 1,500 to 3,500 eggs of uniform size. Carlander (1969) reported the number of ova for several species of minnows in the genus *Cyprinella* and *Notropis.* The number of eggs varied from 98–2,600 per individual. Although several of these species have reproductive strategies which differ from ARS, the values presented do not indicate that the ARS is significantly more fecund than other species of minnows. Regardless of their fecundity, ARS were unable to maintain populations in several Arkansas River basin rivers and streams. Fecundity of ARS is not sufficient to maintain robust populations where adequate water to support populations no longer exists.

Stream channelization affects fish populations indirectly by altering the structural, physical, and chemical characteristics of the stream (Simpson *et al.* 1982). Direct impacts include injury or mortality during the actual construction of the channel. The specific spawning requirements of ARS are unknown, and we cannot specifically describe the influence of channelization on reproduction of ARS. Based on known impacts of channelization, we can predict, with a fairly high degree of accuracy, how ARS reproduction could be affected. The preferred habitat, including presumed microhabitat for spawning, of the ARS is found in wide, relatively shallow, sandy bottomed rivers and larger streams. Channelization would eliminate this preferred habitat. Shallow water habitat would then exist in minute quantities and would be restricted to nearshore areas. Production of microscopic plant material by photosynthesis would be limited to the shallow near shore zones. Consequently, productivity of the stream would decline. Channelization also would reduce or eliminate invertebrates and other food resources needed to ensure successful reproduction and survival of the larvae.

Channelization also alters the morphology of the channel by creating fairly uniform steep sided channels, eliminating habitat diversity. Alteration of the channel morphology also would alter water velocities, which would in turn affect hatching of the fertilized eggs, assuming any would be produced. If ARS prefer to spawn in shallow waters, channelization would reduce the amount of habitat available for spawning. All of these alterations that occur as a result of channelization would likely seriously reduce the number of young fish that would be produced, leading to overall declines in the number of adult fish in the affected stream reach.

All of the information published prior to 1997 concluded that flood pulses were the primary environmental cue that triggered the onset of spawning by ARS. None of these studies, however, documented how much of a rise in river stage was necessary to induce spawning. We still lack specific data to determine how much of a flood pulse is needed to induce spawning. Recent studies (Polivka and Matthews 1997, Bonner et al. 1997), have failed to show that reproduction in ARS is entirely dependent upon these flood pulses. Flows, however, are important to maintaining habitat conditions within the stream channel and for hatching of the eggs once a spawn occurs. We believe streamflow is a crucial component of suitable ARS habitat even though large flood pulses may not be required to induce spawning.

The proposed rule did not state that reproduction was entirely restricted to Age-I individuals. Age-I individuals, however, do provide most of the annual reproductive effort. The loss of a single year class would significantly reduce the chances of survival of the ARS because the Age-I year class is so important to the success of each year's reproductive effort (see factor E in ''Summary of Factors Affecting the Species'' section).

Issue 8: Conservation Agreement

Comment: Eight respondents urged us to consummate a conservation agreement or seek local attempts to conserve the species without the need to list. Seven commenters encouraged us to follow a voluntary approach to conservation as fostered in the draft Memorandum of Understanding submitted to us by the TPWD and the ODWC.

Service Response: Candidate conservation agreements are formal agreements between us and one or more parties (i.e., land owners, land managers, or State fish and wildlife agencies) to address the conservation needs of proposed or candidate species. The participants take on the responsibility of developing the agreement, and voluntarily commit to implementing specific actions that will remove or reduce threats. This can contribute to stabilizing or restoring the species, thereby precluding or removing the need to list.

In order to remove the need for listing the ARS, a significant number of candidate conservation agreements would have to be developed and implemented throughout the four-State range of the Arkansas River Basin population. We met with representatives of the Arkansas Game and Fish Commission, Kansas Department of Wildlife and Parks (KDWP), New Mexico Department of Game and Fish (NMDGF), ODWC, and TPWD in March of 1997 to discuss the merits and feasibility of developing a conservation agreement. Unfortunately, not all States could commit to such an agreement due to fiscal and personnel constraints. However, listing of the species does not preclude the future development of habitat conservation plans or other conservation agreements with private individuals or agencies.

Because the ARS occurs primarily on private property, we fully realize that recovery of this species will depend upon local support and the voluntary cooperation of private landowners, and we welcome them as cooperators in the recovery effort. We will work to provide technical assistance to those property owners and land managers who wish to implement conservation measures for this species.

Issue 9: Abundance and Range

Comment: Numerous (249) commenters stated that the ARS is abundant in Texas and populations are stable and that, therefore, listing is not warranted. In addition, the TPWD does not believe that the ARS should be listed in Texas and is opposed to the listing.

Service Response: A considerable amount of variation can occur in samples of fish community structure between sites, years, and sampling effort, that makes trends difficult to determine. However, data collected by various researchers (e.g., TPWD, Oklahoma State University, Bureau, and Texas Tech University) between 1953 and 1998 from identical, readily identified locations (e.g., major highway crossings) document trends in ARS abundance in Texas. In Hemphill County, the numbers of ARS collected between 1954 and 1990 declined by 67 percent. In Hutchinson County, the number of ARS collected declined by 99 percent over this same time period. Upstream of Lake Meredith, in Potter and Oldham counties, collection records document similar declines at one of two sites. At the U.S. Highway 87/287 crossing north of Amarillo, Texas, the numbers of ARS collected have declined by 46 percent. However, in Oldham County, at the U.S. Highway 385 crossing near Tascosa, Texas, the numbers of ARS collected have increased by about 38 percent.

An analysis of the amount of occupied habitat demonstrates that the range of the ARS also has been reduced

in Texas. Historically, the Arkansas River shiner occupied 370 km (230.0 mi) of the Canadian River in Texas. At present, the ARS occupies 265 river-km (164.5 river-mi). This represents a loss of 28.5 percent of the historically occupied habitat in Texas.

As discussed previously, our policy on delineating distinct vertebrate population segments requires that those segments be both discrete and significant. We do not believe that the ARS in Texas is discrete from the remainder of the Arkansas River basin population. Thus, although the ARS in Texas may have declined less precipitously than in other areas of the species' range (see factor A in ''Summary of Factors Affecting the Species'' section), we cannot consider the ARS in Texas separately from the entire Arkansas River basin population.

Comment: Three commenters stated that the historical range of the ARS did not include Morton, Stevens, or Grant counties, Kansas. Two individuals stated that, based on the journals from travelers using the Sante Fe Trail, water sufficient to support shiners was not available in the Cimarron River of western Kansas.

Service Response: Morton, Grant, and Stevens counties, Kansas are within the historical range of the species. The ARS was first collected from the Cimarron River, near Kenton, Oklahoma. This section of the Cimarron River is upstream of the section that flows through Morton, Stevens, and Grant counties. Hubbs and Ortenburger (1929) state that ''hundreds of paratypes'' were collected from several sites in Oklahoma and at Kinsley, Kansas. The species likely occurred throughout the Cimarron River in 1926. In 1955, the species was collected from the Cimarron River south of Ulysses, Grant County, Kansas (William H. Busby, *in litt.* 1990). There are also two records from the Cimarron National Grassland (Morton County), one in 1962 and one in 1987 (William H. Busby, *in litt.* 1990). Records from the Cimarron River in Kansas also exist for Clark, Meade, and Seward counties.

We suspect that the Santa Fe Trail crossed the Cimarron River where crossing was most convenient and easiest. People using the trail likely did not choose to cross at sites supporting ''abundant'' water.

Comment: Two commenters stated that we have inadequate evidence to show that any populations of the ARS occur in Kansas.

Service Response: We believe that ARS may indeed have been extirpated from Kansas (see ''Background'' section). However, habitat within the Cimarron River in Meade County, Kansas appears suitable. This segment of the Cimarron River is not separated from that portion of the Cimarron River in Oklahoma where other individuals have been collected since 1989. The extreme rarity of this species in the Cimarron River makes it highly unlikely that infrequent collection efforts from one or two sites would locate this species. Consequently, we believe the ARS could still exist in very reduced numbers in the Cimarron River near the Kansas-Oklahoma State line.

Comment: Several commenters disagreed with our assessment of the historical and current range of the ARS. Three individuals stated that the ARS had not disappeared from 80 percent of its historical range. Another individual stated that the occurrence of the ARS in Arkansas was an anomaly due either to a flood or a misidentification. Similarly, one individual thought we had exaggerated the historical range in western Kansas and eastern Oklahoma. Another three individuals stated that we reported the ARS to be historically abundant and widespread without providing sufficient data to support this position. Two other individuals stated that we provided no data to document the change in abundance alluded to in the proposed rule. Six commenters stated that the Arkansas River has been permanently modified by the navigation system and should not be included as historical range for the species. Three commenters stated that the Beaver/North Canadian River should be excluded from the current range of the shiner. One commenter stated that many small tributaries of the Arkansas River and its larger tributaries incorrectly appear to be included as historical range of the ARS.

Service Response: The distribution and abundance of ARS were determined from collections of fish throughout the Arkansas River basin since the late 1880s. The collection record establishes that this fish occurred abundantly throughout most of the Arkansas River basin with the exception of Colorado. A compilation of the museum records for the ARS is contained in Larson *et al.* (1991). These records, however, generally only contain a percentage of the number of individuals collected because ichthyologists do not always retain and catalog every individual captured. Where possible, individuals captured in excess of those needed for vouchers are released unharmed at the site of capture. Some of the larger vouchers include 533 specimens from the Canadian River below Conchas Reservoir in New Mexico; 827 specimens from the Canadian River near Norman, Oklahoma; 1,182 specimens from the Salt Fork of the Arkansas River in Oklahoma; 1,068 from the Cimarron River near Cleo Springs, Oklahoma; and 2,122 specimens from the North Canadian River near Woodward Oklahoma. At least 21 other voucher collections containing in excess of 200 individuals from over 15 different sites also exist in several museums.

It is important to note that the ARS no longer occurs in the Canadian River below Conchas Reservoir, the entire Salt Fork of the Arkansas River, and the entire North Canadian River and is almost extirpated from the Cimarron River. We believe that these data accurately document that the species was historically widespread and abundant throughout most of the Arkansas River basin and adequately document the decline in range and abundance of the ARS. Based on the amount of currently occupied habitat compared with the amount of historically occupied habitat, either in number of stream miles inhabited or percent of the drainage basin occupied, we believe the 80 percent figure is accurate.

The records from the eastern and western fringes of the species' range are both documented by voucher specimens deposited in natural history museums. We have no information indicating that the identification or capture locations of any of these fish are in doubt.

Arkansas was likely the eastern periphery of the range for the ARS. The individuals collected from the mouth of Piney Creek were deposited as voucher specimens in the University of Michigan, Museum of Zoology (catalog number 128394) and are available for inspection. In addition, Robison and Buchanan (1988) consider the ARS a valid member of the fish community of Arkansas.

The range of the ARS in western Kansas extended at least as far west as Holcomb, Finney County, Kansas based on collection of 41 individuals in 1952. At that time, Cross *et al.* (1985) believed the species inhabited the full length of the Arkansas River in Kansas. There are no records from Colorado, thus the Arkansas River west of Garden City to the Kansas State line was likely the western periphery of the range of ARS.

Although the Arkansas River in extreme eastern Oklahoma and western Arkansas was not likely optimal habitat for the ARS, this reach is established historic range of the ARS. Records for the ARS exist for this section of the Arkansas River prior to construction of the McClellan-Kerr Arkansas River Navigation System and impoundment by Keystone and Kaw reservoirs (Larson *et al.* 1991). We agree that the ARS

likely no longer occurs in the Beaver/North Canadian River.

Some smaller tributaries supported populations of the ARS, at least temporarily, based on verified collection records (Larson *et al.* 1991). These tributaries, while not likely essential habitat for the ARS, are a vital component of the entire watershed and are indirectly important to the survival of the ARS. These tributaries contribute streamflow, sediments and other important habitat constituents; influence water quality; and supply nutrients to the larger tributaries and river mainstems. These inputs are necessary to sustain the ecological integrity of the entire Arkansas River basin.

Comment: One respondent stated that journals of the early explorers reported the western region of the Arkansas River basin to be devoid of water long before the arrival of irrigation on the plains, thus irrigation could not have affected habitat for the ARS.

Service Response: Historically, the western region of the Arkansas river basin did not have an abundant supply of surface water. Average annual precipitation in this region varies from 40–61 cm (16–24 in) and pan evaporation during the growing season varies from 25–38 cm (10–15 in) (Johnson and Duchon 1995). Various periods of drought, generally lasting from 3–5 years each, also have occurred (Johnson and Duchon 1995). Despite these harsh conditions, ARS occurred at a number of sites in the western basin as early as 1926, which is prior to extensive irrigation development (see ''Background'' section). The general lack of water reported by these explorers does not disagree with information in this rule and does not indicate that ARS or their habitat were non-existent in this region prior to extensive irrigation development.

Comment: Thirteen respondents stated that the ARS is abundant in the Canadian River, Revuelto Creek, Palo Duro Creek, and throughout its range.

Service Response: Data available to us, as presented in this rule, document that the ARS has decreased in abundance and has been completely eliminated from over 80 percent of its historical range. The number of fish collected, an indication of the abundance of the species, has declined at numerous sites within the Canadian River (Larson *et al.* 1991).

In the Canadian River, habitat upstream of Ute Reservoir and downstream of Lake Meredith and Eufaula Reservoir has been eliminated or degraded to the point that this habitat no longer supports the ARS. Habitat throughout the entire length of the Arkansas River in Kansas, Oklahoma, and western Arkansas has been destroyed or degraded to the point that the ARS no longer occurs. Likewise habitat in the North Canadian River, Salt Fork of the Arkansas River, and many of the smaller tributaries, including Palo Duro Creek, no longer supports ARS. The introduction of the Red River shiner, in combination with habitat loss and degradation has severely depleted the ARS in the Cimarron River.

Comment: Two commenters stated that records on the periphery of the ARS historical range could be due to bait bucket introductions.

Service Response: These records could be due to bait bucket introduction. However, we believe this is very unlikely. Considering the size of the human population in western Oklahoma and Kansas, the wide-spread distribution of the species, and the general lack of access to the technology necessary for transporting minnows over long distances, we do not believe populations in the Arkansas River were established by bait bucket introductions.

Comment: Two individuals stated that the ARS is thriving in ponds and lakes (e.g., Optima Reservoir) in Oklahoma.

Service Response: All of the existing life history information indicates that the ARS is an obligate riverine species. Flowing water is necessary to keep the eggs suspended in the water column until hatching and the larvae become free-swimming. The few collection records from reservoirs were obtained following a flood event, immediately post-impoundment, or under similar circumstances. A persistent, self-perpetuating reservoir population has never been documented.

Issue 10: Socioeconomic Impacts

Comment: Numerous (325) commenters stated that listing and the regulations which follow will have a devastating effect on the economy of the region. Conversely, two commenters stated that society will benefit when habitat for threatened and endangered species is protected. One other commenter stated that Federal listing of the interior least tern (*Sterna antillarum*) has not affected landowners economically. Fifty commenters requested that we prepare an in-depth regional economic impact study describing how listing will affect present and future economic growth and metropolitan development. Forty-eight others believed that listing places the needs of animals over the needs of the people.

Service Response: Under section 4(b)(1)(A) of the Act, we must base listing decisions solely on the basis of biological information using the best scientific and commercial data available without considering possible economic or other impacts. Because we are specifically precluded from considering economic effects, either positive or negative, in a final decision on a proposed listing, we did not evaluate or consider the economic effects of listing this species.

While economic effects, private property rights, and related concerns cannot be considered in listing decisions, we intend to work closely with affected parties throughout the Arkansas River basin to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the ARS. By **Federal Register** notice on July 1, 1994 (59 FR 34272), the Secretaries of the Interior and Commerce set forth an interagency policy to minimize social and economic impacts consistent with timely recovery of listed species. We will strive to balance any recovery actions for the ARS with social and economic concerns.

Comment: Three commenters stated that the High Plains aquifer exists to be exploited for man's benefit. Another respondent stated that once water supplies in the Texas Panhandle are gone, they cannot be easily replaced. Similarly, one respondent stated that one of the Texas underground water conservation districts is involved in developing and implementing an aquifer management plan.

Service Response: Listing will not preclude a landowner's ability to utilize water which exists on or under his property, unless such use would result in take of ARS pursuant to section 9 of the Act. A description of activities we believe would and would not likely violate section 9 is presented in the ''Available Conservation Measures'' section.

If a landowner proposes to withdraw groundwater to an extent that taking of ARS would likely occur, the landowner could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to otherwise lawful activities. We recognize the importance of the aquifer to the citizens of the region but also realize the importance of the aquifer to streamflow within the basin. We believe that a region-wide focus on conservation will ensure that the aquifer can meet the needs of people and the ARS simultaneously. Even at reduced pumping rates, the supply of water within the aquifer is not unlimited. Many citizens realize this

and are diligently striving to conserve this resource. We support such efforts.

Comment: Eleven commenters wanted to know how listing and section 7 of the Act would affect Federal agencies. One commenter was concerned that the section 7 process would increase the costs of and delay affected projects. Seventeen commenters stated that listing the shiner would impact several existing or proposed water development projects in the Arkansas River Basin either by requiring downstream releases or eliminating the ability to control floodwaters. Similarly, seven commenters stated that any change in operation of the upstream Federal reservoirs, which are operated to maximize benefits to the McClellan-Kerr Arkansas River Navigation System, would have a negative impact on navigation either by altering the uses, benefits, and reliability of the navigation system or impacting operation and maintenance of the system. Three commenters stated that listing will extend the regulations of the Act to private land and impact all Federal funds spent in the region.

Service Response: Any action funded, carried out, or authorized by a Federal agency that may affect a listed species would be subject to the section 7 consultation process. The implications of the consultation process on the various agencies would vary according to the nature of the project. If a project was determined to adversely affect a listed species, the action agency would initiate formal consultation with us. We would then prepare a biological opinion, pursuant to 50 CFR 402.14 (h) and (i). If incidental take of a listed species was involved, we would provide mandatory terms and conditions and recommended reasonable and prudent measures in an incidental take statement to minimize take and its effects. Under sections 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered taking within the bounds of the Act, provided that such taking is in compliance with an incidental take statement in a biological opinion.

If we determined that a project would jeopardize the continued existence of a listed species, we would seek to develop reasonable and prudent alternatives to avoid jeopardy. Such reasonable and prudent alternatives might require project modifications. Implementation of reasonable and prudent alternatives and terms and conditions are not discretionary. Discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat would be provided as conservation recommendations in the biological opinion.

We are required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for formal consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Meetings with us, preparation of documents, and implementation of any reasonable and prudent alternatives or measures identified in the biological opinion may result in some additional project costs.

Large water development projects virtually always involve a Federal agency through funding, permitting, or other action. Therefore, future construction and ongoing operation of reservoirs will be evaluated for impacts to the ARS, and, where impacts occur, these actions would undergo consultation under section 7 of the Act. If feasible, modifications to these projects will be sought to ensure that the ecosystems upon which this species depends are conserved. However, if no adverse impacts would occur, or if the affected habitat is unoccupied and unsuitable, such as in the McClellan-Kerr Navigation System, further consultation under section 7 would be unlikely.

Private actions, such as construction of a private residence, would be exempt from the regulatory provisions of section 7, unless Federal funds were expended or Federal authorization was required. However, private actions that would result in the taking of an ARS are not exempt. In the latter case, a private party could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to an otherwise lawful activity.

Comment: Seven commenters stated that listing would affect recreational activities (fishing and trail rides) on the Canadian River, at the Lake Meredith National Recreation Area, and at Conchas and Ute reservoirs.

Service Response: We believe that normal, lawfully authorized recreational activities such as hiking, trail rides, camping, boating, hunting, and fishing, do not result in take of the ARS and would not be prohibited under section 9 of the Act (see ''Available Conservation Measures'' section). These activities do not generally impact or destroy the physical habitat for the ARS. However, recreational vehicle use within the river bed to the extent that habitat for the ARS is adversely impacted could be a violation of section 9.

The Lake Meredith National Recreation Area is managed by the National Park Service. Consequently, the National Park Service has an obligation under section 7 of the Act to evaluate its activities for possible effects on listed species. Similarly, if a Federal agency funds, authorizes, or carries out a recreation program at Ute or Conchas Reservoir, that agency has an obligation to evaluate its activities for possible effects on listed species. We do not anticipate that recreational activities at the Lake Meredith National Recreation Area, Ute Reservoir, or Conchas Reservoir will be altered as a result of these evaluations.

Comment: Eighty-four commenters contended that the listing of the ARS will result in control of, or ''taking'' of private property (e.g., grazing and water rights), in clear violation of their rights within the Fifth, Tenth, and Fourteenth Amendments to the U.S. Constitution. Similarly, 25 others concluded that property would be taken without compensation or that listing would impact ability to generate income. Conversely, one individual stated that Federal listing of a fish, the leopard darter (*Percina pantherina*), in southeastern Oklahoma did not result in the loss of private land rights.

Service Response: Listing under the Act does not imply that private land would be confiscated or taken without just compensation, and the Act itself does not authorize ''takings'' of private lands. Many of the provisions of the Act apply only to Federal agencies and Federal lands. However, section 9 of the Act prohibits taking of a listed species, including the ARS, regardless of land ownership. Recovery planning for the species may include recommendations for land acquisition or easements involving private landowners. These efforts would only be undertaken with the cooperation of the landowner. In the vast majority of cases, listing of a species does not preclude private landowners from using their land as they always have.

We do not anticipate significant land use restrictions, impacts to local economies, or to the well-being of citizens. The listing of the Arkansas River Basin population of the ARS does not, in itself, restrict groundwater pumping or water diversions, does not in any way limit or usurp water rights, and does not violate State or Federal water law. Through section 7 consultations, extraction or use of water that is funded, carried out, or authorized by Federal agencies that might adversely affect the ARS could be modified through reasonable and prudent measures or alternatives in a biological

opinion, as discussed previously. However, compliance with section 7 or other provisions of the Act has never resulted in the wrongful taking of property.

Comment: Numerous (105) respondents expressed concern that listing would either reduce land and property values or diminish or eliminate a property owner's equity. Two other commenters specifically stated that listing will depress property values as shown in the Texas A&M University Real Estate Center's study on the Edwards Aquifer.

Service Response: The Act and regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make listing decisions based on the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determinations. However, we do not anticipate that listing would result in reduced land and property values or other significant impacts to the economy. The results of one study, conducted by the Massachusetts Institute of Technology (Meyer 1995), show that endangered species listings have not depressed State economic development activity as measured by growth in construction employment and gross State product. Continuing depletion of the High Plains Aquifer and related reduction in the region's water supply is likely to be an equally important factor determining future land and property values in the Region.

Comment: Twelve individuals expressed concern regarding the implications of section 9 of the Act and either urged us to follow the interpretation of the ''Sweet Home'' decision or expressed concern that actions causing habitat alterations would constitute take under section 9.

Service Response: The Sweet Home decision (*Sweet Home Chapter of Communities for a Great Oregon* v. *Babbitt*, 17 F.3d 1463) found the harm regulation at 50 CFR 17.3 invalid because our definition of harm exceeded our statutory authority and was not a reasonable interpretation of the statute. The definition of harm at 50 CFR 17.3 includes ''. . . significant habitat modification or degradation. . . .'' In this decision, the court found that harm does not include habitat modification. However, on June 29, 1995, the Supreme Court upheld our definition of harm to include habitat modification. The prohibition against take of listed species applies to Federal and non-Federal lands without respect to whether critical habitat has been designated. In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34272), we have identified those activities that would or would not constitute a violation of section 9 of the Act (see ''Available Conservation Measures'' section).

Comment: Twenty-two commenters believed we intend to restrict grazing in riparian zones to reduce damage by livestock.

Service Response: We consider livestock grazing to be one of many contributing factors affecting water quality within the Arkansas River basin. However, we do not envision recommending widespread fencing of riparian zones as a means of reducing water quality degradation within the basin. Excluding livestock from riparian zones is just one means of preserving water quality. Best grazing management practices, such as low to moderate grazing and seasonal or rotational grazing, are compatible with many natural resource objectives and likely do not adversely modify the riparian zone.

Comment: Two respondents stated that we would hamper activities of the commercial minnow industry in order to protect the ARS.

Service Response: We anticipate that listing of the ARS would only have minimal effects on the activities of the commercial minnow industry. At present, take of ARS in Kansas, New Mexico, and Oklahoma without a valid permit is already prohibited by State law. Federal listing will only increase the penalties for unauthorized take. Considering the ARS is not sought by the commercial minnow industry, any take that occurs is incidental to capture of other bait species and will likely be minor. Collectors could minimize take of ARS by using nets having a larger mesh size. We will work with the States and the commercial minnow industry to reduce the threat to ARS from recreational use of bait fish. We expect that any required changes in bait fish collection practices would be minor.

Comment: Eight commenters were concerned that, in order to increase streamflows, we would mandate which soil and water conservation practices could be applied on local farms and ranches.

Service Response: The U.S. Department of Agriculture (USDA) has already developed a list of approved soil and water conservation practices. Under section 7 of the Act, we would consult with the USDA to determine which practices are likely to result in impacts to the ARS. Considering the number of practices that are available, we do not believe that listing of the ARS would significantly affect the soil and water conservation options for local farms and ranches. We have already determined that certain conservation practices, such as terracing, would not likely result in take of ARS (see ''Available Conservation Measures'' section).

Comment: Ten commenters believed that listing would impact the Bureau's Lake Meredith Salinity Control Project. Seven commenters stated that this project is not a threat and would not impact the ARS.

Service Response: We expect the effects of the Lake Meredith Salinity Control Project on the ARS will be minimal. Consequently, conservation of the ARS will have little influence over the anticipated construction and operation of this project (see factor a in ''Summary of Factors Affecting the Species'' section).

Comment: Five commenters were concerned about the effect of the listing on operation of Lake Meredith.

Service Response: In 1968, the Bureau turned operation and maintenance of the reservoir over to the Canadian River Municipal Water Authority (CRMWA). However, until the cost of the reservoir has been repayed to the Federal government, operation of the reservoir is still considered a Federal action. Arkansas River shiners are not known to inhabit Lake Meredith. Arkansas River shiners prefer riverine environments; if they occur in the reservoir, they would only occur in the upper reaches of the reservoir on a temporary basis. Existing literature on spawning requirements of the ARS do not indicate that the species could complete its entire life cycle within the confines of the reservoir. Consequently, we do not anticipate any impacts to reservoir operation.

Scheduled, downstream releases from Lake Meredith have not occurred since the reservoir was constructed. Water releases could occur at three points, the spillway, control gates, and river outlet works. Water levels in the reservoir have never reached the elevation of the spillway. Releases could still occur from one of the other two points as long as the water surface elevation was above 868.6 m (2850 ft). Although lack of releases from Lake Meredith has had a significant effect on ARS habitat below the reservoir, we do not believe releases from Lake Meredith would provide any significant, long-term benefit to the ARS. The Canadian River floodplain below Lake Meredith has been invaded by salt cedar, mesquite, and other perennial woody vegetation such that a single, one-time release would not likely result in significant improvements in habitat for the ARS. This vegetation would likely consume a considerable portion of the released water and prevent restoration to a wider,

unvegetated floodplain unless the density of the vegetation was reduced or vegetation was removed prior to release. Likewise, we do not believe sufficient precipitation occurs in this area to support sufficient releases, either in duration or frequency, to improve downstream aquatic habitat permanently.

During the recovery process, we intend to investigate the potential for improving habitat below Lake Meredith with the Bureau, CRMWA, and TPWD. If releases from Lake Meredith ever occur, we will work with responsible entities to ensure that ARS benefit to the extent possible.

Comment: Thirty-seven commenters stated that listing would affect municipal water systems. Two others were concerned about the consequences of listing on municipal storm water drainage systems and waste water treatment facilities.

Service Response: Unless a city's water supply system, storm water drainage system, or waste water treatment facility is funded, carried out, or authorized by a Federal agency, these projects would not be subject to the requirements of section 7 (see other comment response under this issue for further discussion of the section 7 consultation process). If these projects result in take of ARS, the provisions of section 9 would apply. As stated in the ''Available Conservation Measures'' section, existing discharges into waters supporting the species that are carried out in accordance with existing regulations and permit requirements generally would not constitute a taking of ARS.

The States, with assistance from and oversight by the U.S. Environmental Protection Agency (EPA), set water quality standards that are presumably protective of aquatic life, including the ARS. If new information indicates that current water quality criteria are insufficient to prevent the likelihood of jeopardy to the ARS, new standards may be needed. In this instance, the EPA would consult with us under section 7 of the Act to determine appropriate standards. However, we believe that no significant increase in regulatory burden regarding waste water discharge permits would result from listing of the ARS.

Comment: Nineteen respondents wanted to know what impact this listing would have on the use of agricultural chemicals. Another was concerned that listing would hinder ability to obtain section 18 exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Service Response: The EPA, during its pesticide registration process, consults with us to determine if a pesticide will likely jeopardize the continued existence of any federally listed species. If we determine that the application of the chemical is likely to jeopardize a species, we provide reasonable and prudent chemical application alternatives, if any, that would avoid the likelihood of jeopardy. These alternatives generally consist of some type of application restriction to protect the species (e.g., prohibit pesticide application within a prescribed distance from an inhabited stream reach). Thus, it is possible that we could require restrictions on the use of a pesticide to avoid jeopardizing the ARS.

Although there may be some added restrictions to pesticide use as a result of this listing, we believe that the resulting impacts to pesticide users will be minimal. We have already assessed the stream reaches inhabited by the ARS that are populated with previously listed species (interior least tern and bald eagle (*Haliaeetus leucocephalus*)). Additionally, some pesticides reviewed for registration are not believed to be harmful to fishes and no restrictions are applied. If we find a pesticide to be harmful to a species, pesticide users can sometimes use other unrestricted, alternative chemicals to control the same pest.

Comment: Fifteen commenters stated that listing the ARS would have the same implications for the High Plains aquifer as listing did for the Edwards Aquifer.

Service Response: We do not expect the implications to be the same because the two situations differ. The High Plains aquifer is not a porous limestone, karst aquifer, as is the Edwards Aquifer. Recharge in the southern portions of the High Plains Aquifer is no more than 2.5 cm (1 in) annually (Opie 1993). Although discharge from the High Plains Aquifer is important to streamflow in the western portions of the Arkansas River basin (Luckey and Becker 1998), the ARS is not an obligate spring inhabitant. Several of the listed species occurring in the Edwards Aquifer Region are entirely dependent on spring discharge for habitat maintenance or actually reside underground within the aquifer.

Comment: Numerous (280) commenters stated that listing or designation of critical habitat would result in the Federal government regulating or restricting the use of surface/stream water and groundwater within the Arkansas River basin. Similarly, one respondent stated that although pumping from the aquifer may one day cease to be economically feasible, the free enterprise system must determine when this occurs, not a fish or the Federal government.

Service Response: The listing of the ARS does not, in itself, restrict groundwater pumping or stream water diversions, does not in any way limit or usurp water rights, and does not violate State or Federal water law. Likewise, we have no authority to regulate surface water or groundwater. However, groundwater pumping or a surface water withdrawal that would dewater a stream or reduce base flows to the point that a take of ARS occurred would be a violation of section 9 of the Act.

We believe that groundwater pumping at existing rates does not pose an immediate threat to remaining ARS aggregations in the Canadian River in Texas and Oklahoma, but that withdrawals at existing rates will eventually deplete the aquifer to the point that streamflows will be reduced and ARS will be affected. Because withdrawals of groundwater and surface water at current rates have already reduced streamflows in other areas of the ARS historic range in western Oklahoma and Kansas, northern Texas, and eastern New Mexico, continued withdrawals at current rates will further diminish streamflow and make habitat more unsuitable for ARS. In the currently occupied range of the ARS, withdrawals will likely cause adverse effects in the foreseeable future unless mitigating actions are implemented. In the long term, groundwater withdrawals must be reduced to the point that they do not exceed recharge, or ARS habitat in the western reaches of the Arkansas River basin will ultimately be lost. A recent report by the USGS (Luckey and Becker 1998) demonstrates the predevelopment influence of the High Plains aquifer on streamflows in the western reaches of the Arkansas River basin. However, we recognize that groundwater pumping is not entirely responsible for reduced streamflows and the demise of the ARS in the Arkansas River basin.

We intend to fully address the implications of groundwater withdrawals and diversions of surface water during the recovery process. Generally, we will support and encourage the States in their efforts to increase irrigation efficiency and improve conservation of groundwater sources in the High Plains. Groundwater management districts in the Texas High Plains have aggressively encouraged implementation of water-saving technologies that have minimized annual depletion. For example, low head, low pressure sprinkler (LEPA) systems have largely replaced high

pressure sprinkler systems in the Texas High Plains.

Some other States do not have underground water conservation districts or similar groups that encourage water conservation to the same extent. Unfortunately, conversion to LEPA systems in other States has not been as widespread. Flood irrigation and high pressure center pivot and side roll systems are still often used in western Oklahoma and Kansas. Conservation of the High Plains aquifer, and the resulting benefits to streamflow within the Arkansas River basin, will not occur without the participation of other States. We believe voluntary conservation of the groundwater resource will be more effective in recovery efforts for the ARS than restricting or otherwise regulating withdrawals.

Comment: Two commenters stated that groundwater withdrawals in the extreme southern portion of the High Plains aquifer do not influence groundwater levels or streamflows in the Canadian River basin and that we mislead the public with these statements.

Service Response: We agree that this portion of the High Plains aquifer appears to have little influence, if any, over groundwater levels or streamflows within the Canadian River basin in Texas.

Comment: Four commenters stated that listing might impose additional cuts on oil and gas development, causing imports of foreign oil to rise.

Service Response: The listing of the ARS will not, in itself, restrict oil and gas development. However, if such development is funded, authorized, or carried out by a Federal agency, that agency has an obligation to evaluate it's activities for possible effects on listed species. If such activities may adversely affect the ARS, then some conservation actions may be necessary. Use of water from the High Plains aquifer for secondary oil recovery is not likely to be restricted as a result of this listing. We believe voluntary conservation of the groundwater resource will be more effective in recovery efforts for the ARS than restricting or otherwise regulating withdrawals.

Peer Review

We routinely solicit comments from parties interested in, and knowledgeable of, taxa which have been proposed for listing as threatened or endangered species. On May 7, 1993, we mailed a summary of the available status information on the ARS to 72 Federal and State agencies, organizations, and knowledgeable individuals, including 10 university scientists familiar with the status of fishes in the Arkansas River basin. We solicited their comments on life history, threats, and the need to propose this species under the Act. We received 13 responses.

Of the 13 respondents, the National Park Service, the Corps' Tulsa District, Kansas Water Office, and a fishery scientist from Texas Tech University provided no new information. The Bureau submitted information on the Lake Meredith Salinity Control Project. The TPWD submitted known collection records and stated that the last recorded observation in Texas was from 1954. Two acknowledged scientific authorities and one research assistant from Oklahoma State University responded that the status and threats we presented were accurate and supported listing. A highly respected fisheries ecologist from the University of Oklahoma commented that periodic scientific collecting would not harm the species and stated that modification of streamflow was the primary threat. A biologist employed by the State of Oklahoma, who has annually surveyed fish communities throughout the State since 1976, submitted information relative to the status of the species. Two of our offices, one in Kansas and one in New Mexico, also provided status information. Our New Mexico Ecological Services Field Office concurred that listing of the Pecos River population of the ARS was not appropriate. The most extensive comments were submitted by the New Mexico Interstate Stream Commission. They did not express an opinion on the need to list but did provide considerable information on threats to the species. We considered all of the information provided in preparing this rule.

A July 1, 1994, policy on peer review (59 FR 34270) requires us to solicit peer review on our listing proposals from a minimum of three independent peer reviewers. We sent copies of the proposed rule to 20 appropriate and independent specialists who have extensive knowledge or expertise in the life history, taxonomy, and ecology of the ARS. All of these specialists were employed at universities within the States affected by the proposed rule. We received one response which expressed support for the proposed listing and provided additional insight into threats affecting the species. The remaining reviewers did not respond to our request. We also met with USGS staff in Oklahoma to discuss threats affecting this species.

We also requested and/or received comments on the proposed rule from a variety of Federal, State, county, and private individuals, including all parties known to us having expertise regarding the ARS. Additionally, the State fish and game agencies as well as the State water management agencies were requested to comment. The game and fish agencies in the States of Kansas, New Mexico, and Oklahoma supported listing. The TPWD opposed listing the species in Texas. Various State water management agencies and the USGS provided information on threats to the species. We considered all of these comments in preparing this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Arkansas River basin population of the ARS is not in imminent danger of extinction. However, we have determined that this population is likely to become in danger of extinction within the foreseeable future and, therefore, should be listed as a threatened species.

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) 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). These factors and their application to the Arkansas River basin population of the ARS (*Notropis girardi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary threat facing the ARS and its associated habitat is the destruction and modification of habitat by one or more of the following: stream channelization, reservoir construction, streamflow alteration and depletion, and, to a lesser extent, water quality degradation.

Navigation improvements on the Arkansas River by the Corps began in Arkansas in 1832, 4 years before Arkansas adopted statehood (Corps 1989). Initially, constructed projects generally consisted of small improvements, such as clearing and snagging operations, until passage of the River and Harbor Act in 1946 authorized construction of the McClellan-Kerr Arkansas River Navigation System from the Mississippi River upstream to Catoosa, Oklahoma. Project construction began in the 1950s and intensified during the 1960s. Project segments from the Mississippi confluence upstream to Fort Smith, Arkansas were completed by 1969. By 1970, the channel had been extended up

the Arkansas River as far as Muskogee, Oklahoma and was essentially complete. The project included numerous bank stabilization and channel rectification projects, 17 locks and dams (12 in Arkansas), annual channel maintenance, and port facilities. Several of the locks and dams are multipurpose facilities, providing hydropower generation. The Corps maintains a minimum channel depth of 3 m (9 ft) and minimum width of 76 m (250 ft).

Channelization causes a variety of changes in natural stream channels, including altering the channel shape, form, and width, water depth, substrate type, stream gradient, streamflow, water velocity, and the hydroperiod (Simpson *et al.* 1982). Channelization of the Arkansas River has permanently altered and eliminated suitable habitat for the ARS and is largely responsible for the extirpation of the ARS within the State of Arkansas. This channelization has also contributed to the decline of the species in Oklahoma. In the Arkansas River downstream of Muskogee, Oklahoma, ARS were last observed in 1985 (Pigg 1991). Buchanan (1976) failed to collect any ARS specimens from the Arkansas River Navigation System in Arkansas, and fish collections between 1972 and 1988 from the Arkansas River near Fort Smith, Arkansas also failed to produce any ARS specimens (Robison and Buchanan 1988).

Reservoir construction is the most widespread cause of habitat loss for the ARS. Numerous multipurpose impoundments, including three mainstem reservoirs on the Arkansas River (John Martin, Kaw, and Keystone) and four mainstem reservoirs on the Canadian River (Conchas, Ute, Meredith, and Eufaula) have been constructed within the Arkansas River basin. Other large mainstem impoundments also have been constructed within the historical range of the ARS—Optima and Canton reservoirs on the North Canadian River, and Great Salt Plains Reservoir on the Salt Fork of the Arkansas River. All of these impoundments have inundated, dewatered, fragmented, or otherwise directly altered considerable sections of riverine habitat once inhabited by ARS. Arkansas River shiner populations persist only below Ute Reservoir in New Mexico and Lake Meredith in Texas (Bonner *et al.* 1997; Eric Altena, *in litt.* 1993; Larson *et al.* 1991; Pigg 1991).

Inundation following impoundment eliminated ARS spawning habitat, isolated populations, and favored increased abundance of predators both upstream and downstream of these reservoirs. Water releases from impoundments may be infrequent or non-existent in the western portions of the Arkansas River basin causing streams to be dewatered for considerable distances downstream of the reservoir.

In the eastern region of the basin, sufficient water is released to maintain downstream flows. However, these releases generally alter the natural flow regime for considerable distances downstream of the impoundment, establishing a stream environment unlike that which existed under pre-impoundment conditions. Regulation of streamflows has severely modified or eliminated natural cycles of flooding, drought, and sediment transport. Physical changes from these altered flows may include modifications to water velocity, wetted perimeter (amount of streambed exposed to water at any given flow), water depth, streambed and bank erosion, and suspension and re-distribution of bed and bank sediments.

Impoundments also function as barriers, fragmenting populations and habitat into smaller, more isolated units. These fragmented sections are then more likely to be affected by influences from external factors (e.g., localized drought, water withdrawals, permitted and unpermitted wastewater discharges). Once the habitats are isolated, other aggregations of ARS can no longer disperse into them and help maintain or restore populations of ARS there.

In 1952, the ARS was believed to inhabit the entire Arkansas River mainstem in Kansas, but was already suspected to be declining due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985). By 1960, the species had disappeared from the Arkansas River mainstem west of Wichita, Kansas and was absent from the entire Kansas portion of the Arkansas mainstem by 1983 (Cross *et al.* 1985).

Arkansas River shiners were apparently abundant in the Arkansas River near Tulsa, Oklahoma prior to construction of Keystone Reservoir in 1964 (Pigg 1991). Following addition of hydropower at Keystone Dam in 1968, the resultant flow alterations severely depleted ARS populations. The ARS was last observed from the section of the Arkansas River between Keystone Reservoir and Muskogee, Oklahoma, in 1982. Kaw Reservoir, another Arkansas River mainstem impoundment, located upstream of Keystone Reservoir, became operational in 1976. Arkansas River shiners were last observed downstream of Kaw Reservoir in 1986 (Larson *et al.* 1991, Pigg 1991).

On the Canadian River, Eufaula Reservoir, Lake Meredith, Conchas Reservoir, and Ute Reservoir have impacted the ARS. Construction of Conchas Reservoir in 1938 ultimately led to the extirpation of upstream populations. Flows in the Canadian River prior to construction of Conchas Reservoir, as measured at Logan, New Mexico (before Ute Reservoir was completed in 1963), averaged 11.1 cubic m/s (392 cfs). Flows declined to 7.6 cubic m/s (270 cfs) after Conchas Reservoir was built. Flows at Logan declined to 1.1 cubic m/s (38 cfs) after construction of Ute Reservoir.

Prior to completion of Eufaula Reservoir, ARS were abundant in the Canadian River between the proposed dam site and the Arkansas River (Pigg 1991). Arkansas River shiners have not been collected from this reach of the Canadian River since the reservoir became operational in 1964. The disappearance of ARS from the 43-km (27-mi) section of the Canadian River below Eufaula Reservoir has been attributed to rapid water level fluctuations occurring during hydropower generation and altered conditions favoring an abundant predatory fish population (Pigg 1991).

Lake Meredith was constructed by the Bureau in 1965 and conservation storage is presently managed by the CRMWA. Prior to construction of the reservoir, historical streamflow measured at Canadian, Texas, 121 river-km (75 river-mi) below Lake Meredith, averaged 15.5 cubic m/s (549 cfs). Releases from Lake Meredith are now infrequent to non-existent (Williams and Wolman l984) and have considerably altered flows in the Canadian River downstream of the reservoir. Annual discharge at Canadian, Texas now averages only 2.4 cubic m/s (83.7 cfs). Principal sources of water to the Canadian River below Lake Meredith are wastewater discharges, tributary inflows, and groundwater discharges (Buckner *et al.* 1985). Although ARS persist in the Texas portion of the Canadian River some 121 river-km (75 river-mi) downstream of Lake Meredith, remaining populations are small.

Reduced flows downstream of Lake Meredith, and to a lesser extent below Ute Reservoir, have considerably altered the morphology of the Canadian River and have reduced the extent of suitable habitat for ARS. Stinnett *et al.* (1988) examined a 370-km stretch of the Canadian River and associated 72,843 hectares (ha) (179,495 acres (ac)) of floodplain between the western Oklahoma border and the western

Pottawatomie County line near Norman, Oklahoma. Between 1955 and l984, the amount of riverine wetlands (shoreline and open water) had decreased by about 50 percent. Sandbar acreage alone had been reduced by 54 percent. Wetland and associated floodplain changes were principally the result of hydrological modifications due to the influence of Lake Meredith (Stinnett *et al.* 1988). The lack of significant scouring flows permitted the encroachment of vegetation into the channel, reducing channel width by almost 50 percent since 1955. Although ARS persist in the Canadian River downstream of Ute Reservoir and Lake Meredith, the reduction in available habitat has likely suppressed shiner populations in affected reaches. Habitat alterations associated with reduced flows downstream of Lake Meredith are considered to be a significant, ongoing threat to the continued existence of the ARS within the Canadian River.

Surface water withdrawals constitute a small percentage of the total water used within the western sections of the historical range of the ARS, primarily because of the limited number of impoundments and elevated levels of chlorides. However, surface flows in the Cimarron River upstream of Waynoka, Oklahoma are affected by several diversions for irrigation. Within the western portion of the Arkansas River basin, groundwater is an extremely important water source due to limited surface supplies and lack of precipitation during the summer months (Oklahoma Water Resources Board 1997, 1990, 1980; Kansas Water Office and Kansas Division of Water Resources 1992; Texas Water Resources Board 1990; Stoner 1985; Texas Department of Water Resources 1984). For example, withdrawals from western Oklahoma aquifers account for about 80 percent of the State's total groundwater usage (Oklahoma Water Resources Board 1990). Irrigation of croplands in the basin is the dominant use of this water. Withdrawal from the High Plains aquifer and from alluvial and terrace deposits associated with the major river systems in conjunction with diversion of surface water has affected streamflow in several of the major tributaries. Kromm and White (1992) state that streamflow has been dramatically reduced by groundwater withdrawals in western Kansas and has eliminated aquatic ecosystems in many areas of the High Plains.

During the period from 1950 to 1975, water tables receded from 3 m (10 ft) to more than 30 m (100 ft) over much of southwestern Kansas (Cross *et al.* 1985). Between 1955 and 1980, declines in water levels by as much as 31 m (102 ft) have been recorded from the High Plains Aquifer in Oklahoma (Oklahoma Water Resources Board 1980). In 1960, there were about 400 groundwater wells in the Oklahoma panhandle; by 1974, the number of wells had risen to 2,067 (Oklahoma Water Resources Board 1980). By 1988, there were an estimated 3,200 high capacity wells overlying the Ogallala Aquifer in western Oklahoma alone (Oklahoma Water Resources Board 1990).

In Texas, withdrawals of groundwater in the Canadian River Basin were as much as 33 times higher than the annual natural recharge in 1980 and irrigation return flows in the Basin are negligible (Texas Department of Water Resources 1984). From 1980 to 1994, Dugan and Sharpe (1996) documented a nearly continuous area of decline exceeding 3 m (10 ft) in the Central High Plains subregion of the aquifer, including much of southwestern Kansas, portions of the Oklahoma Panhandle, and much of the northern Panhandle of Texas. The water level declines in the Central High Plains subregion were the largest, both in area and magnitude of decline, of any in the entire High Plains aquifer. Even precipitation that averaged about 5 cm (2 in) above normal from 1981–93 in the Central High Plains appeared to have a minimal effect on the large rate of water level decline (Dugan and Sharpe 1996). Portions of this subregion also showed evidence of a long-term decline in the amount of irrigated cropland acreage during this same period.

Streamflow is the largest natural discharge from the aquifer and pumping from the aquifer has caused water level declines and streamflow reductions (Luckey and Becker 1998). The relationships between groundwater pumping and river flow are complicated. Generally, when groundwater is pumped faster than it is restored, water tables drop, channel seepage ceases, and streams dry up. Under these conditions, suitable habitat to support ARS populations is non-existent.

The Canadian River appears to have been affected the least by water withdrawals from the High Plains aquifer primarily because much of the Canadian River in Texas and New Mexico has cut below the water bearing strata and the alluvium has not been significantly tapped as a source of water. Much of the land immediately adjacent to the Canadian River in Texas is rangeland and relatively little groundwater use occurs. Upstream of the Hutchinson-Roberts county line, including Lake Meredith, the Canadian River stream bed is below the elevation of the High Plains aquifer. Induced recharge of the High Plains aquifer by the Canadian River within this segment, caused by a lowering of the water table, is not likely to occur. The primary influence of the High Plains aquifer on streamflow within this reach would be predominantly through spring flow and similar emissions (e.g., natural discharge) where the water table intersects the land surface.

Springs and seeps in the Canadian River basin of Texas issue largely from Ogallala sand, gravel, and caliche, and from Triassic sandstone (e.g. Dockum and Santa Rosa formations), with a few flowing from Permian dolomite (Brune 1981, Peckham and Ashworth 1993). Upstream of Lake Meredith, Brune (1981) identified 57 springs or seeps from Oldham and Potter counties and another 25 from Hutchinson County. In his discussion of the importance of these water bearing formations and the effects of groundwater withdrawal on spring flow, Brune (1981) stated that the water tables in the Ogallala and Dockum aquifers were rapidly being depleted and flow within the associated springs had declined or ceased to flow. However, the contribution of these springs and seeps to flow in the Canadian River upstream of Lake Meredith is relatively minor.

In 1937–38, prior to large scale development of the High Plains aquifer for irrigation, flow contributions from 56 known springs in Oldham and Potter counties were measured (Texas State Board of Water Engineers 1938a, 1938b). Measured flows from these springs totaled between 2 and 4 cfs. Prior to construction of Conchas Reservoir, New Mexico in 1938, 2–4 cfs represented only about 0.5–1 percent of the average annual discharge in the Canadian River, as measured at Logan, New Mexico, and less than one percent at Amarillo (USGS 1961, 1963). Based on this information, the influence of irrigation withdrawals from the High Plains aquifer on streamflows upstream of Lake Meredith appears to be insignificant, particularly compared to flow reductions caused by impoundment of the Canadian River in New Mexico.

Downstream of Lake Meredith, the Canadian River is below the elevation of the High Plains aquifer in Hutchinson County, but is confined within the sediments of the aquifer in Roberts and Hemphill counties (John Ashworth, Texas Water Development Board, *in litt.* 1995). Within Hutchinson County, as within the segment above Lake Meredith, contributions from springflow are the primary influence of the aquifer on streamflow. Unfortunately, we have

been unable to locate comparable historic spring flow information for the reach downstream of Lake Meredith. Brune (1981) provides information on flow from some 62 springs in Hutchinson, Hemphill, and Roberts counties. These springs generally have relatively low flows, with only Spring Lake Springs in Hutchinson County, Texas having a measured flow exceeding 1 cfs (Brune 1981). However, these measurements were taken in 1977 and 1978 after widespread irrigation development had already had its greatest effect on water levels in the High Plain aquifer. Consequently, we cannot determine the influence of groundwater pumping on the observed springflows with the available information. Considering the small contribution of springflow within this segment, we believe a reduction in spring flow is not likely to have had a profound impact on streamflows or habitat for the ARS. Certainly, any impact from a reduction or cessation of flows from these springs and seeps is considerably less significant than the influence of Lake Meredith on existing streamflows.

Downstream of the Hutchinson County segment, however, groundwater moves toward the river where it eventually either discharges as spring flow into the river or seeps into the alluvial deposits (John Ashworth, *in litt.* 1995). The potential for groundwater depletion to affect streamflows is much greater in this segment of the Canadian River. For example, a proposed project adjacent to the Canadian River in Roberts and Hutchinson counties, Texas has the potential to reduce median streamflows over the 50-year life of the project by as much as 25 percent, as measured at Canadian, Texas (Kathy Peters, USGS, *in litt.* 1998). The proposed project would also dewater White Deer Creek, a Canadian River tributary, over much of its length. This project ultimately would involve the pumping of some 1,200 cubic meters (40,000 acre-feet) of groundwater annually (Bureau 1997). Currently, no reliable means of augmenting streamflows in White Deer Creek or the Canadian River have been identified. Occurrences of the ARS in the Canadian River within the project are extremely rare. No ARS were reported from fish collections made by Texas Tech University, Bureau, and us from White Deer Creek or the Canadian River in 1998 (Shirley Shadix, Bureau, *in litt.* 1998). Only three ARS were reported captured by Texas Tech University at Canadian, Texas in 1995 (Gene Wilde, in *lit.* 1997). However, we are currently working with the Bureau and the CRMWA to identify feasible measures which would reduce the impacts of the proposed project.

Continued unmitigated groundwater withdrawal threatens to further reduce or eliminate baseflows in western sections of the Arkansas River basin. Fortunately, improved conservation, more efficient irrigation practices, and improved technology have resulted in less water demand over the last 5 years. However, precipitation and runoff contribute little recharge to the underlying aquifers. In the Canadian River basin in Texas, water demand is projected to decrease only slightly over the next 50 years primarily due to improvements in irrigation efficiency (Texas Water Development Board 1990). In Oklahoma, water use is projected to increase statewide over the next 50 years (Oklahoma Water Resources Board 1997). Municipal and industrial demands are expected to increase by about 30 percent and agricultural demands by 29 percent. Streamflows will continue to diminish despite declining agricultural demand in Texas and basinwide decreases in the amount of water used per irrigated acre.

Depletion of the High Plains aquifer is expected to continue to occur in Kansas, New Mexico, Oklahoma and Texas. When two below-average flow years occur consecutively, a short lived species such as the ARS can be severely affected, if not completely eliminated from portions of the river. Dewatering and reduced base flows, due to groundwater and surface water withdrawals, is considered a significant, ongoing threat to the ARS in southwestern Kansas, northwestern Oklahoma and the Texas panhandle (Larson *et al.* 1991, Cross *et al.* 1985).

The Bureau's Lake Meredith Salinity Control Project is designed to control brine water seeping into the Canadian River downstream of Ute Reservoir from a brine aquifer in New Mexico. The Bureau completed a Final Supplemental Environmental Assessment (EA) for the salinity control project in September 1995 (Bureau 1995). At that time, we were concerned with projected streamflow reductions as a result of the project. However, the Bureau has changed the scope of the salinity control project since they completed the EA and expects these changes to reduce the impacts of the project.

As originally proposed, the salinity control project would have reduced streamflow by 1.4 cfs, with a maximum project potential streamflow reduction of 3.2 cfs. A reduction of 1.4 cfs represents about a 35 percent reduction in the average baseflow of the Canadian River as measured at the downstream end of the project and a 12–14 percent reduction in average base flow as measured at the confluence of Revuelto Creek in New Mexico. The reduced project is now anticipated to reduce flows by only 0.7 cfs, with a maximum potential of 1.4 cfs. This represents an estimated flow reduction of 8–15 percent, with only minimal expectations of ever operating the project above the anticipated pumping rate of 0.7 cfs. Downstream of Revuelto Creek, the effects on streamflow from revised project operation are expected to be no more than 5 percent of average base flow.

In addition, the CRMWA anticipates no additional surface water withdrawals upstream of Lake Meredith, at least in Texas, once the project is operational (J.C. Williams, CRMWA, *in lit.* 1997). The State of New Mexico has expressed an intent to use Canadian River water below Ute Reservoir in conjunction with the Eastern New Mexico Water Supply Project (Bureau 1995). These withdrawals would affect Canadian River streamflows, particularly between Ute Dam and the confluence of Revuelto Creek. However, the future of this project is unclear. A Special Environmental Report prepared by the Bureau (1993) on this project recommends that base flows of the Canadian River below Ute Reservoir be maintained at a minimum of 2 cfs. Such mitigation would preclude dewatering of the Canadian River below Ute Reservoir but would still result in streamflow reductions. Arkansas River shiner populations in this 219-km (136-mi) reach of the Canadian River are isolated from other populations by Ute and Meredith reservoirs. Any additional flow reductions in this reach could severely deplete these populations.

We believe that water quality degradation within the Arkansas River basin can cause localized impacts to ARS populations, particularly in areas with rapidly expanding urban populations. Water quality in the Canadian River in Texas generally declines as the river flows eastward. The Canadian River traverses oil and gas producing areas and receives municipal sewage effluent and manufacturing return flows, all of which degrade existing water quality (Texas Department of Water Resources 1984). Water quality within the Canadian River begins to improve as the river flows through the sparsely populated counties in western Oklahoma. However, several discharges influence water quality in the remainder of the Canadian River. The wastewater treatment facility for the City of Norman is the largest single

discharge into the Canadian River in Oklahoma.

Poor water quality in the North Canadian River near Oklahoma City and in the Arkansas River at Tulsa are also believed to have contributed to localized declines in ARS populations. The North Canadian River from western Oklahoma City downstream to Eufaula Reservoir is considered to be the most nutrient enriched stream in Oklahoma (Pigg *et al.* 1992). The ARS has not been found in this section of the North Canadian River since 1975 (Jimmie Pigg, pers. comm. 1997). In 1997, there were 623 active National Pollution Discharge Elimination System (NPDES) permits in Oklahoma. The majority of these are in the Arkansas River basin.

Some agricultural practices have contributed to water quality degradation in the Arkansas River basin, likely resulting in impacts to ARS aggregations. Agriculture can be a key contributer of nutrients, sediments, chemicals, and other types of non-point source pollutants, primarily due to runoff from range and pastureland and tilled fields. The EPA (1994, 1998) found that agricultural practices were the primary source of water quality impairment in both rivers and lakes and were responsible for the impairment of 72 percent of the stream miles assessed nationwide in 1992 and 25 percent in 1996. The decline in 1996 was largely due to an expansion of the national estimate of total river miles to include nonperennial streams, canals, and ditches, which essentially doubled the total river miles surveyed since 1992 (EPA 1998). Siltation and nutrient pollution were the leading causes of water quality impairment in both studies. Increased nutrients promote eutrophication of aquatic ecosystems, including the growth of bacteria, algae, and nuisance aquatic plants, and lower oxygen levels.

Overgrazing of riparian areas also can affect ARS habitat. Overgrazing in riparian zones is likely to be locally detrimental and is one of the most common causes of riparian and water quality degradation (Kauffman and Krueger 1984). High livestock densities may result in excessive physical disturbances, such as trampling, and changes in water quality. Trampling of pool margins and thinning of vegetation from overgrazing induce changes in the plant community structure, species composition, relative species abundance, and plant density which are often linked to more widespread changes in watershed hydrology. For example, soil compaction may increase pasture runoff, leading to erosion and increased siltation in streams.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We have no evidence that the ARS is being overutilized for commercial, recreational, scientific, or educational purposes. We speculate that the ARS may occasionally be collected for personal use as bait by individual anglers. The States of Kansas, New Mexico, Oklahoma, and Texas allow the harvest of fish for personal use as bait. The introduction of the ARS into the Pecos River, presumably by anglers, provides some evidence that ARS are at least occasionally collected and used as bait. A record also exists for the Red River system in Oklahoma that was presumed to have been a bait bucket release (Cross 1970). However, the rarity of the ARS outside of the Canadian River would indicate that this fish is not likely to occur in the retail trade or to be collected for personal use very frequently.

Larson *et al.* (1991) reported that there is no evidence that the species has been adversely affected by the commercial harvest of bait fish. The reported capture of predominantly large species (plains minnows (*Hybognathus placidus*)) and the continued existence of the ARS in portions of the South Canadian River was the primary evidence used in arriving at this conclusion. Larson *et al.* (1991) suggested that slender-bodied fishes such as ARS would constitute only a small percentage of the commercial harvest, assuming the commercial bait industry used large-mesh seines as the major mode of capture. However, other evidence described below indicates that ARS, while perhaps not a highly sought commercial species, is being affected by the commercial bait industry or is being harvested for personal use as bait.

The greatest potential threat to ARS from incidental collection occurs in the State of Oklahoma. In 1985, the Cimarron and South Canadian rivers produced over 55 percent of the bait fish harvested in Oklahoma, providing over 20,846 kilograms (kg) (45,958 pounds (lbs)) of fish (Peterson 1986). Plains minnow, which may reach total lengths of 127 cm (5 in), was the primary species reported harvested by the commercial minnow dealers. In 1996, the Cimarron and South Canadian rivers produced slightly less than 34 percent of the bait fish harvested in Oklahoma, providing over 17,663 kg (38,941 lbs) of fish (Wallace 1997). River shiners (species unreported) and plains minnows were reported to be the primary species harvested. From 1980–81 to 1996, the percent of the total harvest taken from the South Canadian and Cimarron rivers varied from 67 percent in 1982 (Peterson and Weeks 1983) to 34 percent in 1996 (Wallace 1997). The amount of fish taken varied from over 37,762 kg (83,252 lbs) in 1982 to 17,663 kg (38,941 lbs) in 1996. The lists of species harvested did not include ARS.

The rapid establishment of the ARS in the Pecos River, presumably from the release of bait fish, indicates that a sufficient number of fish were released in a single event to establish a reproducing population. If ARS occur only occasionally in the commercial harvest or are rarely used as bait, several releases over a short period of time would be required to ensure that a large enough population existed to facilitate natural reproduction. In either instance, the evidence indicates that ARS may occasionally occur in commercial catches in fairly large numbers or are occasionally being harvested for bait. The capture of four individuals from the North Canadian River in 1990 also suggests that ARS are occasionally being used as bait fish.

Lists of fish species reported captured by commercial bait dealers are not always accurate and likely fail to report the capture of ARS. Based on the large percentage of golden shiners (*Notemigonus crysoleucas*) reported captured by commercial bait dealers in 1989, Larson *et al.* (1991) believed the lists to be suspect. River shiners are often one of the primary ''species'' reported harvested by commercial bait dealers. However, the river shiner (*Notropis blennius*) has not been recorded from several of the rivers where commercial minnows are harvested (Miller and Robison 1973). Larson *et al.* (1991), in their survey for ARS, also did not report capturing a single river shiner from 128 sampling localities within the Arkansas River basin. We suspect that the term ''river shiner'' is used to represent all minnows captured, except for the plains minnow.

The large numbers of fish collected from the South Canadian River would imply that ARS could constitute a measurable percentage of the by-catch taken during commercial harvest. While there is no conclusive evidence to suggest that commercial harvest has contributed to the decline of the ARS, take of this species during commercial bait harvest may be significant which suggests that the effect of this factor warrants further investigation.

The most significant threat to the ARS from the commercial bait industry or bait collection for personal use is the potential for introduction of non-indigenous fishes into occupied ARS habitat (see factor E of this section).

C. *Disease or predation.* No studies have been conducted on the impact of disease or predation upon the ARS; therefore, the significance of these threats upon existing populations is unknown. There is no direct evidence to suggest that disease threatens the continued existence of the species. Disease is not likely to be a significant threat except in isolated instances or under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality (e.g., low dissolved oxygen or elevated nutrient levels). During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites and bacterial and viral agents are generally the most common causes of mortality. Lesions caused by injuries, bacterial infections, and parasites often become the sites of secondary fungal infections.

Some predation of ARS by largemouth bass (*Micropterus salmoides*), green sunfish (*Lepomis cyanellus*), channel catfish (*Ictalurus punctatus*), and other fish species undoubtedly occurs, but the extent is unknown. Predation by aquatic birds (e.g., terns, herons, and egrets) and aquatic reptiles (e.g., snakes and turtles) also may occur. Plains fishes have evolved under adverse conditions of widely fluctuating, often intermittent flows, high summer temperatures, high rates of evaporation, and high concentrations of dissolved solids. These conditions are not favored by most large predaceous fish and tend to preclude existence of significant populations of these species. However, alteration of historic flow regimes and construction of reservoirs have created favorable conditions for some predatory species such as white bass (*Morone chrysops*) and striped bass (*M. saxatilis*). State and Federal fish and wildlife management agencies, through cooperative efforts to develop sport fisheries in these reservoirs, have facilitated expansion of the distributions of some predatory species. The impact of predation to the species is likely to be localized and insignificant, particularly where habitat conditions upstream of mainstem reservoirs are not favorable to the long-term establishment of abundant predatory fish populations.

D. *The inadequacy of existing regulatory mechanisms.* Federal and state laws and regulations can protect the ARS and its habitat to some extent. The State of Kansas lists the ARS as a State endangered species. The KDWP has designated portions of the mainstem Cimarron, Arkansas, South Fork Ninnescah, and Ninnescah rivers as critical habitat for the shiner (Kansas Administrative Regulation 23–17–2). A permit is also required by the State of Kansas for public actions that have the potential to destroy listed individuals or their critical habitat. Subject activities include any publicly funded or State or federally assisted action, or any action requiring a permit from any other State or Federal agency. Violation of the permit constitutes an unlawful taking, a Class A misdemeanor, and is punishable by a maximum fine of $2,500 and confinement for a period not to exceed 1 year. Kansas does not permit the commercial harvest of bait fish from rivers and streams.

The State of New Mexico lists the ARS as a State endangered species. This listing prohibits the taking of the ARS without a valid scientific collecting permit but does not provide habitat protection. The State of Oklahoma lists the ARS as a State threatened species, but like New Mexico, this listing does not provide habitat protection. The States of Arkansas and Texas provide no special protection for the species or its habitat.

While Kansas, New Mexico, and Oklahoma protect the ARS from take and/or possession, only Kansas addresses the problem of habitat destruction or modification. Only New Mexico provides significant protection from the potential introduction of non-native, competitive species. Licensed commercial bait dealers in New Mexico may sell bait minnows only within the drainage where they have been collected and cannot sell any State-listed fish species.

The Kansas legislature can identify a minimum desirable streamflow for a stream as part of the Kansas Water Plan. The Chief Engineer is then required to withhold from appropriation the amount of water necessary to establish and maintain the minimum streamflow. New Mexico and Oklahoma water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. However, Oklahoma indirectly provides some protection of instream uses, primarily by withholding appropriations for flows available less than 35 percent of the time.

Section 404 of the Clean Water Act (33 U.S.C. 1251–1376) is the primary Federal law that could provide some protection for aquatic habitats of the ARS, if the habitats are determined by the Corps to be Federal jurisdictional areas (i.e., waters of the United States). Listing of the ARS will require the Corps to consult and obtain our concurrence prior to issuing any section 404 permit affecting ARS habitat.

The NEPA requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may decide to choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The status and threats to the ARS reflect, in part, the inability of these laws and regulations to adequately protect and provide for the conservation of the ARS. Even listing as threatened or endangered by the States of Kansas, New Mexico, and Oklahoma has not reversed the decline of this species.

E. *Other natural or manmade factors affecting its continued existence.* The overall trend in the status of this species is characterized by dramatic declines in numbers and distribution despite the fact that this species evolved in rapidly fluctuating, harsh environments. The occurrence of a single, catastrophic event, such as the introduction of competitive species, or a prolonged period of low or no flow, would increase the likelihood of extinction. Arkansas River shiners are undoubtedly capable of recovering from drought, provided other factors have not irreparably degraded their habitat. The fragmentation and apparent isolation of self-sustaining populations of ARS renders the remaining populations vulnerable to any natural or manmade factors that might further reduce population size. Recolonization of some reaches following a significant drought or period of no flow will be considerably reduced by habitat fragmentation, and may require human intervention.

The introduction and establishment of the Red River shiner, a species endemic to the Red River drainage, into the Cimarron River in Oklahoma and Kansas has had a detrimental effect on the ARS (Cross *et al.* 1983, Felley and Cothran 1981). The Red River shiner was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1983) and Oklahoma in 1976 (Marshall 1978). The Red River shiner has since colonized the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983, Felley and Cothran 1981). The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner suggest that it

competes with the ARS for food and other essential life requisites (Cross *et al.* 1983, Felley and Cothran 1981). The unintentional release of Red River shiners, or other potential competitors, into the Canadian River by anglers or the commercial bait industry is a potentially serious threat and could lead to decimation or extirpation of the remaining ARS populations.

Accidental or intentional releases of the Red River shiner within stream segments occupied by the Arkansas River shiner have occurred on several instances but no populations have become established outside of that in the Cimarron River (Luttrell *et al.* 1995). A recent record of another Red River endemic, the Red River pupfish (*Cyprinodon rubrofluviatilis*), from the Salt Fork of the Arkansas River (Pigg *et al.* 1997b) indicates that releases of fish from the Red River continue.

The Red River, native habitat for the Red River shiner and Red River pupfish, exhibits high concentrations of chlorides due to contributions from brine seeps and springs. Concentrations in some tributaries often exceed that of sea water. Within the Arkansas River basin, the Cimarron River and the Salt Fork of the Arkansas River also exhibit elevated levels of chlorides due to the influence of brine seeps and springs. Although studies have not been conducted, we suspect that the elevated chloride loads in the Cimarron River may be at least partially responsible for the success of the Red River shiner in this stream system. The ability of the Red River shiner to cope with elevated chloride concentrations may have provided a competitive advantage over the native ARS aggregations. Lower chloride concentrations in other stream systems may partially explain why Red River shiners have not yet become established in other Arkansas River tributaries after accidental introductions.

While the introduction of non-indigenous fishes do not fully account for the disappearance of ARS within the Arkansas River basin, particularly outside of the Cimarron River, competition with introduced species can have a significant adverse impact on ARS populations under certain conditions. The consequences of non-indigenous species on native organisms have been widely documented and are summarized by U. S. Congress, Office of Technology Assessment (1993).

The reproductive characteristics and specialized spawning and early life history requirements of this species makes it especially vulnerable to certain natural or manmade factors, such as drought. Successful reproduction of the ARS appears to require precise flow conditions conducive to breeding and embryonic development. Spawning is triggered, in part, by abrupt increases in streamflow during the late spring or summer (Cross *et al.* 1983, Moore 1944). Streamflows favorable to spawning must be sustained over at least a 24-hour period to ensure complete embryonic and larval development. As discussed under factor A of this section, suitable habitat conditions are becoming scarce and where conditions are not favorable, populations have rapidly declined.

Declining populations of the ARS may also be due to poor survival of juveniles. Bestgen *et al.* (1989) observed that spawning in ARS appeared to be primarily limited to Age-I individuals, based on an absence of Age-I and older fish from collections made after the spawning period. The apparent extremely high post-spawning mortality observed in Pecos River ARS populations suggests that the reproductive contribution of Age-II or older individuals is very limited. Thus, the continued existence of ARS populations may be almost entirely dependent upon successful annual reproduction and subsequent recruitment of juvenile individuals into the population. The loss of a single reproductive event or cycle would seriously reduce recruitment, and possibly lead to localized extirpations. The fragmentation of ARS habitat by impoundments intensifies the effects of failed reproduction by hindering repopulation following rapid declines or localized extirpations.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on this evaluation, the preferred action is to list the Arkansas River basin population of the Arkansas River shiner (*Notropis girardi*) as threatened due to its significantly reduced range, including the apparent extirpation of the shiner in Arkansas and throughout much of its historical range in Kansas and Oklahoma. Threatened status, which means that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, more accurately reflects the threats facing this species than does endangered status, the designation we proposed on August 3, 1994 (59 FR 39532). New information recieved during the comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. Also, the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith is less than originally believed, and the threat from groundwater withdrawals on the Texas High Plains does not appear to be as severe or as imminent as first suspected. In addition, new information shows that the aggregations of Arkansas River shiners in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule.

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 and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) 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.

We find that the designation of critical habitat for the Arkansas River basin population of the ARS is not prudent due to lack of benefit. The prohibition of destruction or adverse modification of critical habitat is provided under section 7 of the Act and only applies to Federal agency actions (see ''Available Conservation Measures'' section). Under section 7, actions funded, authorized, and carried out by Federal agencies may not jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. To ''jeopardize the continued existence'' of a species is defined as an action that

appreciably reduces the likelihood of its survival and recovery. ''Destruction or adverse modification of critical habitat'' is defined as an appreciable reduction in the value of critical habitat for the survival and recovery of a species.

Future conservation and recovery of the ARS will emphasize remaining aggregations and habitats in the Canadian River. All suitable ARS habitat in the Canadian River is believed to be occupied by the species. Therefore, Federal actions involving the Canadian River that would cause habitat alteration of a severity that would result in destruction or adverse modification of critical habitat would also jeopardize the continued existence of the Arkansas River shiner. Furthermore, reasonable and prudent alternatives that would remove the likelihood of jeopardy would also remove the likelihood of destruction or adverse modification of critical habitat. Due to the considerable overlap in the jeopardy and adverse modification standards associated with the ARS in the Canadian River, designation of critical habitat would provide no additional benefit to the species when dealing with the Federal actions under section 7 of the Act.

The major threat to the ARS is the depletion of surface and ground waters by non-Federal entities (e.g., State water agencies, ground water and irrigation districts, private individuals). In most cases, the management of water is under the jurisdiction of the States and is not under the purview of section 7 of the Act. Therefore, the designation of critical habitat would provide no benefit in addressing this important threat to the ARS.

The benefits of listing, specifically the jeopardy standard under section 7 and the provisions of sections 9 and 10 of the Act, will provide the principal mechanisms to protect ARS populations and habitats. For these reasons, the designation of critical habitat for the ARS would provide no benefit to the species beyond that conferred by listing alone and is, therefore, 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 consultation under section 7, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to 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 consultation with us.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the ARS, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Bureau's Canadian River Project and operation of the Corps' multi-purpose reservoirs throughout the Arkansas River Basin. The Corps will also consider the ARS in administration of Section 404 of the Clean Water Act. The EPA will consider the ARS in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration will consider the effects of bridge and road construction at locations where known habitat may be impacted. The USDA NRCS will consider the effects of structures installed under the Watershed Protection and Floodwater Prevention program (Public Law 566). Also, the U.S. Forest Service will consider the effects of their management actions on the Cimarron and Kiowa National Grasslands.

The intent of the section 7 consultation process is to ensure that agency actions are implemented in a manner that will not jeopardize the continued existence of a listed species. We have conducted numerous section 7 consultations, and very rarely has the consultation process stopped a Federal action. In fact, in the vast majority of consultations the actions are implemented with little or no modification.

The USGS has recently initiated a water quality assessment of the High Plains aquifer under the National Water Quality Assessment program (NAWQA). Through this project the USGS will evaluate existing water quality problems in the aquifer and provide information that will help protect water quality in the aquifer.

The CRMWA, the non-Federal sponsor of the Lake Meredith Salinity Control Project, has agreed to implement certain conservation actions for the ARS. The CRMWA has agreed to—(1) conduct routine evaluations of flow conditions within the immediate project area, (2) adjust operation of the salinity control project to minimize any potential effect upon the ARS, and (3) monitor water quality within the affected stream segment (J.C. Williams, *in litt.* 1997). In response to provisions under the Supreme Court ruling in Oklahoma and Texas v. New Mexico, No. 109, the CRMWA also has agreed to cooperate with us and the State of New Mexico in scheduling releases from Ute Reservoir to benefit the ARS. The CRMWA has already sought our input in scheduling releases of excess waters from Ute Reservoir. Most recently, the CRMWA initiated releases on June 9, 1997, and concluded them in July 1997. Researchers at Texas Tech University are currently evaluating the effect of these releases on reproductive ecology of the ARS and will provide us and CRMWA with recommendations for scheduling any future releases. We anticipate that such releases will result in conservation benefits for the ARS.

The CRMWA also speculates that the reduction in salinity anticipated from operation of the salinity control project may hinder the establishment of Red River shiners within the affected reach of the Canadian River, should this non-native species be introduced upstream of Lake Meredith (J.C. Williams, *in litt.* 1997). While we have no conclusive evidence to support this premise, reduced salinities could indeed influence establishment of Red River shiners. The ARS exhibit preferences for certain water quality conditions (Polivka and Matthews 1997) which may differ from those preferred by the Red River shiner.

Reducing or eliminating incidental take of ARS during personal collections or commercial bait operations can be achieved through gear restrictions. State regulations requiring the use of seines with mesh sizes of 1.3 cm (0.5 in) or greater could minimize the capture of ARS during collections for bait. We intend to work with the States to ensure that collection of bait fish for personal or commercial uses does not reduce the abundance or distribution of the ARS.

Eliminating opportunities for introductions of non-indigenous fishes is more difficult. Commercial bait

operators should take steps to ensure that holding tanks have been thoroughly emptied and flushed before moving from one river basin to another. This is particularly important if collections are obtained from the Red River basin or the Cimarron River. Informing anglers of the potential harm from releases of unused live bait is also important.

Other general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute our interpretation of the entire scope of a recovery plan as discussed in the provisions of section 4(f) of the Act.

(1) Ensure that water extractions, diversions, and groundwater use for agriculture and municipal purposes do not adversely affect habitat of the ARS. Increase efforts to improve irrigation efficiency and implement appropriate water conservation measures.

(2) Closely monitor introductions of non-indigenous species. Develop and implement measures to minimize the accidental or intentional release of non-indigenous species. Initiate studies to determine the feasibility of and techniques for eradicating or controlling Red River shiners in the Cimarron River. If feasible, implement a control program.

(3) Monitor and maintain existing aggregations of ARS throughout the Arkansas River basin.

(4) Conduct studies to further define biological and life history requirements of the ARS.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. You should send requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103 (telephone 505/248–2914; facsimile 505/248–8063).

It is our policy (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

The Service believes that, based on the best available information, the following actions will not likely result in a violation of section 9:

(1) Authorized taking of ARS in accordance with a permit issued by us pursuant to section 10 of the Act or with the terms of an incidental take statement pursuant to section 7 of the Act, or possessing specimens of this species that were collected prior to the date of publication in the **Federal Register** of this final regulation adding this species to the list of endangered and threatened species;

(2) Normal, lawful recreational activities such as hiking, trail rides, camping, boating, hunting, and fishing, provided unused bait fish are not released back into the water;

(3) Normal livestock grazing and other standard ranching activities within riparian zones that do not destroy or significantly degrade ARS habitat;

(4) Routine implementation and maintenance of agricultural conservation practices specifically designed to minimize erosion of cropland (e.g., terraces, dikes, grassed waterways, and conservation tillage);

(5) Existing discharges into waters supporting the ARS, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act); and

(6) Improvements to existing irrigation, livestock, and domestic well structures, such as renovations, repairs, or replacement.

Activities we believe could potentially harm the ARS and result in a violation of section 9 include, but are not limited to:

(1) Take, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, of ARS without a valid permit;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken ARS;

(3) Introduction of non-native fish species that compete or hybridize with, displace, or prey upon ARS;

(4) Unauthorized destruction or alteration of ARS habitat by dredging, channelization, impoundment, diversion, recreational vehicle operation within the stream channel, sand removal, or other activities that result in the destruction or significant degradation of channel stability, streamflow/water quantity, substrate composition, and water quality used by the species for foraging, cover, and spawning;

(5) Unauthorized discharges (including violation of discharge permits), spills, or dumping of toxic chemicals, silt, household waste, or other pollutants (e.g., sewage, oil and gasoline, heavy metals) into surface or ground waters or their adjoining riparian areas that support/sustain ARS;

(6) Applications of pesticides, herbicides, fungicides and other chemicals, including fertilizers, in violation of label restrictions;

(7) Withdrawal of surface or ground waters to the point at which baseflows in water courses (e.g., creeks, streams, rivers) occupied by the ARS diminish and habitat becomes unsuitable for the species.

Not all of the activities mentioned above will result in a violation of section 9; only those activities that result in ''take'' of ARS would constitute a violation of section 9.

The above lists only provide some examples of the types of activities that we would consider as likely or not likely to take ARS. You should direct questions regarding whether specific activities may constitute a violation of section 9 of the Act to the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section). You should mail requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits to the U.S. Fish and Wildlife Service, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 (telephone 505/248–6649; facsimile 505/248–6922).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this final rule, as well as others, is available upon request from the Oklahoma Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. In § 17.11(h) the following is added to the List of Endangered and Threatened Wildlife in alphabetical order under ''FISHES'':

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES:							
*	*	*	*	*	*		*
Shiner, Arkansas River.	*Notropis girardi*	U.S.A. (AR, KS, NM, OK, TX).	Arkansas River basin (AR, KS, NM, OK, TX).	T	653	NA	NA
*	*	*	*	*	*		*

Dated: November 13, 1998.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98–31096 Filed 11–20–98; 8:45 am]

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federal register

Monday
November 23, 1998

Part IV

Department of Housing and Urban Development

24 CFR Parts 246 and 891

Rent Control Preemption for Supportive Housing for the Elderly and Persons With Disabilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 246 and 891

[Docket No. FR–4346-F–01]

RIN 2502–AH21

Rent Control Preemption for Supportive Housing for the Elderly and Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD's rules regarding preemption of local rent control for assisted housing projects have not been updated to reflect the statutory replacement of the section 202 direct loan program with the section 202 and section 811 programs for capital advances and project rental assistance for projects for the elderly and persons with disabilities. This final rule accomplishes the necessary updating through revision of 24 CFR part 246 concerning rent control and 24 CFR part 891 concerning the current section 202 and section 811 programs. There is no change in HUD's policy of preempting local rent control for assisted housing programs.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410–0500. Telephone (202) 708–2866. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD's regulations at 24 CFR part 246 set forth the circumstances under which local rent control laws are preempted by HUD regulations from applying to housing projects which are owned by HUD or which are involved in HUD mortgage insurance or subsidy programs. In § 246.20, HUD identifies the projects that are subject to subpart C of the rule regarding subsidized projects, including ''all projects with mortgages held by HUD that receive a subsidy in the form of * * * direct loans at below-market interest rates under section 202 of the Housing Act of 1959 * * *'' In § 246.21, HUD states: ''* * * it is in the national interest to preempt, and it (HUD) does hereby preempt, the entire field of rent regulation by local rent control boards (hereinafter referred to as board), or other authority acting pursuant to state or local law as it affects projects covered by this subpart.'' Section 246.22 sets forth procedures for project owners to seek HUD approval of increases in HUD-approved rental levels.

Section 246.20 is outdated because it does not reflect subsequent legislation affecting the section 202 program. At the time § 246.20 was issued, and until October 1, 1991, the section 202 program involved direct below-market interest mortgage loans from HUD to owners of projects for the elderly or persons with disabilities. After that date, section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended section 202 to provide a new Supportive Housing for the Elderly Program with capital advances and project rental assistance instead of direct loans. Existing section 202 projects continued to be subject to the ''old'' section 202 program. Section 811 of NAHA established a new program of Supportive Housing for Persons with Disabilities with capital advances and project rental assistance instead of direct loans. This program replaces the section 202 program for direct loans for projects for persons with disabilities. The regulations for the amended section 202 program and the section 811 program are in 24 CFR part 891.

The Department regards the section 202/811 programs as successors to the old section 202 direct loan program for purposes of rent control preemption. HUD controls the rents in section 202/811 projects through the Regulatory Agreement without regard to local rent control that would otherwise apply. However, HUD did not previously make a technical correction to § 246.20 to reflect the statutory development. In this final rule, HUD therefore amends § 246.20 to refer to section 202 as it existed prior to October 1, 1991. Rather than amend § 246.20 to also specifically refer to the successor section 202/811 programs, HUD instead has chosen to keep intact in part 891 all of the rules applicable to those programs, and therefore has provided a parallel rent control preemption in new § 891.185.

HUD is also updating the heading of Chapter VIII of 24 CFR to recognize that the chapter includes the regulations for the section 202 and section 811 Supportive Housing Programs.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest''. (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to the public interest. Public procedure is unnecessary because no change in policy is involved. HUD is simply making a technical correction to its rent control regulations applicable to subsidized projects on which HUD holds a mortgage to reflect the legislative division of former section 202 into two sections of law, which collectively continue to provide for subsidy to the same classes of projects as the previous section 202, through a modified subsidy mechanism under which HUD will continue to hold a mortgage on the project. The public policy reasons for the rent control preemption stated in § 246.20 apply equally to the current section 202/811 programs. HUD considers that a change in policy necessitating public comment would be involved if HUD abandoned rent control preemption, rather than retaining it.

HUD also considers that prior public procedure would be contrary to the public interest because it could raise doubts as to whether HUD's preemption of rental control currently applies to section 202/811 projects with capital advances.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies the application of existing regulations to the section 202/811 programs. The rule will have no disproportionate economic impact on small businesses.

Environmental Impact

This final rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rulemaking simply continues without substantial change the existing HUD policy of preempting local rent

control in connection with subsidized projects for the elderly or persons with disabilities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments. Although the rule involves preemption of local rent control laws, it continues rather than initiates preemption in the area involved.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157 (section 202) and 14.181 (section 811).

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 891

Aged, Capital advance programs, Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 246—[AMENDED]

1. The authority citation for part 246 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. Section 246.20 is revised to read as follows:

§ 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

(a) Interest reduction payments under section 236 of the National Housing Act;

(b) Below-market interest rates under section 221(d)(3) and (5) of the National Housing Act;

(c) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959 (as in effect immediately before October 1, 1991);

(d) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(e) Housing assistance payments under 24 CFR part 886, subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(f) Housing assistance payments pursuant to a contract under section 8 of the United States Housing Act of 1937 or section 23 of that Act (as in effect immediately before January 1, 1975), except that this subpart will only apply with respect to units occupied by tenants receiving housing assistance thereunder if the contract covers fewer than all units in the project.

CHAPTER VIII—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS, SECTION 202 DIRECT LOAN PROGRAM, SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM AND SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM)

3. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1436f, 3535(d), and 8013.

4. The heading of Chapter VIII is revised to read as set forth above.

5. Part 891 is amended by adding a new § 891.185 to read as follows:

§ 891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

Dated: October 22, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

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federal register

Monday
November 23, 1998

Part V

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6183–3]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of eleventh update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this eleventh update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, published in the **Federal Register** (FR) on June 27, 1997 at 62 FR 34779, which was current as of October 1, 1996. EPA policy specifies that, for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of publication of the notice. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 89 additions and 11 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,182.

DATES: This list is current as of February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Toll-Free Telephone Line for the Docket, Telephone: (800) 548–1016, or locally (703) 287–8868. Electronic versions of the docket may be obtained at http://www.epa.gov/oeca/fedfac/oversight/oversight.html.

SUPPLEMENTARY INFORMATION:

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2.0 Revisions of the Previous Docket
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1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) § 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6925, § 6930, and § 6937, and under section 103 of CERCLA, 42 U.S.C. § 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); and June 27, 1997 (62 FR 34779). This notice constitutes the eleventh update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 [February 12, 1988] for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868, for information on locations of Regional docket repositories.

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 89 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added to the docket, it is EPA's policy that the responsible Federal agency must complete the required preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of the date of this publication.

Of the 89 facilities being added to the docket, 3 are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation ''103(a)'' in the ''Reporting mechanism'' column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but had not submitted a notification form under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under Federal agency environmental restoration programs mentioned above contain information similar to that provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for the docket. Thus, EPA believes that a facility that has provided information equivalent to a CERCLA section 103 notification, such as a report under a Federal agency environmental restoration program, should be included on the docket, regardless of the absence of formal notification under CERCLA section 103. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the reports described above.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities ''owned or operated'' by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that ''owns or operates'' the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having ''jurisdiction, custody, or control'' over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 11 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 Code of Federal Regulations [CFR] Part 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an ''O''), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a ''C'') for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain

on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.

- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this eleventh docket update must submit a PA and, if warranted, an SI to EPA within 18 months of the date of this publication. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identify of the responsible Federal agency. The reports should be submitted to the Federal facilities coordindator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled ''Reporting mechanism.'' Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868. As of today, the total number of Federal facilities that appear on the docket is 2,182.

Dated: October 2, 1998.

Craig E. Hooks,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This corection code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Chaning Responsible Federal Agency (New Responsible Federal Agency Has 18 Months to Submit PA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Federal Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868.

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
BLM–BOSTIK INC HOOSIER CREEK.	65D26M54SN, 150D04M31SW	RAMPART	AK	99767	INTERIOR	3010	19A
FWS–ARCTIC NWR: PORCUPINE RVR DEWLINE STAGING AREA.	T14S R48E S33 NE¼ NE¼	ARCTIC VILLAGE	AK	99722	INTERIOR	103c	19A
UNICOR FEDERAL PRISON INDUSTRIES.	565 E RENFROE RD	TALLADEGA	AL	35160	JUSTICE	3010	19A
FLORENCE RANGE		FLORENCE	AZ		ARMY	103c	19A
PHOENIX NATIONAL GUARD—PAPAGO PARK.	5636 E MCDOWELL RD	PHOENIX	AZ	85008	ARMY	3010	19A
BR-GOLDEN FALCON INT SITE	23RD ST AT AVE C	SAN LUIS	AZ	85349	INTERIOR	3010	19A
LAKE TAHOE BASIN MU: MEYERS LANDFILL.	870 EMERALD BAY RD	SOUTH LAKE TAHOE	CA	96150	AGRICULTURE	103a	19A
MENDOCINO NF: EEL RIVER WORK CENTER WASTE SUMP.	T23N R11W S28 NE¼	COVELO	CA		AGRICULTURE	103a	19A
PLUMAS NF: WHITEHORSE LANDFILL.	T23N R8E S6, T24N R8E S7	QUINCY	CA	95971	AGRICULTURE	103c	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
CAMP ROBERTS TRAINING SITE	HWY 101	CAMP ROBERTS	CA	93451	AIR FORCE	3010	19A
LOS ALAMITOS AIR FORCE RESERVE CENTER.	LEXINGTON AVE	LOS ALAMITOS	CA	90720	AIR FORCE	3010	19A
BOEING NORTH AMERICAN INC	12214 LAKEWOOD BLVD	DOWNEY	CA	90241	NASA	3010	19A
PALO ALTO MEDICAL CENTER	3801 MIRANDA AVE	PALO ALTO	CA	94304	VETERANS AFFAIRS	3010	19A
BUCKLEY ANG FORMER WAREHOUSE AREA.	660 S ASPEN DR, STOP 26	AURORA	CO	80011	DEFENSE	103c	19A
DENVER ARMY MEDICAL DEPOT	3800 YORK ST	DENVER	CO	80205	GENERAL SERVICES ADMINISTRATION.	103c	19A
BLM-SAGUACHE MILL SITE	2 MI NW OF SAGUACHE	SAGUACHE	CO	81149	INTERIOR	103c	19A
CONNECTICUT AIR NATIONAL GUARD ORANGE BASE.	RTE 1	ORANGE	CT	06477	AIR FORCE	103c	19A
CONNECTICUT ARMY NATIONAL GUARD BRADLEY BASE.	RTE 20	WINDSOR LOCKS	CT	06096	ARMY	103c	19
CONNECTICUT ARMY NATIONAL GUARD GROTON BASE.	SOUTH RD	GROTON	CT	06340	ARMY	103c	19A
DANBURY FEDERAL CORRECTIONAL INSTITUTION.	PEMBROKE STATION—RTE 37	DANBURY	CT	06811	JUSTICE	103c	19A
NATIONAL PHOTOGRAPHIC INTERPRETATION CENTER.	1ST ST & M ST SE	WASHINGTON	DC	20374	EPA	3010	19A
FPSD PISTOL RANGE	4TH ST & M ST SW	WASHINGTON	DC	20407	GENERAL SERVICES ADMINISTRATION.	3010	19A
NPS-BARNEY CIRCLE FACILITY	19TH ST & H ST	WASHINGTON	DC	20032	INTERIOR	103c	19A
U.S. CAPITOL COMPLEX	U.S. CAPITOL BUILDING	WASHINGTON	DC	20515	INTERIOR	3010	19A
HARRY S. TRUMAN ANIMAL IMPORT CENTER.	FLEMING KEY	KEY WEST	FL	33041	AGRICULTURE	103c	19A
AUGUSTA NATIONAL GUARD ARMORY.	88 MILLEDGE RD	AUGUSTA	GA	30904	ARMY	3010	19A
CEDARTOWN NATIONAL GUARD ARMORY.	HWY 27 S	CEDARTOWN	GA	30125	ARMY	3010	19A
ATLANTA FEDERAL CENTER PROJECT.	45 BROAD ST	ATLANTA	GA	30303	GENERAL SERVICES. ADMINISTRATION	3010	19A
PALMETTO SITE	8400 TATUM RD	PALMETTO	GA	30268	GENERAL SERVICES ADMINISTRATION.	3010	19A
SAC CITY ARMY RESERVE CENTER.	1801 GISHWILLER RD	SAC CITY	IA	50583	ARMY	3010	19A
CARIBOU NF: S MABEY CANYON CROSS VALLEY FILL SITE.	T8S R44E S10, 11, 14 & 15 BM	CONDA	ID	83230	AGRICULTURE	103c	19A
CHICAGO DISTRICT	RTE 100	GRAFTON	IL	62037	ARMY	3010	19A
DIRKSEN FEDERAL OFFICE BUILDING.	219 S DEARBORN	CHICAGO	IL	60604	GENERAL SERVICES ADMINISTRATION.	3010	19A
KLUCZYNSKI FEDERAL OFFICE BUILDING.	230 S DEARBORN	CHICAGO	IL	60604	GENERAL SERVICES ADMINISTRATION.	3010	19A
HAMMOND COMBAT COMMUNICATION AIR NATIONAL GUARD.	901 N AIRPORT RD	HAMMOND	LA	70401	AIR FORCE	3010	19A
MASSACHUSETTS AIR NATIONAL GUARD WORCESTER.	SKYLINE DR	WORCESTER	MA	01605	AIR FORCE	103c	19A
DANVERS ARMY RESERVE CENTER.	NORTH ST	DANVERS	MA	01923	ARMY	103c	19A
WAYLAND ARMY NATIONAL GUARD ARMORY.	OXBOW RD	WAYLAND	MA	01778	ARMY	103c	19A
NYANZA SUPERFUND SITE	MEGUNKO RD	ASHLAND	MA	01721	EPA	3010	19A
BOSTON VETERANS AFFAIRS HOSPITAL.	150 S HUNTINGTON ST	BOSTON	MA	02130	VETERANS AFFAIRS	103a	19A
FALLON BUILDING	31 HOPKINS PLAZA	BALTIMORE	MD	21201	GENERAL SERVICES ADMINISTRATION.	3010	19A
CHESAPEAKE BEACH DETACHMENT-NAVAL RESEARCH LAB.	5813 BAYSIDE RD	CHESAPEAKE BEACH.	MD	20732	NAVY	3010	19A
MAINE ARMY NATIONAL GUARD BANGOR BASE.	RTE 222—BANGOR INTERNATIONAL AIRPORT.	BANGOR	ME	04401	ARMY	103c, 3016	19
DETROIT MARINE CORPS RESERVE CENTER.	7600 E JEFFERSON AVE	DETROIT	MI	48214	NAVY	3010	19A
HIGHLAND PARK POST OFFICE	13215 WOODWARD	HIGHLAND PARK	MI	48203	POSTAL SERVICE	3010	19A
MONROE POST OFFICE	210 W FRONT ST	MONROE	MI	48161	POSTAL SERVICE	3010	19A
ROSEVILLE POST OFFICE	30550 GRATIOT AVE	ROSEVILLE	MI	48066	POSTAL SERVICE	3010	19A
FDA-KANSAS CITY SITE	1009 CHERRY ST	KANSAS CITY	MO	64106	AGRICULTURE	3010	19A
ST LOUIS (EX) ORDNANCE PLANT.	4300 GOODFELLOW BLVD, HANLEY AREA.	ST LOUIS	MO	63120	ARMY	103c, 3016	19
BM-ROLLA RESEARCH CENTER	900 W 14TH ST	ROLLA	MO	65401	INTERIOR	3010	19A
NPS–NOLAND HOUSE	216 N DELAWARE	INDEPENDENCE	MO	64052	INTERIOR	3010	19A
KANSAS CITY HOSPITAL	4801 LINWOOD BLVD	KANSAS CITY	MO	64128	VETERANS AFFAIRS	3010	19A
SALMON SITE	OFF HWY 13	BAXTERVILLE	MS	11111	ENERGY	3010	19A
FWS–RED ROCK LAKES NATIONAL WILDLIFE REFUGE.	MONIDA STAR RT, 28 MI E	LAKEVIEW	MT	59739	INTERIOR	3010	19A
NPS–NAGS HEAD SITE	S OLD NAGS HEAD RD	NAGS HEAD	NC	27959	INTERIOR	3010	19A
STANLEY R. MICKELSON SAFEGUARD COMPLEX.		NEKOMA	ND		AIR FORCE	103c	19A
PARKER RAILCAR SERVICE CO	300 S FULTON AVE	FALLS CITY	NE	68355	SMALL BUSINESS ADMINISTRATION.	3010	19A
NEW HAMPSHIRE AIR NATIONAL GUARD NEWINGTON BASE.	NEWINGTON ST	NEWINGTON	NH	03801	AIR FORCE	3010	19A
OTTER BROOK LAKE PROPERTY.	OLD CONCORD RD	KEENE	NH	03431	CORPS OF ENGINEERS, CIVIL.	103c	19A
SURRY MOUNTAIN SHOOTING RANGE.	EAST SURRY RD	SURRY	NH	03431	CORPS OF ENGINEERS, CIVIL.	103c	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
CLARKSON FISHER FEDERAL BUILDING & COURTHOUSE.	402 E STATE ST	TRENTON	NJ	08608	GENERAL SERVICES ADMINISTRATION.	3010	19A
BELLMAWR VEHICLE MAINTENANCE FACILITY.	421 BENIGNO BLVD & HAAG AVE.	BELLMAWR	NJ	08099	POSTAL SERVICE	3010	19A
CLIFFSIDE PARK POST OFFICE	289 GORGE RD	CLIFFSIDE PARK	NJ	07010	POSTAL SERVICE	3010	19A
PALMER SQUARE STATION	20 PALMER SQUARE E	PRINCETON	NJ	08542	POSTAL SERVICE	3010	19A
NORTH LAS VEGAS FACILITY	2621 LOSEE RD	NORTH LAS VEGAS	NV	89030	ENERGY	3010	19A
SHOAL SITE	ST RTE 839	FALLON	NV	89406	ENERGY	3010	19A
NEWARK POST OFFICE	300 S MAIN ST	NEWARK	NY	14513	POSTAL SERVICE	3010	19A
FREMONT NF: ANGEL PEAK MINE SITE.	T37S R17E S32, 30 MI W OF LAKEVIEW.	LAKEVIEW	OR	97630	AGRICULTURE	103c	19A
FREMONT NF: ANGEL PEAK ROADS.	42D22M30SN, 120D45M00SW	LAKEVIEW	OR	97630	AGRICULTURE	103c	19A
FWS–KLAMATH FOREST NWR: TOXAPHENE COW DIP PIT.	T30S R10E S19 WILLAMETTE MERIDIAN.	CHILOQUIN	OR	97624	INTERIOR	103c	19A
PITTSBURGH SITE	3500 GRAND AVE	PITTSBURGH	PA	15225	CORPS OF ENGINEERS, CIVIL.	3010	19A
PHILADELPHIA FEDERAL DETENTION CENTER.	7TH ST & ARCH ST	PHILADELPHIA	PA	19106	JUSTICE	3010	19A
SAN JUAN POST OFFICE & COURTHOUSE.	COMERCIO ST & TANCA ST	SAN JUAN	PR	00906	GENERAL SERVICES ADMINISTRATION.	3010	19A
CHARLESTON COAST GUARD GROUP.	196 TRADD ST	CHARLESTON	SC	29401	TRANSPORTATION	3010	19A
CHARLESTON MEDICAL CENTER.	109 BEE ST	CHARLESTON	SC	29401	VETERANS AFFAIRS	3005, 3010	19A
CHEROKEE NF: BATTERY DUMP	RTE 1, HYW 64	BENTON	TN	37307	AGRICULTURE	3010	19A
164TH AIRLIFT WING		MEMPHIS	TN	37000	AIR FORCE	3010	19A
101ST AIRBORNE DIVISION (AIR ASSAULT).	W OF US HWY 41 AT BORDER		TN	37000	ARMY	3005, 3010	19A
MEMPHIS NAVAL SURFACE WARFARE CENTER-CARDEROCK LCC.	2700 CHANNEL AVE	MEMPHIS	TN	38113	NAVY	3005, 3010	19A
NORRIS HYDRO PLANT	2 MI N OF NORRIS	JEFFERSON CITY	TN	37760	TENNESSEE VALLEY AUTHORITY.	3010	19A
MOORE AIR BASE	RTE 3, BOX 1004, RM 55	MCALLEN	TX	78539	AGRICULTURE	103c	19A
ANTHONY FEDERAL CORRECTIONAL INSTITUTION.	15 MI W OF EL PASO	ANTHONY	TX	88021	JUSTICE	3010	19A
ADMIRAL OLIN E TEAGUE CENTER.	1901 S 1ST ST	TEMPLE	TX	76504	VETERANS AFFAIRS	3010	19A
NANSEMOND ORDNANCE DEPOT.	RTE 135	SUFFOLK	VA	23434	AGRICULTURE	103c	19A
OFFICE OF INSULAR AFFAIRS	WATER ISLAND CATCHMENT BAY.	ST THOMAS	VI	00802	INTERIOR	3010	19A
NIOSH—FORMER ATLAS E MISSILE FACILITY S–9 SITE.	T27N R39E S36, 9 MI N OF REARDAN.	REARDAN	WA	99029	HEALTH AND HUMAN SERVICES.	103c	19A
BLM—CLEVEAND MINE & MILL SITE.	T30N R38E S9, 9MI E OF HUNTERS.	HUNTERS, STEVENS COUNTY.	WA	99137	INTERIOR	103c	19A
MADISON POST OFFICE	3902 MILWAUKEE ST	MADISON	WI	53714	POSTAL SERVICE	3010	19A
PORT WASHINGTON POST OFFICE.	104 E MAIN	PORT WASHINGTON	WI	53094	POSTAL SERVICE	3010	19A

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechinism	Correction code
PRESCOTT NF: GOLDEN BELT MINE.		PRESCOTT	AZ	86303	AGRICULTURE	103c, 3016, 103a	2
WINDSOR LOCKS AREA MAINT. SUPPORT ACTIVITY 72G.	536 SPRING STREET	WINDSOR LOCKS	CT		ARMY	103c	7
BLM-KINNIKINNIC CREEK	ADJACENT TO TOWN AND OLD SMELTER.	CLAYTON	ID	83227	INTERIOR	103c	2
BLM-PULLMAN MINE	T29N R4W S14	COTTONWOOD	ID	83522	INTERIOR	103c	2
BLM-SPRINGFIELD DUMPSITE	T3SR32ESEC12	SPRINGFIELD	ID	83277	INTERIOR	103c	2
BANGOR ORGANIZATIONAL MAINTENANCE SHOP #3.	28 HAYES ST	BANGOR	ME	04401	ARMY	3016	7
TOGUS MEDICAL CENTER	ROUTE 17	TOGUS	ME	04330	VETERANS AFFAIRS	3016, 3010	4
DEA-ST. LOUIS	120 SOUTH CENTRAL	ST. LOUIS	MO	63105	JUSTICE	3010, 103c	8
CIBOLA NF: UNC SAN MATEO MINE.	T13N, R8E, SEC30, NE3/4	SAN MATEO	NM	87050	AGRICULTURE	103c, 3016	2
SARATOGA SPRINGS NAVY HOUSING MANAGEMENT OFFICE.	26 QUIET HARBOR DR—2000 FT E.	SARATOGA SPRINGS	NY	12866	NAVY	3010	4
PHILADELPHIA SITE	COLLINS AND ONTARIO STREETS.	PHILADELPHIA	PA		EPA	103a	8

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C CHUGACH NF: GRANITE MINE.	T10 R7 S9 SEWARD MERIDIAN	PORT WELLS	AK	99664	AGRICULTURE	103c	20A
O CHUGACH NF: GRANITE MINE.	T10 R7 S9 SEWARD MERIDIAN	PORT WELLS	AK		AGRICULTURE	103c.	
C TONGASS NF: THORNE BAY DUMP.	FS RD #30	THORNE BAY	AK	99919	AGRICULTURE	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O TONGASS NF: THORNE BAY DUMP.		THORNE BAY	AK	99919	AGRICULTURE	103c.	
C CAPE NEWENHAM AIR FORCE STATION.	KUSKOKWIM BAY	CAPE NEWENHAM	AK	99651	AIR FORCE	3010, 3016, 103c	20A
O CAPE NEWENHAM AIR FORCE STATION.	11 ACW/CC	ELMENDORF AFB	AK	99506	AIR FORCE	3010, 3016, 103c.	
C DEWLINE SITE BAR—MAIN: BARTER ISLAND.	BARTER ISLAND, ARCTIC NWR	KAKTOVIK	AK	99747	AIR FORCE	103c, 3016, 3010	20A
O DEWLINE SITE BAR—MAIN	BARTER ISLAND, ARCTIC NWR	KAKTOVIK	AK	99747	AIR FORCE	103c, 3016, 3010.	
C DEWLINE SITE LIZ–2: POINT LAY RADAR INSTALLATION.	KASEGALUK LAGOON & KOKOLIK RIVER.	POINT LAY	AK	99759	AIR FORCE	3010, 103c, 3016	20A
O DEWLINE SITE LIZ–2	KASEGALIK LAGOON—CHUKCHI SEA.	POINT LAY	AK	99766	AIR FORCE	3010, 103c, 3016.	
C DEWLINE SITE LIZ–3: WAINWRIGHT.	KUK RIVER & CHUKSI SEA	WAINWRIGHT	AK	99782	AIR FORCE	3010, 103c, 3016	20A
O DEWLINE SITE LIZ–3	KUK RIVER & CHUKCHI SEA	WAINWRIGHT	AK	99782	AIR FORCE	3010, 103c, 3016.	
C EARECKSON AIR FORCE STATION.	SHEMYA ISLAND S SHORE	SHEMYA	AK	99546	AIR FORCE	3010, 3016, 103c, 3005.	20A
O EARECKSON AIR FORCE STATION.	SHEMYA ISLAND S SHORE	SHEMYA	AK	99736	AIR FORCE	3010, 3016, 103c, 3005.	
C KING SALMON AIRPORT	15 MI E OF BRISTOL BAY	KING SALMON	AK	99613	AIR FORCE	3010, 3016, 103c	20A
O KING SALMON AIRPORT	5071 CSS/CC DEMR 15 MI E OF BRISTOL BAY.	KING SALMON AIRPORT.	AK	99613	AIR FORCE	3010, 3016, 103c.	
C PORT MOLLER AIR FORCE STATION.	55D58M41SN, 160D29M45SW	PORT MOLLER	AK	99571	AIR FORCE	3010, 103c, 3016	20A
O PORT MOLLER AIR FORCE STATION.	55 59′22″ N 160 34′ 29.374″ W ALASKA PENINSULA.	PORT MOLLER	AK	99999	AIR FORCE	3010, 103c, 3016.	
C FORT RICHARDSON	GLEN HWY & ARCTIC VALLEY RD.	FORT RICHARDSON	AK	99505	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O FORT RICHARDSON	ARMY GUARD RD & DAVIS HWY	FORT RICHARDSON	AK	99505	ARMY	3005, 3010, 3016, 103c, 103a.	
C FORT WAINWRIGHT	RICHARDSON HWY SE OF CITY	FORT WAINWRIGHT	AK	99703	ARMY	3005, 3010, 3016, 103c.	20A
O FORT WAINWRIGHT	ASZR–FW–DC	FORT WAINWRIGHT	AK	99703–5500	ARMY	3005, 3010, 3016, 103c.	
C NOAA—NATIONAL MARINE FISHERIES SERVICE.	PRIBILOF ISLAND	SAINT PAUL ISLANDS	AK	99660	COMMERCE	103c, 3010	20A
O NOAA—NATIONAL MARINE FISHERIES SERVICE.	PRIBILOF ISLAND	ST PAUL ISLANDS	AK	99660	COMMERCE	103c, 3010.	
C FAIRBANKS DEFENSE FUEL SUPPORT POINT.	CANOL SERVICE RD	FORT WAINWRIGHT	AK	99703	DEFENSE	3016, 103c	20A
O FAIRBANKS DEFENSE FUEL SUPPORT POINT.	CANOL SERVICE ROAD	FT WAINWRIGHT	AK	99703	DEFENSE	3016, 103c.	
C BLM—ICY CAPE DEWLINE SITE.	50 MI NE OF WAINWRIGHT	WAINWRIGHT	AK	99782	INTERIOR	103c, 3010	20A, 23
O BLM—ICY CAPE DEWLINE SITE.	WAINWRIGHT, 50 MI NE	WAINWRIGHT	AK	99782	INTERIOR	103c.	
C BLM—MACLAREN GLACIER MINE.	T19S R6E S14NE S11 FAIRBANKS MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c	20A
O BLM—MACLAREN GLACIER MINE.	FAIRBANKS MER T19S R6E SEC14NE SEC11.	PAXSON	AK	99737	INTERIOR	103c.	
C BLM—OLD MAN CAMP SITE	T19N R14W S19 AND T19N R15W S24.	ALLAKAKET	AK	99720	INTERIOR	103c	20A
O BLM—OLD MAN CAMP SITE	T19N, R14W, SEC19 AND T19N, R15W, SEC24.	FAIRBANKS MERIDIAN.	AK	99720	INTERIOR	103c.	
C BLM—PAXSON DUMP	T22S R12E S5 SW¼ SW¼ COPPER RIVER MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c	20A
O BLM—PAXSON DUMP	T22S, R12E, SEC31	FAIRBANKS MERIDIAN.	AK	99737	INTERIOR	103c.	
C BLM—PEARD BAY DEWLINE SITE.	50 MI SW OF BARROW	BARROW	AK	99723	INTERIOR	103c, 3010	20A, 23
O BLM—PEARD BAY DEWLINE SITE.	BARROW, 50 MI SW	BARROW	AK	99723	INTERIOR	103c.	
C BLM—PUMP STATION 12 DUMP SITE.	T4S R1E S26 NWSW	COPPER CENTER	AK	99573	INTERIOR	103c	20A
O BLM—PUMP STATION 12 DUMP SITE NWSW.	T4S, R1E, SEC26	COPPER CENTER	AK	99573	INTERIOR	103c.	
C BLM—RED DEVIL MINE WASTE PONDS.	T19N R44W S6 SE, 61D10M12SN, 149D56M40SW.	BETHEL	AK	99565	INTERIOR	3016, 103c	20A
O BLM—RED DEVIL MINE WASTE PONDS.	L61–10–12 L149–56–48	BETHEL	AK	99656	INTERIOR	3016, 103c.	
C BLM—SAG RIVER DUMP	T8S R14E S8	DEADHORSE	AK	99734	INTERIOR	103c	20A
O BLM—SAG RIVER DUMP	T8S, R14E, SEC8	UMIAT MERIDIAN	AK	99740	INTERIOR	103c.	
C BLM—SAGWON AIRSTRIP DUMP.	T15N R14E S10&11	SAGWON	AK	99734	INTERIOR	3016, 103c	20A
O BLM—SAGWON AIRSTRIP DUMP.	T5R4ESEC10–11	SAGWON	AK	99513	INTERIOR	3016, 103c.	
C BLM—SLANA DUMP SITE	MILE 67 OF DENALI HWY	CANTWELL	AK	99729	INTERIOR	103c	20A
O BLM—SLANA DUMP SITE	MILE 67 OF DENALI HWY		AK	99729	INTERIOR	103c.	
C BLM—TANACROSS AIRFIELD	63D22M00SN, 143D20M00SW	TANACROSS	AK	99776	INTERIOR	103c	20A
O BLM—TANACROSS AIRFIELD	LAT 63 DEGREES 22′ N, LONG 143 DEGREES 20′ W.	TANACROSS	AK	99776	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: AGATTU ISLAND AWR/NAV AID.	20 MI SW OF EARECKSON AFB	SHEMYA	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: AGATTU ISLAND AWR/NAV AID.	20 MI SW OF EARICKSON AFB	SHEMYA	AK	99500	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: AMCHITKA ISLAND.	51D32M00SN, 179D00M00SE	AMCHITKA	AK	99546	INTERIOR	3010, 3016, 103c	20A
O FWS—ALASKA MARITIME NWR: AMCHITKA ISLAND.	51D32M00SN, 179D00M00SE	AMCHITKA	AK	99502	INTERIOR	3010, 3016, 103c	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C FWS—ALASKA MARITIME NWR: ATTU ISLAND.	30 MI NW OF EARECKSON AFB	SHEMYA	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: ATTU ISLAND.	30 MI NW OF EARICKSON AFB	SHEMYA	AK	99500	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: GREAT SITKIN ISLAND.	25 MI NE OF ADAK	ADAK	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: GREAT SITKIN ISLAND.	25 MI NE OF ADAK	ADAK	AK	99500	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: TANAGA ISLAND.	65 MI W OF ADAK NAVAL FACILITY.	ADAK	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: TANAGA ISLAND.	65 MI W OF ADAK NAVAL STATION.	ADAK	AK	99500	INTERIOR	103c.	
C FWS—ARCTIC NWR: BROWNLOW POINT DEWLINE SITE.	70 MI E OF DEADHORSE/PRUDHOE BAY.	DEADHORSE	AK	99734	INTERIOR	103c, 3016	20A
O FWS—ARCTIC NWR: BROWNLOW POINT DEWLINE SITE.	70 MI E OF DEADHORSE/PRUDHOE BAY.	DEADHORSE	AK	99740	INTERIOR	103c, 3016.	
C FWS—ARCTIC NWR: LAKE PETERS & MARSH FORK NARL SITE.	70 MI SW OF KAKTOVIK	KAKTOVIK	AK	99747	INTERIOR	103c	20A
O FWS—ARCTIC NWR: LAKE PETERS & MARSH FORK NARL SITE.	60 MI E OF CITY	DEADHORSE	AK	99740	INTERIOR	103c.	
C NPS—BERING LAND BRIDGE NP: LAVA LAKE.	45 MI SW OF DEERING	DEERING	AK	99736	INTERIOR	103c, 3016, 3010	20A
O NPS—BERING LAND BRIDGE NP: LAVA LAKE.	45 MI SW OF DEERING	DEERING	AK	99762	INTERIOR	103c, 3016, 3010.	
C NPS—DENALI NP&P: STAMPEDE CREEK MINE.	63D43M05SN, 150D24M00SW	DENALI NATIONAL PARK & PRESERVE.	AK	99755	INTERIOR	103c	20A
O NPS—DENALI NATIONAL PARK: STAMPEDE MINE.	LAT 63 43.5N, LONG 150 24.0E	DENALI NATIONAL PARK.	AK	99755	INTERIOR	103c.	
C NPS—KATMAI NP&P: NAKNEK RECREATION SITE #2.	T17S R44W S25 & T18S R44W S4.	KING SALMON	AK	99613	INTERIOR	103c	20A
O NPS—KATMAI NP&P: NAKNEK RECREATION SITE #2.	KATMAI NATIONAL PARK & PRESERVE.	KING SALMON	AK	99613	INTERIOR	103c.	
C NPS—WRANGELL ST. ELIAS NP&P: MALASPINA DR MUD SITE.	T24S R32E S31	GLENNALLEN	AK	99588	INTERIOR	3016, 103c	20A
O NPS—WRANGELL—ST. ELIAS NATIONAL PARK.	WRANGELL–ST ELIAS NATIONAL PARK.	GLENNALLEN	AK	99588	INTERIOR	3016, 103c.	
C NPS—WRANGELL ST. ELIAS NP&P: NABESNA MINE.	T7N R13E S21	GLENNALLEN	AK	99588	INTERIOR	103c	20A
O NPS—WRANGELL ST. ELIAS NP&P: NABESNA MINE.	WRANGELL ST. ELIAS NAT. PARK & PRESERVE.	GLENALLEN	AK	99588	INTERIOR	103c.	
C NPS—YUKON—CHARLEY RIVERS NP: COAL CREEK.	T5N R21E S3&4	EAGLE	AK	99738	INTERIOR	103c, 3016	20A
O NPS—YUKON—CHARLEY RIVERS NATIONAL PARK.	T5N, R21E, SEC 3 & 4	EAGLE	AK	99738	INTERIOR	103c, 3016.	
C ADAK NAVAL FACILITY	51D54M00SN, 176D45M00SW N END OF ADAK ISLAND.	ADAK	AK	99546	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O ADAK NAVAL AIR STATION	51–54N, 176–45W	ADAK ISLAND	AK	99599	NAVY	3005, 3010, 3016, 103c, 103a.	
C POINT MCINTYRE DEWLINE SITE.	15 MI NW OF CITY	DEADHORSE	AK	99734	NAVY	103c	20A
O POINT MCINTYRE DEW STATION.	12M NW OF CY	DEADHORSE	AK	99740	NAVY	103c.	
C CG—KETCHIKAN BASE	TONGASS HWY 1 MI S OF KETCHIKAN.	KETCHIKAN	AK	99901	TRANSPORTATION	3010, 103c, 3005	20A, 23
O CG—KETCHIKAN COAST GUARD BASE.	S TONGASS HWY-S CY LIMITS	KETCHIKAN	AK	99901	TRANSPORTATION	3010, 103c.	
C CG—LORAN STATION ON SITKINAK.	SITKINAK ISLAND	OLD HARBOR	AK	99643	TRANSPORTATION	103c	20A
O CG—LORAN STATION ON SITKINAK.	SITKINAK ISLAND	SITKINAK ISLAND	AK	99615	TRANSPORTATION	103c.	
C CG—SAINT PAUL ISLAND LORAN STATION.	SAINT PAUL AIRPORT, 1.5 MI FROM RUNWAY #2.	SAINT PAUL ISLAND	AK	99660	TRANSPORTATION	3010, 103c	20A
O CG—ST PAUL ISLAND LORAN STATION.	ST PAUL ISLAND LORAN STATION.	ST PAUL ISLAND	AK	99660	TRANSPORTATION	3010, 103c.	
C FAA—BIG DELTA STATION	FORT GREELY AIRPORT	DELTA JUNCTION	AK	99737	TRANSPORTATION	103c, 3016	20A
O FAA—BIG DELTA STATION	FORT GREELY AIRPORT	DELTA JUNCTION	AK	99732	TRANSPORTATION	103c, 3016.	
C FAA—BIG LAKE VORTAC SITE.	61D33M00SN, 149D52M00SW	BIG LAKE	AK	99652	TRANSPORTATION	103c	20A
O FAA—BIG LAKE VORTAC SITE.	BIG LAKE	BIG LAKE	AK	99687	TRANSPORTATION	103c.	
C FAA—CAPE YAKATAGA STATION.	60D04M57SN, 142D29M30SW	CORDOVA	AK	99574	TRANSPORTATION	3010, 3016, 103c	20A
O FAA—CAPE YAKATAGA STATION.	CAPE YAKATAGA	CAPE YAKATAGA	AK	99574	TRANSPORTATION	3010, 3016, 103c.	
C FAA—DEADHORSE STATION	DEADHORSE AIRPORT NAV AIDS.	DEADHORSE	AK	99734	TRANSPORTATION	103c	20A
O FAA—DEADHORSE STATION	DEADHORSE AIRPORT NAV AIDS.	DEADHORSE	AK	99740	TRANSPORTATION	103c	
C FAA—DUTCH HARBOR STATION.	DUTCH HARBOR AIRPORT	DUTCH HARBOR	AK	99692	TRANSPORTATION	103c, 3010	20A
O FAA—DUTCH HARBOR STATION.		DUTCH HARBOR	AK		TRANSPORTATION	103c, 3010.	
C FAA—FAIRBANKS STATION	5640 AIRPORT WAY	FAIRBANKS	AK	99790	TRANSPORTATION	103c	20A
O FAA—FAIRBANKS STATION	5640 AIRPORT WAY	FAIRBANKS	AK		TRANSPORTATION	103c.	
C FAA—FAREWELL STATION	62D30M24SN, 153D53M37SW	MCGRATH	AK	99627	TRANSPORTATION	3010, 103c, 3016	20A
O FAA—FAREWELL FACILITIES	FAREWELL AIRPORT AREA	FAREWELL	AK	99695	TRANSPORTATION	3010, 103c, 3016	
C FAA—FORT YUKON AIR NAVIGATION STATION.	FORT YUKON AIRPORT	FORT YUKON	AK	99740	TRANSPORTATION	3016, 103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O FAA—FORT YUKON AIRPORT.	FORT YUKON AIRPORT	FORT YUKON	AK	99740	TRANSPORTATION	3016, 103c.	
C FAA—GALENA STATION	64D44M10SN, 156D56M04SW, GALENA AIRPORT NAV AIDS.	GALENA	AK	99741	TRANSPORTATION	103c	20A
O FAA—GALENA STATION	64D44M10SN, 156D56M04SW, GALENA AIRPORT.	GALENA	AK	99741	TRANSPORTATION	103c.	
C FAA—HAINES AIR NAVIGATION STATION.	2 MI S ON FAA/HAINES RD, 59D14M42SN, 135D31M19SW.	HAINES	AK	99827	TRANSPORTATION	103c, 3010	20A, 23
O FAA—HAINES AIR NAVIGATION SITE.	HAINES-FAA ROAD	HAINES	AK	99827	TRANSPORTATION	103c.	
C FAA—JOHNSTONE POINT AIR NAVIGATION STATION.	NW HINCHINBROOK ISLAND, 60D28M00SN, 146D34M00SW.	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c	20A
O FAA—JOHNSTONE POINT AIR NAVAL STATION.	JOHNSTONE POINT NAV AIDS	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c.	
C FAA—LAKE MINCHUMINA STATION.	RAMP AT LAKE MINCHUMINA AIRPORT.	LAKE MINCHUMINA	AK	99757	TRANSPORTATION	3010, 3016, 103c, 3005.	20A
O FAA—LAKE MINCHUMINA AIRPORT.	RAMP AT LK MINCHUMINA ARPT.	LAKE MINCHUMINA	AK	99757	TRANSPORTATION	3010, 3016, 103c, 3005.	
C FAA—MCGRATH STATION	AIRPORT N OF CITY, NAV AIDS	MCGRATH	AK	99627	TRANSPORTATION	103c	20A
O FAA—MCGRATH STATION	AIRPORT N OF CITY, NAV AIDS	MCGRATH	AK	99627	TRANSPORTATION	103c.	
C FAA—MOSES POINT AIR NAVIGATION STATION.	MOSES POINT AIRFIELD, 64D41M53SN, 162D03M26SW.	ELIM	AK	99739	TRANSPORTATION	3010, 3016, 103c	20A
O FAA—MOSES POINT AIR NAVIGATION STATION.	MOSES POINT AIRFIELD	MOSES POINT	AK	99762	TRANSPORTATION	3010, 3016, 103c.	
C FAA—NENANA/NORTH NENANA STATION.	NENANA AIRPORT, 64D32M56SN, 149D04M24SW.	NENANA	AK	99760	TRANSPORTATION	3016, 103c	20A
O FAA—NORTH NENANA VORTAC SITE.	NENANA	NENANA	AK	99760	TRANSPORTATION	3016, 103c.	
C FAA—NOME AIR NAVIGATION STATION.	NOME MUNICIPAL AIRPORT, 64D30M47SN, 165D26M34SW.	NOME	AK	99762	TRANSPORTATION	103c, 3010	20A
O FAA—NOME AIRPORT STATION.	NOME AIRPORT MUNICIPAL AIRPORT.	NOME	AK	99762	TRANSPORTATION	103c, 3010.	
C FAA—PUNTILLA AIR NAVIGATION STATION.	PUNTILLA LAKE, 62D04M24SN, 152D43M59SW.	SKWENTNA	AK	99667	TRANSPORTATION	3016, 103c	20A
O FAA—PUNTILLA AIR NAVIGATION SITE.	PUNTILLA LAKE	PUNTILLA LAKE	AK	99999	TRANSPORTATION	3016, 103c.	
C FAA—SAINT MARY'S AIR NAVIGATION STATION.	YUKON DELTA NATIONAL WILDLIFE REFUGE.	SAINT MARY'S	AK	99658	TRANSPORTATION	103c	20A
O FAA—ST. MARY'S AIR NAVIGATION.	YUKON DELTA NATIONAL WILDLIFE REFUGE.	ST. MARY'S	AK		TRANSPORTATION	103c.	
C FAA—SAND POINT STATION	2 MI W OF SANDPOINT, 55D18M54SN, 160D31M03SW.	SANDPOINT	AK	99661	TRANSPORTATION	103c	20A
O FAA—SAND POINT STATION	ON PENINSULA TOWARDS ALEUTIAN ISLAND CHAIN.	SANDPOINT	AK	99661	TRANSPORTATION	103c.	
C FAA—SISTERS ISLAND	58D10M40SN, 135D15M24SW	JUNEAU	AK	99803	TRANSPORTATION	103c	20A
O FAA—SISTERS ISLAND	SISTERS ISLAND NAV AIDS	JUNEAU	AK	99803	TRANSPORTATION	103c.	
C FAA—SITKA STATION	57D03M07SN, 135D21M45SW, JAPONSKI ISLAND AIRPORT.	SITKA	AK	99835	TRANSPORTATION	103c, 3010	20A
O FAA—SITKA STATION	57D03M07SW, 135D21M45SW, JAPONSKI ISLAND AIRPORT.	SITKA	AK	99835	TRANSPORTATION	103c, 3010.	
C FAA—SUMMIT AIR NAVIGATION STATION.	CANTWELL PKS HWY 5 MI S	SUMMIT	AK	99729	TRANSPORTATION	3016, 3010, 103c	20A
O FAA—SUMMIT AIR NAVIGATION STATION.	CANTWELL PKS HWY 5 MI S NAV AIDS.	SUMMIT	AK	99729	TRANSPORTATION	3016, 3010, 103c.	
C FAIRVIEW SUBSTATION	FAIRVIEW SUBSTATION	FAIRVIEW	AL		TENNESSEE VALLEY AUTHORITY.	103a, 3010	23
O FAIRVIEW SUBSTATION	FAIRVIEW SUBSTATION	FAIRVIEW	AL		TENNESSEE VALLEY AUTHORITY.	103a.	
C DOUGLAS RANGE	1401 EIGHTH ST	DOUGLAS	AZ	85607	ARMY	3016, 103c	23
O DOUGLAS RANGE	1401 EIGHTH ST	DOUGLAS	AZ	85607	ARMY	3016.	
C FORT HUACHUCA	RCRA UNITS	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a, 3005.	23
O FORT HUACHUCA	RCRA UNITS	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a.	
C SAFFORD RANGE	4001 FIRST AVE	SAFFORD	AZ	85546	ARMY	3016, 103c	23
O SAFFORD RANGE	4001 FIRST AVE	SAFFORD	AZ	85546	ARMY	3016.	
C SIERRA NF: BIG CREEK PESTICIDE BUILDING.	T8S R25E S28 SW1/4	BIG CREEK	CA	93605	AGRICULTURE	103c	20A
O BIG CREEK PESTICIDE BUILDING.	T8S R25E S28 SW14	BIG CREEK	CA	93605	AGRICULTURE	103c.	
C BELL ORGANIZATIONAL MAINTENANCE SHOP #6.	5300 BANDINI AVENUE	BELL	CA	90201	ARMY	3016, 103c	23
O BELL ORGANIZATIONAL MAINTENANCE SHOP #6.	5300 BANDINI AVENUE	BELL	CA	90201	ARMY	3016.	
C ENERGY TECHNOLOGY ENGINEERING CENTER.	SANTA SUSANA MOUNTAIN	SIMI HILLS	CA	93063	ENERGY	3005, 3016, 103c, 3010.	23
O ENERGY TECHNOLOGY ENGINEERING CENTER.	SANTA SUSANA MOUNTAIN	SIMI HILLS	CA	93063	ENERGY	3005, 3016, 103c.	
C BLM—STATELINE DUMP (LANDFILL).	N/A		CA		INTERIOR	3016, 103c	23
O BLM—STATELINE DUMP (LANDFILL).	N/A		CA		INTERIOR	3016.	
C CONCORD NAVAL WEAPONS STATION.	10 DELTA ST	CONCORD	CA	94520	NAVY	3005, 3016, 103c, 3010.	20A, 23
O CONCORD NAVAL WEAPONS STATION.	PORT CHICAGO HWY.	CONCORD	CA	94520	NAVY	3005, 3016, 103c.	
C LEMOORE NAVAL AIR STATION.	700 AVENGER AVE	LEMOORE	CA	93246	NAVY	3010, 3016, 103c, 103a, 3005.	23
O LEMOORE NAVAL AIR STATION.	700 AVENGER AVE	LEMOORE	CA	93246	NAVY	3010, 3016, 103c, 103a.	
C OAKLAND NAVAL SUPPLY CENTER-ALAMEDA FACILITY.	2155 MARINER SQUARE LOOP	ALAMEDA	CA	94501	NAVY	3005, 3010, 103c	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O OAKLAND NAVAL SUPPLY CENTER-ALAMEDA FACILITY.	2155 MARINER SQUARE LOOP	ALAMEDA	CA	94501	NAVY	3005, 3010.	
C SALTON SEA TEST BASE	HYW 86	SALTON CITY	CA	92275	NAVY	103c, 3005, 3010	23
O SALTON SEA TEST BASE	HWY 86	SALTON CITY	CA	92275	NAVY	103c.	
C SAN DIEGO NAVAL MEDICAL CENTER.	34800 BOB WILSON DR, SUITE 1800.	SAN DIEGO	CA	92134	NAVY	103c, 103a, 3010	23
O SAN DIEGO NAVAL MEDICAL CENTER.	34800 BOB WILSON DR, SUITE 1800.	SAN DIEGO	CA	92134	NAVY	103c, 103a.	
C SHRIEVER AFS TRANSFORMER STORAGE AREA.	500 NAVSTAR ST	COLORADO SPRINGS.	CO		AIR FORCE	103a	20A
O FALCONERS TRANSFORMER STORAGE AREA.	500 STAR STREET	COLORADO SPRINGS.	CO		AIR FORCE	103a.	
C GRAND JUNCTION PROJECTS OFFICE.	3597 B–¾ RD P02567	GRAND JUNCTION	CO	81502–5504	ENERGY	3016, 103c, 3005, 3010.	23
O GRAND JUNCTION PROJECTS OFFICE.	3597 B–¾ RD P02567	GRAND JUNCTION	CO	81502–5504	ENERGY	3016, 103c.	
C IRS—WASHINGTON	1111 CONSTITUTION AVE, NW	WASHINGTON	DC	20032	TREASURY	103a	20A
O IRS—WASHINGTON	1111 CONSTITUTION AVENUE, N.W..	WASHINGTON	DC		TREASURY	103a.	
C MACDILL AIR FORCE BASE	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c, 103a.	23
O MACDILL AIR FORCE BASE	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c.	
C MAYPORT COAST GUARD BASE.	PO BOX 385	MAYPORT	FL	32267	TRANSPORTATION	3010, 103c, 103a	23
O MAYPORT COAST GUARD BASE.	PO BOX 385	MAYPORT	FL	32267	TRANSPORTATION	3010, 103c.	
C SANTA RITA NAVAL MAGAZINE.	RTE 5	SANTA RITA	GU	96915	NAVY	3010, 3016, 103c, 3005.	23
O SANTA RITA NAVAL MAGAZINE.	RTE 5	SANTA RITA	GU	96915	NAVY	3010, 3016, 103c.	
C BELLOWS AIR FORCE STATION.	10 MS E OF CY RTE. 72	HONOLULU	HI	96898	AIR FORCE	3016, 3010, 103c	23
O BELLOWS AIR FORCE STATION.	10 MS E OF CY RTE. 72	HONOLULU	HI	96898	AIR FORCE	3016.	
C SCHOFIELD BARRACKS	LYMAN RD	WAHIAWA	HI	96786	ARMY	3010, 3016, 103c, 103a, 3005.	23
O SCHOFIELD BARRACKS	LYMAN RD	WAHIAWA	HI	96786	ARMY	3010, 3016, 103c, 103a.	
C SANDIA NATIONAL LABORATORIES—KAUAI TEST FACILITY.	U.S. NAVY PACIFIC MISSILE RANGE.	KEKAHA	HI	96796	ENERGY	3016, 103c	23
O SANDIA NATIONAL LABORATORIES—KAUAI TEST FACILITY.	U.S. NAVY PACIFIC MISSILE RANGE.	KEKAHA	HI	96796	ENERGY	3016.	
C FWS—BAKER ISLAND NATIONAL WILDLIFE REFUGE.	0D11M30SN, 176D29M0SW	HONOLULU	HI	96850	INTERIOR	3016, 103c	20A
O FWS—BAKER ISLAND NATIONAL WILDLIFE REFUGE.	300 ALA MOANA BLVD	HONOLULU	HI	96813	INTERIOR	3016, 103c.	
C PAYETTE NF: CINNABAR MINE.	T18N R9&10E S1, 2, 6&7	YELLOW PINE	ID	83677	AGRICULTURE	3016, 103c	20A
O PAYETTE NF: CINNABAR MINE.	KRASSEL DISTRICT	YELLOWPINE	ID		AGRICULTURE	3016, 103c.	
C PAYETTE NF: STIBNITE MINE	T18N R9E S2, 3, 10, 11, 14, 15, 16, 21&22.	YELLOW PINE	ID	83677	AGRICULTURE	103c, 3016	20A
O PAYETTE NF: STIBNITE MINE	P.O. BOX 1026	MCCALL	ID	83638	AGRICULTURE	103c, 3016.	
C SALMON NF: BLACKBIRD MINE.	HWY 93 NW OF COBALT, T45 R5E S20, 21 & 22.	COBALT	ID	83229	AGRICULTURE	103c, 3016, 3010	20A
O SALMON NF: BLACKBIRD MINE.	P.O. BOX 729	SALMON	ID	83467	AGRICULTURE	103c, 3016, 3010.	
C SHEEP EXPERIMENT STATION.	I15 N	DUBOIS	ID	83423	AGRICULTURE	3016, 103c	20A
O SHEEP EXPERIMENT STATION.	HC 62, BOX 2010	DUBOIS	ID	83423	AGRICULTURE	3016, 103c.	
C MOUNTAIN HOME AIR FORCE BASE.	HWY 67, 10 MI W OF CITY	MOUNTAIN HOME AFB.	ID	83648	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O MOUNTAIN HOME AIR FORCE BASE.	366 CSG/DE	M0UNTAIN HOME AFB.	ID	83648	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C BLM—CEDAR BUTTE S END DUMPSITE.	T23S R32E S15	ROCKFORD	ID	83221	INTERIOR	103c	20A
O BLM—CEDAR BUTTE S END DUMPSITE.	T22 SR32E SEC15	ROCKFORD	ID	83221	INTERIOR	103c.	
C BLM—CHAMPAGNE CREEK MINE.	T3N R24E S15	GROUSE	ID	83242	INTERIOR	3016, 103c	20A
O BLM—CHAMPAIGNE CREEK MINE.	T3N R24E SEC15	GROUSE	ID	83242	INTERIOR	3016, 103c.	
C BLM—COW HOLLOW HAZARDOUS WASTE DUMP.	T14S R31E S34	JUNIPER	ID	83342	INTERIOR	103c	20A
O BLM—COW HOLLOW HAZARDOUS WASTE DUMP.	T.14.S.R.31.E. SEC.34	JUNIPER	ID	83706	INTERIOR	103c.	
C BLM—CREAM CAN JUNCTION.	T5S R26E S35 SW¼ SW¼ BM	MINIDOKA	ID	83343	INTERIOR	3010	20A
O BLM—CREAM CAN JUNCTION.	T5S R26E S35 SW¼ SW¼ BM	CAREY	ID	83320	INTERIOR	3010.	
C BLM—DELAMAR SILVER MINE.	T15S R35E S4–9, 8 MI W OF CITY.	SILVER CITY	ID	83650	INTERIOR	103c	20A
O BLM—DELAMAR SILVER MINE.	T15S, R35E	OWYHEE	ID	83650	INTERIOR	103c.	
C BLM—DRY LAKES AIR SERVICE.	T1N R3W S26	MELBA	ID	83641	INTERIOR	103c	20A
O BLM—DRY LAKES AIR SERVICE AIRSTRIP-CASCADE RA.	T1N, R3W, SEC26	CANYON	ID	83650	INTERIOR	103c.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C BLM—HULET DUMP	T3S R1E S15 NE NE	MURPHY	ID	83650	INTERIOR	103c, 3016	20A
O BLM—HULET DUMP	T.35.R.IW.SEC.15	MUPRHY	ID	83650	INTERIOR	103c, 3016.	
C BLM—JEROME COUNTY LANDFILL.	T8S R17E S14, 4 MI W OF CITY	JEROME	ID	83338	INTERIOR	103c	20A
O BLM—JEROME COUNTY LANDFILL.		JEROME COUNTY	ID	83338	INTERIOR	103c.	
C BLM—LESLIE DUMP SITE-1	T7N R25E S34, 1.5 MI N OF CITY	LESLIE	ID	83249	INTERIOR	103c	20A
O BLM—LESLIE DUMP SITE-1	T 7N, R25E, SEC34	LESLIE	ID	83249	INTERIOR	103c.	
C BLM—LESLIE DUMP SITE-4	T6N R24E S18, 4 MI SW OF CITY	LESLIE	ID	83429	INTERIOR	103c	20A
O BLM—LESLIE DUMP SITE-4 SW.	T 6N, R24E, SEC18	LESLIE	ID	83249	INTERIOR	103c.	
C BLM—LIBERTY DUMP	T3S R33E S19, 20, 21 & 30, 5 MI SW OF CITY.	LIBERTY	ID	83221	INTERIOR	103c	20A
O BLM—LIBERTY DUMP	T3S, R33E, SEC 19E, 20N, 21SWNW NWNW 30N.	LIBERTY	ID	83221	INTERIOR	103c.	
C BLM—MENAN UNAUTHORIZED DUMP.	T6N R38E S27 SE¼	MADISON	ID	83440	INTERIOR	103c	20A
O BLM—MENAN UNAUTHORIZED DUMP.	T6N, R38E, SEC26 AND 27	MADISON	ID	83440	INTERIOR	103c.	
C BLM—PESTICIDE DUMP REYNOLDS.	T2S R3W S31	REYNOLDS	ID	83650	INTERIOR	103c	20A
O BLM—PESTICIDE DUMP SITE, REYNOLDS.	T2SR3W SEC31	REYNOLDS	ID	83650	INTERIOR	103c.	
C BLM—PINE CREEK	T47,48&49N R2E, NEAR PINEHURST.	PINEHURST	ID	83850	INTERIOR	103c	20A
O BLM—PINE CREEK	T47 48 49 N R2E NEAR PINEHURST.	PINHURST	ID	83850	INTERIOR	103c.	
C BLM—SPRINGFIELD UNAUTHORIZED DUMPSITE.	T3S R32E S15, 6 MI N OF CITY	SPRINGFIELD	ID	83277	INTERIOR	103c	20A
O BLM—SPRINGFIELD UNAUTHORIZED DUMPSITE.	T35NR32ESEC15	SPRINGFIELD	ID	83277	INTERIOR	103c.	
C BLM—TWIN FALLS CO #4	T12S R19E S11	MURTAUGH	ID	83344	INTERIOR	103c	20A
O BLM—TWIN FALLS CO #4	T12S, R 19E, SEC 12	MURTAUGH	ID	83344	INTERIOR	103c.	
C BLM—TWIN FALLS CO #5	T12S R19E S12	MURTAUGH	ID	83344	INTERIOR	103c	20A
O BLM—TWIN FALLS CO #5	T12S, R 19E, SEC 11	MURTAUGH	ID	83344	INTERIOR	103c.	
C BLM—TWIN FALLS CO MURTAUGH (EAST) LANDFILL.	T11S R19E S10	MURTAUGH	ID	83344	INTERIOR	103c, 3016	20A
O BLM—TWIN FALLS CO MURTAUGH (EAST) LANDFILL.	T11SR19ESEC10	TWIN FALLS	ID	83301	INTERIOR	103c, 3016.	
C BLM—UPPER LITTLE LOST UNAUTHORIZED DUMP.	T11N R26E S10, 12 MI NW OF CITY.	CLYDE	ID	83244	INTERIOR	103c	20A
O BLM—UPPER LITTLE LOST UNAUTHORIZED DUMP.	T11NR26ESEC10 12 MI NW OF CY/T11N,R26E,SEC10.	CLYDE	ID	82349	INTERIOR	103c.	
C BLM—WARRIOR ROAD	T35N R1W S11, NEAREST CITY KUNA.	KUNA	ID	83634	INTERIOR	103c	20A
O BLM—WARRIOR ROAD	T35N, R1W, SEC11 NEAREST CITY KONA.	KONA	ID	83634	INTERIOR	103c.	
C BR—MINIDOKA LANDFILL	T9S R23E S3, 4.5 MI NW OF CITY.	MINIDOKA	ID	83343	INTERIOR	103c	20A
O BR—MINIDOKA LANDFILL		RUPERT	ID	83350	INTERIOR	103c.	
C TALLEY DEFENSE SYSTEMS JAAPGP64.	6 MILES S OF ELWOOD OFF RT 53.	ELWOOD	IL	60421	DEFENSE	3010, 3005	23
O TALLEY DEFENSE SYSTEMS JAAPGP64.	6 MILES S OF ELWOOD OFF RT 53.	ELWOOD	IL	60421	DEFENSE	3010.	
C BAINBRIDGE NAVAL TRAINING CENTER.	US HIGHWAY 222	BAINBRIDGE	MD	21904		103c, 3010	23
O BAINBRIDGE NAVAL TRAINING CENTER.	US HIGHWAY 222	BAINBRIDGE	MD	21904		103c.	
C FORT RITCHIE	603 LAKESIDE DR	FORT RITCHIE	MD	21719	ARMY	3016, 3010, 103c	23
O FORT RITCHIE	603 LAKESIDE DR	FORT RITCHIE	MD	21719	ARMY	3016, 3010.	
C HURON—MANISTEE NF: WHITE CLOUD.	12 N CHARLES AVE	WHITE CLOUD	MI	49349	AGRICULTURE	103c, 3010, 3016	20A
O HURON—MANISTEE NF: RANGER STATION.	12 N CHARLES AVE	WHITE CLOUD	MI	49349	AGRICULTURE	103c, 3010, 3016.	
C OTTOWA NF: ROBINS DISPOSAL AREA.	FS RD 5238–B	WATERSMEET	MI	49969	AGRICULTURE	103a, 3010	20A, 23
O FS—ROBINS DISPOSAL AREA.		WATERSMEET	MI		AGRICULTURE	103a.	
C SCHUSTER FARM	T55N R33W S58 S17	GOWER	MO	64454	AGRICULTURE	103c	20A
O SCHUSTER FARM	SEC58 S17 T55N R33W	GOWER	MO		AGRICULTURE	103c.	
C MISSOURI AIR NATIONAL GUARD.	ROSECRANS MEMORIAL AIRPORT.	ST JOSEPH	MO	64050	AIR FORCE	103c, 3010	20A
O MISSOURI AIR NATIONAL GUARD.	ROSECRANS MEMORIAL AIRPORT.	ST JOSEPH	MO	64503	AIR FORCE	103c, 3010.	
C RICHARDS GEBAUR AIR FORCE BASE.	HYW 150 & US HWY 71	BELTON	MO	64012	AIR FORCE	3016, 103c, 3010	20A
O RICHARDS GEBAUR AIR FORCE BASE.	442 CSG	BELTON	MO	64030	AIR FORCE	3016, 103c, 3010.	
C WHITEMAN AIR FORCE BASE	T46N R24W S33	WHITEMAN AFB	MO	65305	AIR FORCE	3005, 3010, 3016, 103c.	20A
O WHITEMAN AIR FORCE BASE.	351 CSG/DEEV	WHITEMAN AFB	MO	65305–5000	AIR FORCE	3005, 3010, 3016, 103c.	
C AIR TRAINING COMMAND-ENGINEER & FORT LEONARD WOOD.	I44, PULASKI COUNTY	FORT LEONARD WOOD.	MO	65473	ARMY	3005, 3010, 3016, 103c.	20A
O AIR TRAINING COMMAND ENGINEER & FT. LEONARDWOOD.	FORT LEONARDWOOD I44	PULASKI	MO	65473–5000	ARMY	3005, 3010, 3016, 103c.	
C LAKE CITY ARMY AMMUNITION PLANT.	JCT OF MO HWY 7 & HWY 78	INDEPENDENCE	MO	64050	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O LAKE CITY ARMY AMMUNITION PLANT.	JCT MO HWY 7 & HWY 78	INDEPENDENCE	MO	64051–0330	ARMY	3005, 3010, 3016, 103c, 103a.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C ST. LOUIS ARMY AMMUNITION PLANT.	4800 GOODFELLOW BLVD	ST. LOUIS	MO	63120	ARMY	103c	20A, 24
O ST. LOUIS ARMY AMMUNITION PLANT.	4300 GOODFELLOW BLVD. HANLEY AREA.	ST. LOUIS	MO	63120	ARMY	3016, 103c.	
C NIKE BATTERY KANSAS CITY—30 INACTIVE.	2.5 MI S OF LONE JACK	PLEASANT HILL	MO	64080	DEFENSE	103c	20A
O NIKE BATTERY KANSAS CITY—30 INACTIVE.	2.5 MI S OF LONE JACK	PLEASANT HILL	MO		DEFENSE	103c.	
C KANSAS CITY PLANT	200 E 95TH ST	KANSAS CITY	MO	64131	ENERGY	3005, 3010, 3016, 103c, 103a.	20A
O KANSAS CITY PLANT	2000 EAST 95TH ST.—(TROOST)	KANSAS CITY	MO	64131–3095	ENERGY	3005, 3010, 3016, 103c, 103a.	
C MOBILE INCINERATOR—DEMMRY FARM.	SE¼ NW¼ NW¼ SEC 20	MCDOWELL	MO	65769	EPA	3010, 103c, 3016, 3005.	23
O MOBILE INCINERATOR—DEMMRY FARM.	SE¼ NW¼ NW¼ SEC 20	MCDOWELL	MO	65769	EPA	3010, 103c, 3016.	
C JOB CORPS CENTER—ST LOUIS.	E NATURAL BRIDGE AVE & GOODFELLOW BLVD.	ST LOUIS	MO	63120	LABOR	103c	20A, 22
O HANLEY AREA	E NATURAL BRIDGE GOODFELLOW RD.	ST LOUIS	MO	63120	ARMY	103.	
C COLUMBUS AIR FORCE BASE.	14 ABG/DE	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103c, 103a.	23
O COLUMBUS AIR FORCE BASE.	14 ABG/DE	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103c.	
C YELLOW CREEK PRODUCTION FACILITY.	1 NASA DRIVE	IUKA	MS	38852	NASA	3010, 103c, 3005	23
O YELLOW CREEK PRODUCTION FACILITY.	1 NASA DRIVE	IUKA	MS	38852	NASA	3010, 103c.	
C BLM—JET FUEL REFINERY SITE.	T14N R31E, 4 MI E OF MOSBY	MOSBY	MT	59058	INTERIOR	103c, 3010	20A, 23
O BLM—JET FUEL REFINERY SITE.	T14NR31E 4 MI E OF MOSBY	MOSBY	MT		INTERIOR	103c.	
C SUNNY POINT MILITARY OCEAN TERMINAL.	ATTN: MTE SU–FE	SOUTHPORT	NC	28461	ARMY	103c, 103a, 3016, 3010.	23
O SUNNY POINT MILITARY OCEAN TERMINAL.	ATTN: MTE SU–FE	SOUTHPORT	NC	28461	ARMY	103c, 103a, 3016.	
C CHERRY POINT MARINE CORPS AIR STATION.	NC HWY 101	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c, 103a.	23
O CHERRY POINT MARINE CORPS AIR STATION.	NC HWY 101	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c.	
C HARVEY POINT DEFENSE TESTING ACTIVITY.	RT 5	HERTFORD	NC	27944	NAVY	103c, 3010	23
O HARVEY POINT DEFENSE TESTING ACTIVITY.	RT 5	HERTFORD	NC	27944	NAVY	103c.	
C PEDRICKTOWN SUPPORT FACILITY.	ROUTE 130 & ARTILLERY AVE	PEDRICKTOWN	NJ	08067	ARMY	3010, 103c	20A
O PEDRICKTOWN SUPPORT FACILITY.	ROUTE 130 SIEVER SANDBERG USARC.	PEDRICKTOWN	NJ	08067	ARMY	3010, 103c.	
C FWS—GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE	NJ	07920	INTERIOR	3016, 103c, 3010	23
O FWS—GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE	NJ	07920	INTERIOR	3016, 103c.	
C FAA—TECHNICAL CENTER	ROUTES 563 AND 575	POMONA	NJ	08405	TRANSPORTATION	3016, 103c, 103a, 3010.	23
O FAA–TECHNICAL CENTER	ROUTES 563 AND 575	POMONA	NJ	08405	TRANSPORTATION	3016, 103c, 103a	
C LOVELACE INHALATION TOXICOLOGY RESEARCH INSTITUTE.	BLDG. 9200, KIRTLAND AFB EAST.	ALBUQUERQUE	NM	87185	ENERGY	103c, 3016, 3010	23
O LOVELACE INHALATION TOXICOLOGY RESEARCH INSTITUTE.	BLDG. 9200, KIRTLAND AFB EAST.	ALBUQUERQUE	NM	87185	ENERGY	103c, 3016.	
C TONOPAH TEST RANGE	140 MI NW OF LAS VEGAS	TONOPAH	NV	89049	ENERGY	3005, 3010, 103c, 103a, 3016.	20A
O TONOPAH TEST RANGE	PO BOX 10359	TONOPAH	NV	89049	ENERGY	3005, 3010, 103c, 103a, 3016.	
C BLM-MONITE DYNAMITE SITE.	T20N R20E S28 SW¼ MDW	SPARKS	NV	89436	INTERIOR	103c, 3010	23
O BLM—MONITE DYNAMITE SITE.	T20N R20E S28 SW1/4 MDW	SPARKS	NV	89436	INTERIOR	103c.	
C PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT	NY	11957	AGRICULTURE	3016, 103c, 3010	23
O PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT	NY	11957	AGRICULTURE	3016, 103c..	
C HANCOCK FIELD	TAFT AND THOMPSON ROADS	NORTH SYRACUSE	NY	13212	AIR FORCE	3010, 3016, 103c, 3005.	23
O HANCOCK FIELD	TAFT AND THOMPSON ROADS	NORTH SYRACUSE	NY	13212	AIR FORCE	3010, 3016, 103c.	
C STEWART ANNEX/SUBPOST	USMA NEWBURG LANDFILL, STEWART AIRPORT, RT 17.	NEWBURG	NY	12550	ARMY	3016, 3010, 103c	23
O STEWART ANNEX/SUBPOST	USMA NEWBURG LANDFILL, STEWART AIRPORT, RT 17.	NEWBURG	NY	12550	ARMY	3016.	
C NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	INTERIOR	103c, 3010	23
O NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	INTERIOR	103c.	
C FREMONT NF: SILVER LAKE R.D. PENTA SITE.	HWY 31, 55 MI NW OF PAISLEY	SILVER LAKE	OR	97638	AGRICULTURE	103c, 3010	23
O FREMONT NF: SILVER LAKE R.D. PENTA SITE.	HWY 31, 55 MI NW OF PAISLEY	SILVER LAKE	OR	97638	AGRICULTURE	103c.	
C MT. HOOD NF: SITE B	T1N R6E S7, FS RD 1509, 3 MI SE OF CITY.	BRIDAL VEIL	OR	97010	AGRICULTURE	103c	20A
O MT. HOOD NF: SITE B	3 MI SE OF CITY, T1S R6E S07	BRIDAL VEIL	OR	97010	AGRICULTURE	103c.	
C WILLAMETTE NF: LOWELL RANGER STATION.	FS RD 1806–433, SPUR 477, 44D02M01SN, 122D35M06SW.	LOWELL	OR	97452	AGRICULTURE	3010, 103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O FS—LOWELL RANGER STATION.	RD 1806–433 ON SPUR 447	LOWELL	OR	97452	AGRICULTURE	3010, 103c.	
C PORTLAND AIR NATIONAL GUARD BASE.	6801 NE CORN FOOT RD	PORTLAND	OR	97208	AIR FORCE	103c, 3016, 3010	23
O PORTLAND AIR NATIONAL GUARD BASE.	6801 NE CORN FOOT RD	PORTLAND	OR	97208	AIR FORCE	103c, 3016.	
C ASTORIA FIELD OFFICE	HWY 30 & MARITIME RD	ASTORIA	OR	97103	CORPS OF ENGINEERS, CIVIL.	3010, 3016, 103c	22
O COE—ASTORIA FIELD OFFICE.	HWY 30 & MARITIME RD	ASTORIA	OR	97103	ARMY	3010, 3016, 103c.	
C BONNEVILLE DAM	I84 N OF EXIT 40	BONNEVILLE	OR	97014	CORPS OF ENGINEERS, CIVIL.	3010, 103a, 3016, 103c.	22
O COE—BONNEVILLE DAM	I84 N OF EXIT 40	BONNEVILLE	OR	97014	ARMY	3010, 103a, 3016, 103c.	
C ELK CREEK DAM PROJECT	27 MI N OF CITY	MEDFORD	OR	97503	CORPS OF ENGINEERS, CIVIL.	103c	22
O COE—ELK CREEK DAM PROJECT.	27 MI N OF CITY	MEDFORD	OR	97503	ARMY	103c.	
C JOHN DAY DAM	RUFUS EXIT	RUFUS	OR	97050	CORPS OF ENGINEERS, CIVIL.	3010, 103c	22
O COE—JOHN DAY DAM AIR ENFORCEMENT DIVISION.	RUFUS EXIT	RUFUS	OR	97050	ARMY	3010, 103c.	
C NORTH PACIFIC DIVISION MATERIALS LABORATORY.	1491 NW GRAHAM AVE	TROUTDALE	OR	97060	CORPS OF ENGINEERS, CIVIL.	3010, 103c	22
O COE—NORTH PACIFIC DIVISION–MATERIALS LABORATORY.	1491 NW GRAHAM AVE	TROUTDALE	OR	97050	ARMY	3010, 103c.	
C PORTLAND 3 MILE CANYON SITE.	I84 1.2 MI W OF EXIT 147	ARLINGTON	OR	97812	CORPS OF ENGINEERS, CIVIL.	3010, 103c	22
O COE—PORTLAND 3 MILE CANYON SITE.	I84 1.2 MI W OF EXIT 147	ARLINGTON	OR	97812	ARMY	3010, 103c.	
C PORTLAND MOORINGS	8010 NW ST HELENS RD	PORTLAND	OR	97210	CORPS OF ENGINEERS, CIVIL.	3010, 103c	22
O COE—PORTLAND MOORINGS USAED.	8010 NW ST HELENS RD	PORTLAND	OR	97210	ARMY	3010, 103c.	
C THE DALLES DAM	EXIT 88	THE DALLES	OR	97058	CORPS OF ENGINEERS, CIVIL.	3010, 103c	22
O COE—THE DALLES DAM AIR ENFORCEMENT DIVISION.	EXIT 88	THE DALLES	OR	97058	ARMY	3010, 103c.	
C BLM—LYTLE BOULEVARD DUMP.	T19S R46E S31 & T20S R46E S31.	VALE	OR	97918	INTERIOR	3016, 103c	20A
O BLM—LYTLE BOULEVARD DUMP.	T19SR46ESEC31T20R46	VALE	OR	97918	INTERIOR	3016, 103c.	
C BM—ALBANY RESEARCH CENTER.	1450 SW QUEEN AVE	ALBANY	OR	97321	INTERIOR	3010, 3016, 103c	20A
O BM—ALBANY LABORATORY	1450 SW QUEEN AVE	ALBANY	OR	97321	INTERIOR	3010, 3016, 103c.	
C NPS—CRATER LAKE NATIONAL PARK.	HWY 62 NW OF FORT KLAMATH	CRATER LAKE	OR	97604	INTERIOR	3010, 103c	20A
O NPS—CRATER LAKE NATIONAL PARK.	HWY 62	CRATER LAKE	OR	97604	INTERIOR	3010, 103c.	
C STATE COLLEGE AIR NATIONAL GUARD.	131 W NITTANY AVE	STATE COLLEGE	PA		AIR FORCE	103c	20A
O STATE COLLEGE AIR NATIONAL GUARD.		STATE COLLEGE	PA		AIR FORCE	103c.	
C SAN JUAN NAS HANGER 21	PORT OF SAN JUAN HARBOR	SAN JUAN	PR	00906	NAVY	3016, 103c	20A, 22, 23
O SAN JUAN ARMY AIR SUPPORT FACILITY.	BOX 3786	SAN JUAN	PR	00904	ARMY	3016.	
C DAVISVILLE NAVAL CONSTRUCTION BATTALION CENTER.	OFF SANFORD ROAD	NORTH KINGSTOWN	RI	02871	NAVY	3016, 103c, 103a, 3010, 3005.	23
O DAVISVILLE NAVAL CONSTRUCTION BATTALION CENTER.	OFF SANFORD ROAD	NORTH KINGSTOWN	RI	02871	NAVY	3016, 103c, 103a, 3010.	
C MCENTIRE AIR NATIONAL GUARD BASE.	MAILSTOP 8	EASTOVER	SC	29044	AIR FORCE	103c, 3016, 3010	23
O MCENTIRE AIR NATIONAL GUARD BASE.	MAILSTOP 8	EASTOVER	SC	29044	AIR FORCE	103c, 3016.	
C SAVANNAH RIVER SITE	BETWEEN SC HWY 125 & US HWY 278.	AIKEN	SC	29802	ENERGY	3005, 3010, 3016, 103c, 103a.	20A
O SAVANNAH RIVER SITE	PO BOX A	AIKEN	SC	29802	ENERGY	3005, 3010, 3016, 103c, 103a.	
C CHARLESTON NAVAL WEAPONS STATION—SOUTH ANNEX.	1050 REMOUNT ROAD	NORTH CHARLESTON.	SC	29408	NAVY	103c, 3010	20A, 23
O CHARLESTON NAVAL WEAPONS STATION SOUTH ANNEX.	REMOUNT ROAD	NORTH CHARLESTON.	SC	29406	NAVY	103c.	
C NASHVILLE AIR NATIONAL GUARD.	240 KNAPP BLVD	NASHVILLE	TN	37217	AIR FORCE	3016, 3010	23
O NASHVILLE AIR NATIONAL GUARD.	240 KNAPP BLVD	NASHVILLE	TN	37217	AIR FORCE	3016.	
C BRISTOL NAVAL WEAPONS INDUSTRIAL RESERVE PLANT.	100 VANCE TANK ROAD RAYTHEON COMPANY.	BRISTOL	TN	36720–5698	NAVY	3016, 103c, 3010	23
O BRISTOL NAVAL WEAPONS INDUSTRIAL RESERVE PLANT.	100 VANCE TANK ROAD RAYTHEON COMPANY.	BRISTOL	TN	36720–5698	NAVY	3016, 103c.	
C MEMPHIS NAVAL AIR STATION.	MILLINGTON–ARLINGTON ROAD	MILLINGTON	TN	38054	NAVY	3005, 3010, 3016, 103c, 103a.	23
O MEMPHIS NAVAL AIR STATION.	MILLINGTON–ARLINGTON ROAD	MILLINGTON	TN	38054	NAVY	3005, 3010, 3016, 103c.	
C BOONE HYDRO PLANT	TN HWY 75/ 8 MI SE OF	KINGSPORT	TN	37662	TENNESSEE VALLEY AUTHORITY.	103a, 3010	23
O BOONE HYDRO PLANT	TN HWY 75/8 MI SE OF	KINGSPORT	TN	37662	TENNESSEE VALLEY AUTHORITY.	103a.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C WAKE ISLAND AIRFIELD	DET 1 15 LG/CC	WAKE ISLAND APO AP.	TT	96518	AIR FORCE	3010, 3016, 103c	23
O WAKE ISLAND AIRFIELD	DET 1 15 LG/CC	WAKE ISLAND APO AP.	TT	96518	AIR FORCE	3010, 3016.	
C FORT WORTH FEDERAL SUPPLY CENTER.	501 FELIX ST	FORT WORTH	TX	76101	GENERAL SERVICES ADMINISTRATION.	3010, 103c	20A
O FORT WORTH FEDERAL CENTER 7FS.	501 FELIX STREET	FORT WORTH	TX	78753	GENERAL SERVICES ADMINISTRATION.	3010, 103c.	
C KINGSVILLE NAVAL AIR STATION.	554 MCCAIN ST	KINGSVILLE	TX	78363	NAVY	3010, 103c, 103a, 3005.	20A, 23
O KINGSVILLE NAVAL AIR STATION.	MILITARY HIGHWAY	KINGSVILLE	TX	78363	NAVY	3010, 103c, 103a.	
C HERNDON SITE	925 SPRINGVALE ROAD	HERNDON	VA	22070	ARMY	103c	22
O HERNDON	925 SPRINGVALE ROAD	HERNDON	VA	22070	DEFENSE MAPPING AGENCY.	103c.	
C VINT HILL FARMS STATION	BLDG 2470, VINT HILL FARMS STATION.	WARRENTON	VA	22186	ARMY	3010, 3016, 103c, 3005.	23
O VINT HILL FARMS STATION	BLDG 2470, VINT HILL FARMS STATION.	WARRENTON	VA	22186	ARMY	3010, 3016, 103c.	
C RICHMOND DEFENSE SUPPLY CENTER.	JEFFERSON DAVIS HIGHWAY	RICHMOND	VA	23297	DEFENSE	3005, 3010, 3016, 103c.	20A
O RICHMOND DEFENSE GENERAL SUPPLY CENTER.	JEFFERSON DAVIS HIGHWAY	RICHMOND	VA	23297	DEFENSE	3005, 3010, 3016, 103a.	
C BLAIR HANGAR ARMY AIR SUPPORT FACILITY.	ALEX HAMILTON AIRPORT	ST. CROIX	VI	00850	ARMY	3016, 103c	23
O BLAIR HANGAR ARMY AIR SUPPORT FACILITY.	ALEX HAMILTON AIRPORT	ST. CROIX	VI	00850	ARMY	3016.	
C OKANOGAN NF: ALDER CREEK.	T33N R21E S24 NE¼ SW¼ WM	TWISP	WA	98856	AGRICULTURE	103c	20A
O OKANOGAN NF: ALDER CREEK.	T33N R21E S24 QS SE WM	TWISP	WA	98856	AGRICULTURE	103c.	
C OKANOGAN NF: LOST LAKE	T39N R30E S28&29 QSNE WM	OROVILLE	WA	98844	AGRICULTURE	103c	20A
O OKANOGAN NF: LOST LAKE	T39N R30E S28&29 QSNE WM	ORVILLE	WA	98844	AGRICULTURE	103c.	
C FAIRCHILD AIR FORCE BASE	US HWY 2 W OF SPOKANE	FAIRCHILD AFB	WA	99011	AIR FORCE	3005, 3010, 3016, 103c.	20A
O FAIRCHILD AIR FORCE BASE	92 CSG/CC	FAIRCHILD AFB	WA	99011	AIR FORCE	3005, 3010, 3016, 103c.	
C MCCHORD AIR FORCE BASE	MERIDIAN STREET	MCCHORD AFB	WA	98438	AIR FORCE	3010, 3016, 103c	20A
O MCCHORD AIR FORCE BASE	62 ABG/CC	MCCHORD AFB	WA	98438	AIR FORCE	3010, 3016, 103c	
C FORT LEWIS	T19N R2E S21, 22, 26&27, 11 MI E OF OLYMPIA.	FORT LEWIS	WA	98433	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O FORT LEWIS	9TH INF DIV ATTN AFZH–DEQ	FORT LEWIS	WA	98433	ARMY	3005, 3010, 3016, 103c, 103a.	
C WATERCRAFT SUPPORT NATIONAL GUARD MAINTENANCE CTR.	321 E. ALEXANDER	TACOMA	WA	98421	ARMY	3016, 103c	20A
O WATERCRAFT SUPPORT MAINTENANCE CENTER.	321 E. ALEXANDER	TACOMA	WA	98421	ARMY	3016, 103c.	
C YAKIMA FIRING CENTER	I82 4 MI N OF CITY	YAKIMA	WA	98901	ARMY	3005, 3010, 3016, 103c.	20A
O YAKIMA FIRING CENTER	YAKIMA FIRING CENTER	YAKIMA	WA	98901	ARMY	3005, 3010, 3016, 103c.	
C EDA—COLUMBIA GARDENS	COLUMBIA GARDENS	PASCO	WA	99301	COMMERCE	103c, 3016	20A
O ECONOMIC DEVELOPMENT—COLUMBIA GARDENS.	COLUMBIA GARDENS	PASCO	WA		COMMERCE	103c, 3016.	
C CHIEF JOSEPH DAM PROJECT.	HWY 17 & HWY 173	BRIDGEPORT	WA	98813	CORPS OF ENGINEERS, CIVIL.	103c	22
O COE—CHIEF JOSEPH DAM PROJECT.	HWY 17 & HWY 173	BRIDGEPORT	WA	98813	ARMY	103c.	
C WALLA WALLA DISTRICT HEADQUARTERS.	CHERRY ST & SUMAC ST, 3RD AVE & 4TH AVE.	WALLA WALLA	WA	99362	CORPS OF ENGINEERS, CIVIL.	103C	22
O COE—WALLA WALLA DISTRICT HEADQUARTERS.	CHERRY ST & SUMAC ST, 3RD AVE & 4TH AVE.	WALLA WALLA	WA	99362	ARMY	103c.	
C DLA—MUKILTEO DEFENSE FUEL SUPPORT POINT.	FRONT ST & LOVELAND AVE	MUKILTEO	WA	98275	DEFENSE	3010, 3016, 103c	22
O MUKILTEO DEFENSE FUEL SUPPORT POINT.	FRONT ST & LOVELAND AVE	MUKILTEO	WA	98275	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c.	
C BPA—OLYMPIA SUBSTATION	5240 TROSPER ST SW	OLYMPIA	WA	98502	ENERGY	3010, 3016, 103c, 103a.	20A
O BPA—OLYMPIA SUBSTATION	5240 TROSPER ST SW	OLYMPIA	WA	98512	ENERGY	3010, 3016, 103c, 103a.	
C BLM—KABBA—TEXAS MINE	T40N R25E S23 MID NE¼, 4 MI NW OF CITY.	OROVILLE	WA	98844	INTERIOR	3016, 103c	20A
O BLM—KABBA—TEXAS MINE	T40NR27ESEC13	OROVILLE	WA	98844	INTERIOR	3016, 103c.	
C BR—SMITH WASTEWAY	5 MI E OF PASCO	PASCO	WA	99301	INTERIOR	3016, 103c	20A
O BR—SMITH WASTEWAY	5 MI E OF PASCO	PASCO	WA		INTERIOR	3016, 103c.	
C KEYPORT NAVAL UNDERSEA WARFARE ENG STATION.	HWY 306, E END	KEYPORT	WA	98345	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O KEYPORT NAVAL UNDERSEA WARFARE ENG STATION.	CODE 073 HWY 306, E END	KEYPORT	WA	98345	NAVY	3005, 3010, 3016, 103c, 103a.	
C PUGET SOUND FISC FUEL DEPARTMENT.	ORCHARD POINT/LITTLE CLAM BAY.	MANCHESTER	WA	98353	NAVY	3005, 3010, 3016, 103c.	20A
O PUGET SOUND NAVAL SUPPLY CENTER.	ORCHARD PT/LITTLE CLAM BAY	BREMERTON	WA	98353	NAVY	3005, 3010, 3016, 103c.	
C BLM—NORTHWEST PIPELINE-BARREL SPRINGS.	T16N R92W S18 SE¼ NW¼	CARBON	WY	82324	INTERIOR	3010, 103c	20A
O BLM—N.W. PIPELINE BARREL SP.	SE¼ NW¼ SEC 18 T16N R92W	CARBON	WY	82324	INTERIOR	3010, 103c.	

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federal register

Monday
November 23, 1998

Part VI

Department of the Treasury

Fiscal Service

Electronic Transfer Account; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

RIN 1510–AA56

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed Electronic Transfer Account features; request for comment.

SUMMARY: The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) beginning January 2, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR part 208 (Part 208), on September 25, 1998. 63 FR 51490. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account, or ''ETA℠,'' at any Federally-insured financial institution that elects to offer ETAs℠''. The preamble to the final rulemaking indicated that Treasury would separately publish for comment a notice of the proposed features of the ETA℠. This notice describes proposed features of the ETA℠ and provides further opportunity for public comment. In addition, it requests comment on three other features that are not part of the basic ETA℠ to determine whether they should be added to the ETA℠ at the option of the financial institution and at additional cost, if any, to the account holder. After evaluating the comments received, Treasury will publish a notice in the **Federal Register** setting forth the required features for ETAs℠.

DATES: Written comments on the proposed account features must be received no later than January 7, 1999.

ADDRESSES: Comments should be sent to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, S.W., Washington, D.C., 20227. Comments also may be submitted electronically via e-mail to eta.comments@fms.sprint.com or by filling out the ETA℠ comment form available on the EFT website at http://www.fms.treas.gov/eft/eta/. The final rule for Part 208, the proposed rule for Part 208 (208 NPRM), and comment letters received in response to the 208 NPRM, including comments on the ETA℠ and a summary of comments received in response to the specific ETA℠-related questions raised in the 208 NPRM, are available on the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/. Comments received on this ETA℠ notice will be available for public inspection and downloading at the website address shown above and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106; Matthew Friend, Financial Program Specialist, at (202) 874–6754; Natalie H. Diana at (202) 874–6950; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Attorney-Advisor, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

A. Background

Section 31001(x) of the Act provides that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by EFT beginning January 2, 1999.

The Act authorizes the Secretary of the Treasury to waive the requirement to make Federal payments by EFT for individuals or classes of individuals for whom compliance imposes a hardship; for classifications or types of checks; or in other circumstances as may be necessary. In addition, the Act requires Treasury to ensure access to an account at a financial institution for individuals who are required to have an account because of the EFT mandate. Treasury must ensure that access is provided at reasonable cost and with the same consumer protections that are provided to other account holders at the same financial institution.

On September 25, 1998, Treasury issued as a final rule Part 208, which implements the mandatory EFT requirement of the Act. 63 FR 51490. Part 208 provides, in part, that payment by EFT is not required where an individual determines, in his or her sole discretion, that payment by EFT would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship. An automatic waiver is granted for all individuals who do not have an account at a financial institution and who are eligible to open an ETA℠ until the ETA℠ becomes available.

In addition, Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an account called an ETA℠ at any Federally-insured financial institution that chooses to offer ETAs℠. The ETA℠ will be made available to maximize opportunities for individuals receiving Federal payments electronically to have access to an account at reasonable cost and with the same consumer protections as other account holders at the same financial institution.

In the 208 NPRM published on September 16, 1997, under Section E of the Section-by-Section Analysis, ''208.5—Access to Account Provided by Treasury,'' Treasury invited comment on several questions related to the ETA℠ and stated that it would publish proposed terms, conditions, and attributes of the account for further comment. 62 FR 48714, 48721. Based on the comments received, Treasury has developed a listing of ETA℠ attributes, which are the subject of this notice. This notice is limited in scope to a discussion of the ETA℠; it does not address other provisions of the 208 NPRM. Those provisions are discussed in the final rulemaking for Part 208, which was published in the **Federal Register** on September 25, 1998.

Final Part 208 reflected a significant change in Treasury's approach to the ETA℠ from what was proposed in the 208 NPRM. The 208 NPRM indicated that it was Treasury's intention to solicit bids from organizations interested in providing an account that would include certain specific attributes determined by Treasury. At the time the 208 NPRM was published, Treasury proposed to obtain account services through a competitive process that would select one or more entities to act as Treasury's financial agent within predefined geographic areas. After evaluating the comments received and conducting further research,[1] however, Treasury considered two alternative approaches for offering the account. These two approaches were the subject of public meetings held on May 21, 1998, for the purpose of obtaining comments from consumer and

[1] Treasury contracted for a study related to account features and distribution network options for the ETA℠. A copy of the study is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

community-based organizations and from financial institutions.[2]

The first approach involved selecting a small number of financial institutions to act as Treasury's financial agents in providing ETAs℠. These financial agents would then sign up local financial institutions to market and originate ETAs℠. The second approach involved publishing standards for providing the ETA℠, including account attributes, and allowing any Federally-insured financial institution that chooses to offer ETAs' to act as Treasury's financial agent to provide the ETA℠ in accordance with these standards and subject to terms set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution. The agreement would provide that ETAs℠ offered by the financial institution must meet the criteria described in the **Federal Register** notice listing the required ETA℠ features and would set forth the circumstances in which a financial institution may close an account for fraud or other reasons.

As indicated in final Part 208, based on the comments received on the 208 NPRM and at public meetings and on geographic and economic data and analysis, Treasury decided to pursue the second approach to make the ETA℠ available to payment recipients. Representatives from both consumer organizations and financial institutions indicated that, while this approach does not ensure complete geographic coverage because no financial institution will be required to offer the ETA℠, it encourages participation by financial institutions of all sizes. In addition, of the two approaches, it provides the greater opportunity for market competition. As a result, this approach will likely encourage competing financial institutions to offer lower cost accounts than might otherwise be offered. This approach also may minimize the impact of automated teller machine (ATM) surcharging by allowing recipients greater choice in selecting an ETA℠ at a conveniently located financial institution that offers the account. Moreover, research data indicate that the majority of check recipients are located in a relatively small number of geographic locations. Under the second approach, it is more likely that more than one financial institution will provide ETAs℠ in those areas where check recipients are geographically concentrated, thereby further increasing competition among financial institutions and increasing choice among recipients living in those areas.

In order to maximize the number of financial institutions that choose to offer ETAs℠, Treasury proposes to offer financial institutions financial compensation to establish and market the account. Treasury proposes to reimburse each financial institution that offers the ETA℠ a one-time fee per account established to offset the costs of setting up the account. Recent studies show that these set-up costs, which typically include costs to enroll and work with customers and the cost of issuing an on-line debit card, average approximately $12.60 per account.[3] As an added incentive to financial institutions and to offset imputed marketing, training, and education costs, Treasury is considering compensating participating financial institutions an additional amount for each ETA℠ opened above designated minimum threshold numbers of accounts.

Treasury seeks comment on whether, for purposes of compensating financial institutions, a distinction should be made between ETAs℠ opened by individuals who already have an account at a financial institution and those who do not have an existing account, i.e., should Treasury compensate financial institutions for opening an ETA℠ for an individual who already has an existing account? If a distinction is made, how should the basis for that distinction be determined? In addition, Treasury seeks comment from financial institutions on the extent to which the proposed compensation arrangements will increase the number of financial institutions providing ETAs℠ and on the most appropriate way to establish the minimum thresholds.

Treasury will maintain and make publicly available to recipients and program agencies a list of participating ETA℠ providers. In addition, financial institutions offering ETAs℠ will be permitted to display prominently a logo to be supplied by Treasury indicating that the ETA℠ is available at that financial institution.

B. Summary of ETA℠ Attributes

After considering the comments received, Treasury proposes that the ETA℠ account have the following attributes, which would be set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution offering the account. Specific attributes are explained in more detail below. As proposed, the ETA℠ would:

- Be an individually owned account at a Federally-insured financial institution;
- Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;
- Accept only electronic Federal benefit, wage, salary, and retirement payments;
- Be subject to a maximum price of $3.00 per month;
- Have a minimum of four cash withdrawals per month, to be included in the monthly fee, through a) the financial institution's proprietary (on-us) ATMs, b) over-the-counter transactions at the main office or a branch of the financial institution, or c) any combination of on-us ATM access and over-the-counter access at the option of the financial institution;[4]
- Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;
- For financial institutions that are members of point-of-sale (POS) networks, allow POS purchases at no additional charge by the financial institution offering the ETA℠, as well as cash withdrawals and cash back with purchases, consistent with current commercial practice;
- Require no minimum balance, except as required by Federal or State law; and
- Provide a monthly statement.

Treasury welcomes comments on the above attributes. Treasury also seeks comments on three other features that are not part of the basic ETA℠ to determine whether any or all of the features should be added to the ETA℠ at the option of the financial institution and at additional cost, if any, to the account holder. These features—payment of interest on balances; allowing deposits of other electronic funds; and providing pre-authorized Automated Clearing House (ACH) debit capability—are discussed in Section D of this notice.

[2] A summary of comments provided at the meetings held on May 21, 1998, is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[3] Cost estimates taken from Economic Waterfall Analyses, Dove Associates, Inc., June 1998. A copy of the analyses is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[4] Financial institutions may provide additional withdrawals at no charge or for a fee.

C. Discussion of Proposed ETA℠ Attributes

Individual Account/Availability

The ETA℠, as proposed, would be an individually owned account established at a Federally-insured financial institution. A financial institution that chooses to offer ETAs℠ would be required to make an ETA℠ available to any recipient of a Federal benefit, wage, salary, or retirement payment who requests an ETA℠, unless the institution is prohibited by law from maintaining an account for the recipient (for example, where a recipient does not meet a credit union's field of membership requirements). As mentioned above, financial institutions that choose to offer ETAs℠ would be permitted to close an ETA℠ in certain circumstances to be delineated by Treasury. However, financial institutions would not be permitted to deny an ETA℠ to any eligible recipient.

By requiring that these accounts be held at Federally-insured financial institutions, Treasury can ensure that ETA℠ holders' funds are being deposited into accounts that have Federal deposit insurance. Federally-insured financial institutions are subject to comprehensive Federal regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws.

Deposits

Treasury is proposing to limit the types of funds that may be deposited to an ETA℠ to electronic Federal benefit, wage, salary, and retirement payments. Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would have implications with respect to the potential attachment of funds in the account. As discussed more fully below, a number of consumer and community-based organizations that commented on the proposed rule pointed out that many individuals do not utilize accounts at financial institutions because they fear that funds deposited to such accounts will become subject to attachment by creditors.

Most Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Federal Railroad Retirement benefits, are protected from attachment and the claims of judgment creditors by Federal law, subject to certain limited exceptions.[5] The U.S. Supreme Court has held that Federal benefit payments remain exempt from attachment after they are deposited in a bank account.[6] Where all of the funds deposited into an account are exempt Federal benefits, most courts have held that the account itself is wholly exempt from attachment. If exempt funds are commingled with funds from other sources in a bank account, the exempt funds generally continue to be protected from attachment. However, courts have held that the burden of proving that particular funds in an account are not subject to attachment is on the depositor. Courts in different jurisdictions have used different accounting methods to determine whether funds in an account are considered to be exempt or nonexempt.

Limiting the types of funds that can be deposited to an ETA℠ would facilitate a recipient's ability to defend against impermissible attachments. Treasury expects that, although Federal wage, salary, and retirement payments, in addition to Federal benefit payments, could be deposited to an ETA℠, the majority of ETAs℠ would be utilized for the receipt of Federal benefit payments only. In those cases, ETAs℠ would not be subject to attachment, with limited exceptions (e.g., for child support obligations). If other types of payments were allowed to be deposited to an ETA℠, however, those payments would be subject to attachment, and the burden would be on the account holder to defend against the attachment.

Some consumer and community-based organizations pointed out that statutes protecting Federal benefit payments from attachment are not necessarily construed to prohibit a financial institution that maintains an account from setting off obligations of the depositor against the account. Specifically, several courts have held that statutes prohibiting attachment do not affect a bank's right to set off a depositor's obligations to the bank[7] against an account into which benefit payments have been deposited, on the grounds that a bank's exercise of its right of set off does not constitute ''execution, levy, attachment or other legal process.''[8] For this reason, some commenters urged Treasury to prohibit financial institutions that establish ETAs℠ from exercising any right of set off against an ETA℠.

Treasury recognizes that it is not clear under existing case law that Federal statutes prohibiting the attachment of Federal benefit payments would prohibit a financial institution that offers ETAs℠ from debiting an ETA℠, without the account holder's consent, for fees, loan payments, or other obligations owed by the account holder to the financial institution. Treasury expects that financial institutions offering ETAs℠ will market other products and services to recipients. While Treasury encourages financial institutions to offer recipients banking products and services to further Treasury's goal of bringing persons without accounts into the financial mainstream, Treasury is concerned that financial institutions might offset fees and obligations related to such products against ETAs℠. Many recipients depend on their benefit payments to meet day-to-day living expenses. In light of the special nature of payments deposited to ETAs℠ and the vulnerability of benefit recipients to any unexpected reduction in the funds available in their account, Treasury intends, through the ETA℠ Financial Agency Agreement, to prohibit institutions that elect to offer ETAs℠ from exercising any right of set off against an ETA℠, with the exception of the monthly account fee or charges for additional withdrawals from the ETA℠.

Cost to Recipient

Treasury proposes that financial institutions that choose to offer ETAs℠ would be permitted to charge a monthly fee not to exceed $3.00 per month. Treasury will evaluate the appropriateness of this pricing from time to time, and will make adjustments periodically as warranted. All attributes listed in the ''Summary'' section of this notice must be included within the monthly fee to the recipient.

In general, consumer and community-based organizations favored the establishment of a maximum monthly fee for the ETA℠. In their comments on the 208 NPRM, these organizations expressed a concern that the price, if left to financial institutions, might be out of reach for those recipients for whom traditional account fees are too high. These organizations indicated that cost is one of the main reasons some

[5] *See* 42 U.S.C. § 407(a); 42 U.S.C. § 1383; 38 U.S.C. § 530; and 45 U.S.C. § 231m(a). The prohibition against attaching such funds is subject to certain exceptions, including to satisfy child support and alimony obligations. *See, e.g.,* 42 U.S.C. § 659.

[6] *Philpott* v. *Essex County Welfare Board,* 409 U.S. 413, 416 (1973).

[7] A bank may exercise a right of set off against an account only for obligations owed by the depositor to the bank itself, and not for obligations of the depositor to third parties, such as child support or general creditor claims.

[8] *See Frazier* v. *Marine Midland Bank,* 702 F. Supp. 1000 (W.D.N.Y. 1988)(citing *In re Gillespie,* 41 Bankr. 810 (Bankr. D. Colo. 1984)).

recipients choose not to open an account at a financial institution.

In their comments, financial institutions expressed support for an approach in which the institutions themselves would determine the monthly account fee. They stated that only by allowing the institutions offering the ETA℠ to determine fees would they be able to develop accounts at the lowest possible cost. They also indicated that more financial institutions would participate if fees were unregulated.

Treasury research indicates that the average monthly cost of providing an account with the attributes listed in this notice, including a reasonable profit, falls within the $3.00 maximum price. Research data also indicate that, while some recipients cash their checks for free, recipients who pay to cash checks pay anywhere from one percent to six percent of the amount of the check for this service.[9] Based on the average Federal benefit payment, recipients could pay anywhere from $6.50 to $39.30 to cash a check.

Based on this information, Treasury believes that the $3.00 maximum monthly fee should provide incentives both to financial institutions to offer the account and to recipients to sign up for the account. Treasury recognizes, however, that not all financial institutions may elect to offer the ETA℠ account and not all recipients may find the account attractive. Accordingly, recipients may elect to continue to receive a check if the ETA℠ is unaffordable or the financial institutions offering the account are not conveniently located, or for another reason, by relying on a financial, geographical, or other hardship waiver provided in Part 208.

Access to Funds and Balance Information

As proposed, access to funds and balance information may be provided by ETA℠ providers through one of three methods: (1) Electronically through ATMs or other electronic means, (2) over-the-counter at ETA℠ provider main office or branch locations, or (3) through a combination of electronic and over-the-counter transactions. Any method may be used at the option of the financial institution as long as a minimum of four cash withdrawals are provided within the $3.00 monthly fee. A financial institution may offer additional withdrawals at no cost or at an additional fee to the account owner.

It is expected that over-the-counter cash withdrawals either automatically include an account balance or will include an account balance if requested by the recipient. Treasury further assumes that on-us ATM cash withdrawals generally will produce a transaction receipt that includes the balance of the account. Balance information will be available on the required monthly statement, discussed below. Balance information also may be included as part of a financial institution's customer service program, to be offered to the ETA℠ account holder at the ETA℠ provider's discretion.

In their comments on the 208 NPRM, consumer and community-based organizations stated that some recipients may not be able to use ATMs because of mental, language, literacy, or other barriers and may be forced to rely on hardship waivers. These organizations explained that these recipients, who may otherwise have been interested in a basic low-cost ETA℠, effectively will be denied an opportunity to transition into the financial services mainstream because of this inability to use ATMs. As an alternative to ATMs, these organizations suggested that ETA℠ providers offer over-the-counter access to funds, such as through a teller. A large association representing older Americans commented that its constituency, in some cases, will have difficulty using an ATM. This commenter also called for an option for over-the-counter transactions.

A credit union association commented that many smaller credit unions do not have ATMs and if ETAs℠ were to be accessed solely by electronic means these credit unions would be precluded from offering ETAs℠. The association argued that these credit unions are otherwise in a good position to provide the accounts because of their locations in smaller communities and because they already offer low-cost accounts. A consumer organization commented that many smaller community banks also do not have ATMs.

It is Treasury's objective to provide recipients with as many options for accessing funds as can be provided within the constraints of a low monthly fee. Allowing over-the-counter transactions would give financial institutions added flexibility in designing an account based on their capabilities and their customers' needs. Treasury expects that allowing over-the-counter transactions will increase the number of financial institutions that elect to offer ETAs℠ and the number of recipients who sign up for an ETA℠ and thereby bring more recipients into the financial services mainstream.

In determining the number of cash withdrawals to include in the monthly account fee, Treasury weighed the advantages of providing multiple cash withdrawals against their cost, recognizing that the more transactions provided, the higher the monthly cost. Treasury used cost data developed for it by an outside contractor (see footnote 1) in reaching its determination.

The reference in the list of attributes to a ''minimum'' number of cash withdrawals is intended to permit a financial institution, within the ETA℠ structure, to offer additional cash withdrawals as long as the first four withdrawals are included within the $3.00 maximum price. Additional withdrawals may be subject to fees that are the responsibility of the recipient. Additionally, if the account is accessed through a network ATM owned by another institution, the account holder will be responsible for any charges assessed by the ATM owner.

For accounts that offer electronic access, such electronic access is proposed to be on-line electronic access only. Providing off-line electronic access almost certainly would raise the cost of an account to a payment recipient. Furthermore, as pointed out by some consumer organizations, limiting access to on-line electronic access only will reduce the possibility of overdrafts and associated fees.

In addition, financial institutions offering ETAs℠ would be prohibited under the ETA℠ Financial Agency Agreement from entering into arrangements with non-financial institutions to provide access to ETAs℠, other than access through a national or regional ATM/POS network. Treasury is concerned that such arrangements may be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to the offering of the ETA℠.

Treasury continues to explore ways to expand access to the ETA℠ in areas underserved by financial institutions. These efforts include working with other public entities to expand ATM access.

Consumer Protections

ETAs℠ will be subject to those consumer protections available to other account holders at the same financial institution. This requirement is in accordance with the Act's statutory mandate to ensure that recipients ''are given the same consumer protections with respect to the [ETA℠] as other account holders at the same financial

[9] Percentages taken from the Survey of Commercial Check Cashing Rates, Chaddsford Planning Associates, June 12, 1997.

institution.'' This means, for example, that an ETA℠ will be subject to the Truth in Savings Act disclosures found in Regulation DD (12 CFR Part 230). Also, an ETA℠ that provides electronic access will be subject to Regulation E (12 CFR Part 205), i.e., the ETA℠ holder will be provided with disclosure of terms and conditions of the account, limitations on the holder's liability for unauthorized transfers, and procedures for reporting lost or stolen cards and for error resolution.

POS

For those accounts that provide electronic access, the proposed ETA℠ would allow for POS withdrawals and purchases that are consistent with current commercial practice. Studies show that more and more merchants are offering on-line POS purchases with cash back. This means a recipient can withdraw funds at the same time he or she is making a purchase using a debit card at a POS terminal. Some merchants offer cash withdrawals with no purchase required. However, ETA℠ holders should be aware that POS withdrawals, in some cases, may be subject to fees by merchants offering POS transactions. The recipient is responsible for any fees imposed by the merchant; however, under the proposed ETA℠, there would be no additional fees for these transactions imposed by the financial institution providing the ETA℠.

Minimum Balance

Except in limited circumstances discussed below, the ETA℠ would have no minimum balance requirement. The average monthly dollar amount for Federal benefit payments is approximately $650, and a majority of recipients withdraw most of their funds within the first five days of deposit. Requiring a minimum balance would effectively reduce the amount of the benefits available to the recipient to pay bills and make other subsistence purchases. The only exception to this required attribute is where a minimum balance is mandated by Federal or State law. For example, in the case of credit unions, under 12 U.S.C. 1759, a Federal credit union member must subscribe to at least one share of stock.

Monthly Statement

The ETA℠, as proposed, would have a monthly statement. Treasury is aware that under Regulation E, when government benefits are delivered electronically to a recipient, a periodic account statement may not be required if the recipient has access to account information through other specified means. *See* 12 CFR 205.15. Treasury also is aware that the cost of providing a monthly statement necessarily will be included in the monthly account charge to recipients. Treasury believes, however, that it is important to provide recipients with a monthly statement, particularly since the ETA℠ allows for POS withdrawals and purchases, and account balances are often not provided in connection with such transactions. In addition, providing a monthly statement would provide account balances that may not be available to a recipient if the ETA℠ provider does not offer daily 24-hour telephone customer service for account balance inquiries.

D. Discussion of Other Features

Treasury is requesting specific comment on three additional features that are not included in the list of basic ETA℠ attributes. Treasury is interested in obtaining feedback to determine whether any or all of these other features should be added at the option of the financial institution and at additional cost, if any, to the recipient. These features are (1) paying interest on account balances, (2) allowing for additional electronic deposits, and (3) providing for third-party ACH payments.

Each of the additional features offers potential benefits to some portion of eligible Federal payment recipients. Therefore, permitting these features may encourage more recipients to sign up for an ETA℠, potentially resulting in increased long-term savings to the Government. These additional features also may help to create a useful intermediate step for those without accounts at financial institutions in their transition to the financial services mainstream. For these reasons, if these features are permitted to be offered by financial institutions as part of the ETA℠, Treasury would consider whether to reimburse a financial institution an additional set fee per ETA℠ providing for such features.

There may be, however, potential disadvantages and costs associated with these additional features. Many financial institutions commented that the ETA℠ should be designed as a basic account that could be easily offered by any financial institution and easily understood by recipients. Variation in ETA℠ features may be confusing to recipients and more difficult to market as a standard product. Additionally, variation in the features of the ETA℠ may make it harder to protect the ETA℠ mark and ensure that the mark is used only by those financial institutions that have entered into an ETA℠ Financial Agency Agreement. Adding features, even as options, poses the risk that financial institutions will not be willing to participate, or that recipients who already have an account at a financial institution may switch to a low-cost ETA℠.

Treasury seeks specific comment as to whether the potential advantages of each of the three features outweigh the potential disadvantages. Treasury will consider carefully the comments received, but may decide not to add any of the features if it determines that the potential disadvantages make the features unsuitable for the ETA℠ or the associated cost is determined to be too high. Further, if a decision is made to allow additional features, any financial institution that offers an ETA℠ with the additional features must also make available to recipients an ETA℠ without the additional features.

Regardless of whether any of these other features is added to the ETA℠, financial institutions are encouraged to offer recipients other non-ETA℠ accounts that meet recipients' needs, including accounts that offer features beyond those contained in the ETA℠, such as checking accounts. However, while such accounts may be used for the receipt of Federal payments by EFT, these accounts are not considered to be ETAs℠ and may not be advertised as such.

Interest on Account Balance

Treasury believes that the payment of interest on ETAs℠ could encourage more individuals to sign up for ETAs℠ and could encourage and facilitate savings by low income recipients. In addition, financial institutions could potentially benefit from the higher daily balances that could result from permitting this feature.

However, Treasury research indicates that account balances will likely be drawn down very quickly after deposit and, therefore, interest earnings by recipients could be very small. Additionally, interest accumulated in such accounts may be attachable. Finally, including a savings feature may modestly increase the costs to the financial institution of providing the account. These costs could include interest payments and costs for Truth in Savings Act disclosures and 1099 tax reporting.

Additional Deposits

Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would enable broader use of the ETA℠ for deposits and payments from other sources,

including matching funds under individual development account programs. This would help to meet Treasury's overall goal of bringing recipients into the financial mainstream. In addition, this could assist financial institutions that might find it difficult to refuse customer requests to deposit other funds into their accounts.

However, as discussed previously in Section C of this notice under the subheading ''Deposits,'' permitting other types of payments to be deposited to the ETA℠ would have implications with respect to the potential attachment of funds in the account, and could add complexity and expense to the account. If financial institutions were permitted to allow additional payments into the ETA℠, Treasury would want to assure that recipients were given appropriate disclosures regarding the possible attachment of funds and would encourage Federal payment agencies to issue clear resolution rules to help recipients and financial institutions determine which funds cannot be attached.

Third-Party ACH Debit

Treasury recognizes that the ability for recipients to initiate preauthorized third-party debit transactions would be a convenient and cost-saving means for recipients to pay recurring bills such as rent, utilities, and cable television. Such a feature could reduce recipients' reliance on money orders and cash, thereby enabling recipients to avoid the cost of money orders, save time expended in traveling to pay bills in cash, and reduce the potential losses and thefts associated with carrying cash to pay bills. Thus, because of the convenience of this feature, more recipients might sign up for ETAs℠ and more individuals might be brought into the financial services mainstream.

However, because of differences in clearance mechanisms between ACH debits and ATM withdrawals, permitting ACH debits might result in overdrafts to ETAs℠ or rejected transactions, which would result in higher costs both to financial institutions and recipients. Moreover, Treasury is concerned that recipients inadvertently could authorize ACH debit entries to pay for goods and services that are not delivered or are not as represented, thereby incurring unexpected losses. Treasury is aware of some incidents of ACH debit fraud, as well as the difficulties that consumers sometimes encounter in dealing with legitimate merchants, including difficulties in revoking preauthorized debit authorizations. In addition, Treasury believes that the costs of administering the ETA℠ could increase as a result of the additional customer service burden that would be imposed on financial institutions in dealing with recipient inquiries related to such transactions.

Dated: November 18, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98–31244 Filed 11–19–98; 8:45 am]

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federal register

Monday
November 23, 1998

Part VII

Nuclear Regulatory Commission

10 CFR Chapter I

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use of Byproduct Material, Reopening of Public Comment Period; Notice

Medical Use of Byproduct Material: Proposed Revision and Draft Policy Statement, Reopening of Public Comment Periods; Proposed Rules

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medial Use of Byproduct Material, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of public comment period.

SUMMARY: On August 25, 1998, the Nuclear Regulatory Commission (NRC) announced the availability of and requested comment on draft NUREG–1556, Volume 9, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about the Medical Use of Byproduct Material,'' dated July 1998, (63 FR 45270). This draft guide was developed in parallel with the proposed revision of 10 CFR Part 35, ''Medical Use of Byproduct Material,'' (63 FR 43516). The comment period for the proposed rule and NUREG 1556, Volume 9, expired on November 12, 1998. A number of comments on the rule noted that the original comment period was too short to review, thoroughly understand, and comment on the proposed changes in the regulations that govern the use of byproduct material. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period for the rule and NUREG 1556, Volume 9.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 9, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 9, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@nrc.gov.

Electronic Access. Draft NUREG–1556, Vol. 9 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 16th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31220 Filed 11–20–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32 and 35

RIN 3150–AF74

Medical Use of Byproduct Material; Proposed Revision, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On August 13, 1998, the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule to revise its regulations governing the medical use of byproduct material (63 FR 43516). The comment period for the proposed rule expired on November 12, 1998. A number of comments noted that the original 90-day comment period was too short to review, thoroughly understand, and comment on the proposed changes in the regulations that govern the use of byproduct material. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: *Comments may be sent to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined at: NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select ''Rulemaking'' from the tool bar. The interactive rulemaking website can then be accessed by selecting ''Rulemaking Forum'' and then ''News, Information, and Contacts for Current Rulemakings.'' This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Catherine Haney, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–6825, e-mail CXH@nrc.gov or Diane Flack, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 02555–0001, (301) 415–5681, e-mail DSFI@nrc.gov.

Dated at Rockville, Maryland, this 17th day of November 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–31218 Filed 11–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

Medical Use of Byproduct Material; Draft Policy Statement, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement; reopening of public comment period.

SUMMARY: On August 13, 1998, the Nuclear Regulatory Commission (NRC) published for public comment a proposed revision of its 1979 policy statement on the medical use of byproduct material (63 FR 43580). The comment period for the proposed revision of the policy statement expired on November 13, 1998. A number of comments noted that the original 90-day comment period was too short to review, thoroughly understand, and comment on the proposed changes in the policy statement. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: *Comments may be sent to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined at: NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select ''Rulemaking'' from the tool bar. The interactive rulemaking website can then be accessed by selecting ''Rulemaking Forum'' and then ''News, Information, and Contacts for Current Rulemakings.'' This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Catherine Haney, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–6825, e-mail CXH@nrc.gov or Diane Flack, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 02555–0001, (301) 415–5681, e-mail DSFI@nrc.gov.

Dated at Rockville, Maryland, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–31219 Filed 11–20–98; 8:45 am]

BILLING CODE 7590–01–P

federal register

Monday
November 23, 1998

Part IX

Department of Justice

Architectural and Transportation Barriers Compliance Board

Department of Transportation

28 CFR Part 36

36 CFR Part 1191

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings; Joint Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[A.G. Order No. 2191–98]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014—AA24

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board), the Department of Justice, and the Department of Transportation are continuing the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pool edges in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Standards for Accessible Design. The Access Board plans to issue a separate notice of proposed rulemaking to revise and update ADAAG and will address detectable warnings in that rulemaking. The Department of Justice and the Department of Transportation will issue separate notices of proposed rulemaking to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. The agencies are continuing the suspension of the detectable warning requirements to July 26, 2001, when it is expected that the rulemakings to revise and update ADAAG and the Standards for Accessible Design will be completed.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: *Access Board:* James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 extension 16 or (800) 872–2253 extension 16 (voice), and (202) 272–5449 (TTY) or (800) 993–2822 (TTY).

Department of Justice: John L. Wodatch, The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington DC 20530. Telephone (800) 514–0301 (voice) or (800) 514–0383 (TTY).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies of this final rule are available in the following formats: standard print, large print, Braille, audio cassette tape, and computer disk. Single copies may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434 or (800) 872–2253, pressing 1 on the telephone keypad, then 1 again, and requesting publication S40 (Detectable Warnings Final Rule). Persons using a TTY should call (202) 272–5449 or (800) 993–2822. Please provide your name, address, and telephone number when ordering publications. Persons who want a copy in large print, Braille, audio cassette tape, or computer disk should specify the type of format they want.

The final rule is available on the Access Board's web site (http://www.access-board.gov/rules/dw.htm), the Department of Justice's web site (http://www.usdoj.gov/crt/ada/adahom1.htm), and the Department of Transportation's web site (http://dms.dot.gov). The final rule is also available on electronic bulletin board at (202) 514–6193 (Department of Justice). This telephone number is not toll-free.

Background

On June 1, 1998, the Access Board, the Department of Justice, and the Department of Transportation published a joint notice of proposed rulemaking (NPRM) to continue the suspension of the requirements for detectable warnings at certain locations within sites in ADAAG and the Standards for Accessible Design from July 26, 1998 to July 26, 2000.[1] 63 FR 29924. The suspension applies to detectable warning requirements at curb ramps (4.7.7), hazardous vehicular areas (4.29.5), and reflecting pool edges (4.29.6). The suspension does not affect detectable warning requirements at platform edges in transportation facilities (10.3.1(8)).

As explained in the NPRM, the detectable warning requirements were suspended initially in 1994, pending review of a research project on the need for detectable warnings at vehicular-pedestrian intersections in the public right-of-way. 59 FR 17442 (April 12, 1994). The research project showed that vehicular-pedestrian intersections are very complex environments and that pedestrians who are blind or visually impaired use a combination of cues to detect intersections. The research project found that detectable warnings helped some pedestrians who are blind or visually impaired locate and identify curb ramps. However, the detectable warnings had only a modest impact on overall performance because, in their absence, pedestrians who are blind or visually impaired used other cues that might be available to detect the intersection. The research project indicated that there may be a need for additional cues at some types of intersections. The research project did not identify the specific conditions where such cues should be provided. The research project suggested that other technologies, which may be less costly and equally or more effective than detectable warnings, be explored for providing information about intersections.

The Access Board subsequently established an advisory committee to conduct a comprehensive review of ADAAG and make recommendations for revising and updating the guidelines. The suspension of the detectable warning requirements was continued in 1996, pending review of the advisory committee's recommendations. 61 FR 39323 (July 29, 1996). The advisory committee recommended that the detectable warning requirements at platform edges in transportation facilities be retained and that equivalent tactile surfaces or other means be permitted to provide equivalent detectability of platform edges. The advisory committee did not make any recommendations regarding detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing

[1] The Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered facilities under the Americans with Disabilities Act. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines, which is commonly referred to as ADAAG. 36 CFR part 1191, appendix A. The Department of Justice and the Department of Transportation have adopted sections 1 through 10 of ADAAG as the Standards for Accessible Design for the Americans with Disabilities Act. 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

detectable warnings at vehicular-pedestrian intersections in the public right-of-way should be established first, and the application to other locations within a site should be considered afterwards.

The Access Board is preparing an NPRM to revise and update ADAAG based on the advisory committee's recommendations, as well as research and other available information, and will address provisions for detectable warnings within sites in that NPRM. The Department of Justice and the Department of Transportation will issue separate NPRMs to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. In the NPRM announcing the continuation of the suspension of the detectable warning requirements, the agencies noted that the rulemakings to revise and update ADAAG and the Standards for Accessible Design were expected to be completed by July 26, 2000, and the agencies proposed to continue the suspension through that date. The Access Board is also preparing an NPRM to revise and update the guidelines for the Architectural Barriers Act, which requires certain federally financed facilities to be accessible. The Access Board has recently decided to combine the rulemakings to update and revise ADAAG and the guidelines for the Architectural Barriers Act and to include provisions for housing in the rulemakings. This action is expected to extend the rulemakings for six to twelve months.

Three comments were received in response to the NPRM. One commenter expressed concern about the amount of time it is taking to revise and update ADAAG and the Standards for Accessible Design, and the resulting delay in addressing detectable warnings. The rulemaking process can be lengthy, especially when revising and updating major rules like ADAAG and the Standards for Accessible Design. There are many important issues that will be addressed in these rulemakings. It would not be efficient to address each issue through separate rulemakings. Another commenter identified himself as an individual who is blind and recommended that detectable warnings should be required at the locations covered by the suspension. When detectable warning provisions were initially proposed in ADAAG, a large number of individuals who are blind commented on the proposal. There was no consensus among the group regarding detectable warnings. The agencies expect to receive many comments on detectable warnings when the NPRMs to revise and update ADAAG and the Standards for Accessible Design are issued and will consider all the comments before issuing final rules.

The other commenter recommended that the Access Board issue guidelines addressing public sidewalks and street crossings. The Access Board issued proposed and interim guidelines addressing public rights-of-way in 1992 and 1994. 57 FR 60612 (December 21, 1992); 59 FR 31676 (June 20, 1994). The Access Board received a large number of comments on the guidelines from public works agencies, transportation departments, and traffic consultants. The comments showed a disparate understanding of pedestrian accessibility criteria generally and the application of the guidelines in particular. Based on the comments, the Access Board decided to reserve the guidelines in favor of working with other governmental and private sector organizations in the transportation industry to promote the incorporation of pedestrian accessibility criteria into industry guidelines, standards, and recommended practices. 63 FR 2000 (January 13, 1998). The Access Board periodically reviews its rulemaking agenda and will evaluate the impact of its efforts in this area and whether further rulemaking is warranted.

As explained earlier, the Access Board, the Department of Justice, and the Department of Transportation will address the provisions for detectable warnings within sites in the rulemakings to update and revise ADAAG and the Standards for Accessible Design. Continuing the suspension of the requirements for detectable warnings at certain locations within sites to July 26, 2001 will maintain the status-quo until the planned rulemakings are completed.

Regulatory Process Matters

The Access Board, the Department of Justice, and the Department of Transportation have independently determined that this final rule is not a significant regulatory action under Executive Order 12866. It is not a significant rule under the Department of Transportation's regulatory policies and procedures. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board, the Department of Justice, and the Department of Transportation also independently certify under section 605(b) of the Regulatory Flexibility Act that this final rule is not expected to have a significant economic impact on a substantial number of small entities because it continues the suspension of an existing regulatory requirement and does not impose any new requirement.

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

Text of Final Common Rule

The text of the common rule is revised to read as follows:

§ _____. _____ Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2001.

Adoption of Final Common Rule

The agency specific proposals to adopt the final common rule, which appears at the end of the common preamble, are set forth below.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, HIV/AIDS, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186, and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

§ 36.407 [Revised]

2. Section 36.407 is revised to read as set forth at the end of the common preamble.

Dated: November 2, 1998.

Janet Reno,

Attorney General.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

§ 1191.2 [Revised]

2. Section 1191.2 is revised to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on July 15, 1998.

Thurman M. Davis,

Chair, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.15 [Revised]

2. Section 37.15 is revised to read as set forth at the end of the common preamble.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–31254 Filed 11–20–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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A cumulative list of Public Laws for the second session of the 105th Congress will be published in the **Federal Register** on November 30, 1998.

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266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
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*425–699	(869–034–00154–8)	42.00	July 1, 1998
*700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
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1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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*201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
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43 Parts:			
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1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
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47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.