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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–99–AD; Amendment 39–11170; AD 99–09–52]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) and CL–600–2B16 (CL–601–3R and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 99–09–52 that was sent previously to all known U.S. owners and operators of Bombardier Model CL–600–2B19 (Regional Jet Series 100) and CL–600–2B16 (CL–601–3R and CL–604) series airplanes by individual notices. This AD requires a one-time inspection of the cable harness of the integrated drive generator (IDG) in the right engine nacelle and the adjacent structure to verify clearances and detect chafing; a one-time inspection of both the left and right engine nacelles to detect chafing and verify clearances of the adjacent 10th stage bleed air check valve and fuel manifold pigtails; and repair or replacement of discrepant parts, if necessary. This action is prompted by reports of chafing of the insulation covering on the IDG cable harness and the main engine right fuel manifold. The actions specified by this AD are intended to detect and correct concurrent chafing of both the fuel manifold and the IDG wire and subsequent leakage of fuel, which could come in contact with live wiring and result in fire or explosion.

DATES: Effective May 24, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD T99–09–52, issued April 20, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 16, 1999.

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

The applicable service information may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, 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) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On April 20, 1999, the FAA issued emergency AD T99–09–52, which is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) and CL–600–2B16 (CL–601–3R and CL–604) series airplanes.

That action was prompted by reports of chafing of the insulation covering on the integrated drive generator (IDG) cable harness and the main engine right fuel manifold. Concurrent chafing of both the fuel manifold and the IDG wire, if not corrected, could result in leakage of fuel, which could come in contact with live wiring and result in fire or explosion.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–24–095, Revision 'A,' dated March 25, 1999 (for Regional Jet series airplanes). That alert service bulletin describes procedures for a one-time inspection of the IDG cables in the right engine nacelle to verify clearances and detect damage. The alert service bulletin also describes procedures for repair or replacement of the IDG cables, depending on the results of the inspection.

Bombardier has issued Alert Service Bulletin A601R–73–008, Revision 'A,' dated April 10, 1999 (for Regional Jet series airplanes). That alert service bulletin describes procedures for a one-time inspection of both the left and right engine nacelles to detect damage of the area surrounding the 10th stage bleed air check valve and the top and bottom pigtails of the fuel manifold; a one-time inspection to verify clearances between the right fuel manifold pigtails and the adjacent 10th stage bleed air check valve; and repair or replacement of the manifold, depending on the results of the inspection.

Bombardier has issued Alert Service Bulletin A601–0524, dated April 19, 1999 [for Model CL–600–2B16 (CL–601–3R) series airplanes], and Alert Service Bulletin A604–73–001, dated April 19, 1999 [for Model CL–600–2B16 (CL–604) series airplanes]. These alert service bulletins describe procedures for a one-time inspection of the IDG cable harness in the right engine nacelle and the adjacent structure to verify clearances and detect chafing; a one-time inspection of both the left and right engine nacelles to detect chafing and verify clearances of the adjacent 10th stage bleed air check valve and fuel manifold pigtails; and repair or replacement, depending on the results of the inspection.

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, classified the alert service bulletins as mandatory and issued Canadian airworthiness directive CF–99–09, dated April 6, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada 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, 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 the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 99–09–52 to detect and correct concurrent chafing of both the fuel manifold and the IDG wire and subsequent leakage of fuel, which could come in contact with live wiring and result in fire or explosion. The AD requires accomplishment of the actions specified in the alert service bulletins described previously, except as discussed below. This AD also requires that operators report results of all inspection findings and any repairs performed to Bombardier.

Differences Between This AD and the Relevant Service Information

While the Canadian airworthiness directive and the alert service bulletins recommend a compliance time of 50 flight hours, this AD specifies a compliance time of 50 flight hours or 7 days, whichever occurs first. The Challenger and certain Regional Jet series airplanes are operated as business jets, which generally fly fewer hours per day than commercial airplanes. The FAA has determined that it is necessary to impose a time limit on these airplanes to ensure the safe operation of the fleet.

Operators should further note that, although certain alert service bulletins referenced in this AD specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or TCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or TCA will be acceptable for compliance with this AD.

Publication of the Rule

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on April 20, 1999, to all known U.S. owners and operators of Bombardier Model CL–600–2B19 (Regional Jet Series 100) and CL–600–2B16 (CL–601–3R and CL–604) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–99–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–09–52 Bombardier, Inc. (Formerly Canadair): Amendment 39–11170. Docket 99–NM–99–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7303 inclusive; and Model CL–600–2B16 (CL–601–3R and CL–604) series airplanes, serial numbers 5135 through 5194 inclusive, and 5301 through 5408 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 concurrent chafing of both the fuel manifold and the integrated drive generator (IDG) wire and subsequent leakage of fuel, which could come in contact with live wiring and result in fire or explosion, accomplish the following:

(a) For Model CL–600–2B19 (Regional Jet Series 100) series airplanes: Within 50 flight hours or 7 days after the effective date of this AD, whichever occurs first, perform a one-time visual inspection of the IDG cables in the right engine nacelle to verify clearances and detect damage, in accordance with Canadair Alert Service Bulletin A601R–24–095, Revision 'A,' dated March 25, 1999.

(1) If no damage is detected and all clearances are within the limits specified by the alert service bulletin, submit a report in accordance with the requirements of paragraph (f) of this AD.

(2) If any damage is detected and the inner core is not visible, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Prior to further flight, repair the cable jacket in accordance with the alert service bulletin; and, within 4,000 flight hours after accomplishing the repair, replace the cable with a new cable; in accordance with the alert service bulletin. Or

(ii) Prior to further flight, replace the cable with a new cable, in accordance with the alert service bulletin.

(3) If any damage is detected and the inner core is visible, prior to further flight, replace the cable with a new cable in accordance with the alert service bulletin.

(b) For Model CL–600–2B19 (Regional Jet Series 100) series airplanes: Within 50 flight hours or 7 days after the effective date of this AD, whichever occurs first, perform a one-time visual inspection of both the left and right engine nacelles to detect chafing of the area surrounding the 10th stage bleed air check valve and the top and bottom pigtails of the fuel manifold, in accordance with Canadair Alert Service Bulletin A601R–73–008, Revision ''A,'' dated April 10, 1999.

(1) If no damage is detected, prior to further flight, measure the clearance between the right fuel manifold pigtails and the adjacent 10th stage bleed air check valve.

(i) If the clearance is within the limits specified by the alert service bulletin, submit a report in accordance with the requirements of paragraph (f) of this AD.

(ii) If the clearance is outside the limits specified by the alert service bulletin, prior to further flight, reposition the fuel manifold or install shims, as applicable, in accordance with ''Part B—Repositioning of the fuel manifold to set the gap'' of the Accomplishment Instructions of the alert service bulletin.

(2) If any damage is detected, prior to further flight, repair the fuel manifold or replace the manifold with a new manifold, as applicable, in accordance with ''Part C—Repair or replacement'' of the Accomplishment Instructions of the alert service bulletin.

Note 2: Accomplishment of the actions specified by Canadair Alert Service Bulletin A601R–73–008, dated April 1, 1999, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) For Model CL–600–2B16 (CL–601–3R and CL–604) series airplanes: Within 50 flight hours or 7 days after the effective date of this AD, perform a one-time visual inspection of the IDG cable harness in the right engine nacelle to verify clearances and detect damage, in accordance with Bombardier Alert Service Bulletin A601–0524 or A604–73–001, both dated April 19, 1999, as applicable.

(1) If no damage is detected, submit a report in accordance with the requirements of paragraph (f) of this AD.

(2) If any clearance is outside the limits specified in the applicable alert service bulletin, prior to further flight, adjust the clearance in accordance with the applicable alert service bulletin.

(3) If any damage is detected and the inner core is not visible, prior to further flight, repair the cable in accordance with the applicable alert service bulletin.

(4) If any damage is detected to the cable jacket and the inner core is visible, prior to further flight, accomplish either paragraph (c)(4)(i) or (c)(4)(ii) of this AD.

(i) Repair the cable jacket in accordance with the alert service bulletin; and, within 300 flight hours after accomplishing the repair, replace the cable with a new cable; in accordance with the applicable alert service bulletin. Or

(ii) Replace the cable with a new cable, in accordance with the applicable alert service bulletin.

(d) For Model CL–600–2B16 (CL–601–3R and CL–604) series airplanes: Within 50 flight hours or 7 days after the effective date of this AD, perform a one-time visual inspection of both the left and right engine nacelles of the area surrounding the 10th stage bleed air check valve and the top and bottom pigtails of the fuel manifold to verify clearances and detect chafing, in accordance with Bombardier Alert Service Bulletin A601–0524 or A604–73–001, both dated April 19, 1999, as applicable.

(1) If the clearances are within the limits specified in the alert service bulletin, submit a report in accordance with the requirements of paragraph (f) of this AD.

(2) If any clearance is outside the limits specified in the alert wire, prior to further flight, adjust the clearance or add spacers, as applicable, in accordance with the applicable alert service bulletin.

(3) If any chafing is detected, prior to further flight, repair the manifold or replace the manifold with a new manifold, as applicable, in accordance with the applicable alert service bulletin.

Note 3: Accomplishment of the actions specified by Bombardier Alert Wire TA601–055, dated March 31, 1999, is considered acceptable for compliance with the requirements of paragraphs (c) and (d) of this AD.

(e) If any alert service bulletin referenced in this AD specifies that the manufacturer may be contacted for accomplishment of certain repair conditions, those repairs must be accomplished in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or Transport Canada Aviation (or its designee).

(f) Submit a report of all inspection findings and any repairs performed to the local Bombardier field representative; or to either Mr. Denis Methot (fax 514–855–8501) or Mr. Richard Moore (fax 514–855–7708), Bombardier Aerospace Regional Aircraft, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. 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.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspections required by this AD.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(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, 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.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(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.

Incorporation by Reference

(i) Except as provided by paragraphs (e) and (f) of this AD, the actions shall be done in accordance with Canadair Alert Service Bulletin A601R–24–095, Revision 'A,' dated

March 25, 1999; Canadair Alert Service Bulletin A601R–73–008, Revision 'A,' dated April 10, 1999; Bombardier Alert Service Bulletin A601–0524, dated April 19, 1999; and Bombardier Alert Service Bulletin A604–73–001, dated April 19, 1999; as applicable. 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–99–09, dated April 6, 1999.

(j) This amendment becomes effective on May 24, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99–09–52, issued April 20, 1999, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12099 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–4]

Amendment of Class E Airspace; Thomson, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Thomson, GA. The Cedar Nondirectional Radio Beacon (NDB) has been established 4.49 miles west of Runway (RWY) 10 at the Thomson-McDuffie County Airport, from which a NDB RWY 10 Standard Instrument Approach Procedure (SIAP) has been developed. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Thomson-McDuffie County Airport. An extension via the 276 degree bearing from the Cedar NDB for the NDB RWY 10 SIAP is necessary. The length of the Class E airspace extension west of the NDB is 7 miles, and the width of the airspace extension is 7 miles.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On March 23, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Thomson, GA (64 FR 13938). This action provides adequate Class E airspace for IFR operations at Thomson-McDuffie County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface 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 part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Thomson, GA, for the Thomson-McDuffie County Airport.

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 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.

* * * * *

ASO GA E5 Thomson, GA [Revised]

Thomson-McDuffie County Airport
(Lat. 33°31′47″ N, long. 82°31′100″ W)
Cedar NDB
(Lat. 33°31′59″ N, long. 82°36′51″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 7.5-mile radius of Thomson-McDuffie County Airport and within 3.5 miles each side of the 276 degree bearing from the Cedar NDB, extending 7 miles west of the Cedar NDB.

* * * * *

Issued in College Park, Georgia, on May 5, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–12277 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 2, 3, 5, 10, 12, 16, 20, 25, 50, 54, 56, 58, 60, 70, 71, 200, 201, 202, 206, 207, 210, 211, 299, 300, 310, 312, 314, 316, 320, 333, 369, 510, 514, 520, 522, 524, 529, 800, 801, 807, 809, 812, and 860

[Docket No. 98N–0720]

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of January 5, 1999 (64 FR 396), a direct final rule. The direct final rule amended FDA's regulations by removing references to the repealed statutory provision of the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. The direct final rule also removed references to the repealed antibiotic monograph regulations and to those regulations dealing with antibiotic applications. This document confirms the effective date of the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule published at 64 FR 396 is confirmed as May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA solicited comments concerning the direct final rule for a 75-day period ending March 22, 1999. FDA stated that the effective date of the direct final rule would be on May 20, 1999, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the act, the FDA Modernization Act, and authority delegated to the Commissioner of Food and Drugs, notice is given that no objections were filed in response to the January 5, 1999, final rule. Accordingly, the amendments issued thereby are effective May 20, 1999.

Dated: May 10, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12230 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98N–0040]

RIN 0910–AB52

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations on the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. FDA is issuing these regulations in accordance with the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). These regulations are intended to clarify existing regulations applicable to the approval of radiopharmaceutical drugs and biologics under the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act (the PHS Act).

EFFECTIVE DATE: Effective July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Y. Love, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510; or George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 22, 1998 (63 FR 28301), FDA published a proposed rule to implement section 122 of the Modernization Act (Pub. L. 105–115). Section 122(a)(1) of the Modernization Act directs FDA to issue proposed and final regulations on the approval of radiopharmaceuticals intended for use in diagnosing or monitoring a disease or a manifestation of disease in humans. The proposed regulations apply to the approval of in vivo radiopharmaceuticals (both drugs and biologics) used for diagnosis and monitoring.

The preamble to the proposed rule noted that FDA was in the process of revising and supplementing its guidance to industry on product approval and other matters related to the regulation of diagnostic radiopharmaceutical drugs and biologics, and stated that such guidance would address the application of the proposed rule. In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA announced the availability of a draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics'' (medical imaging draft guidance). The guidance, when completed, will assist developers of drug and biological products used for medical imaging, including radiopharmaceuticals used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The guidance will also provide information on how the agency will interpret and apply provisions in the final rule on diagnostic radiopharmaceuticals.

In the **Federal Register** of January 5, 1999 (64 FR 457), FDA reopened until February 12, 1999, the comment period on the medical imaging draft guidance. In the **Federal Register** of February 16, 1999 (64 FR 7561), the agency further extended the comment period to April 14, 1999.

Several of the comments on the proposed rule on diagnostic radiopharmaceuticals addressed issues that are also relevant to the medical imaging draft guidance. In FDA's responses to the comments set forth in section III of this document, the agency refers to relevant portions of the draft guidance that interpret and apply provisions of the regulations on diagnostic radiopharmaceuticals. In finalizing the medical imaging guidance, FDA will carefully consider all comments received on the proposed rule that are relevant to issues addressed in the draft guidance.

II. Highlights of the Final Rule

In accordance with section 122 of the Modernization Act, the final rule adds new regulations pertaining to the review and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring. The new regulations in part 315 (21 CFR part 315) and part 601 (21 CFR part 601) (§§ 601.30 through 601.35)) complement and clarify existing regulations on the approval of drugs and biologics in part 314 (21 CFR part 314) and part 601, respectively. The regulations include a definition of diagnostic radiopharmaceuticals and

provisions that address the following aspects of these products: (1) General factors to be considered in determining safety and effectiveness, (2) proposed indications for use, (3) evaluation of effectiveness, and (4) evaluation of safety.

FDA revised the proposed rule in response to comments received on the proposal. Proposed §§ 315.4(b) and 601.33(b) were revised to clarify that where a diagnostic radiopharmaceutical is not intended to provide disease-specific information, the proposed indications for use may refer to a biochemical, physiological, anatomical, or pathological process or to more than one disease or condition.

FDA also revised the provisions on the evaluation of effectiveness of a diagnostic radiopharmaceutical. The agency revised proposed §§ 315.5(a)(1) and (a)(2) and 601.34(a)(1) and (a)(2) to state that claims of structure delineation and of functional, physiological, or biochemical assessment must be demonstrated in a defined clinical setting that is appropriate for the intended clinical benefit (as is the case with claims of: (1) Disease or pathology detection or assessment and (2) diagnostic or therapeutic patient management). In addition, FDA revised §§ 315.5(a)(1) and 601.34(a)(1) to state that a structure delineation claim involves an ability ''to locate anatomical structures and to characterize their anatomy,'' rather than an ability ''to locate and characterize normal anatomical structures.''

FDA also revised the provisions on the evaluation of the safety of a diagnostic radiopharmaceutical. Proposed §§ 315.6(a) and 601.35(a) were revised to add to the factors that FDA will consider in assessing the safety of a diagnostic radiopharmaceutical the results of any previous human experience with the carrier or ligand of a radiopharmaceutical when the same chemical entity as the carrier or ligand has been used in a previously studied product. Similarly, the agency revised §§ 315.6(c)(2) and 601.35(c)(2) to specify that the amount of new safety data required to be submitted for a particular diagnostic radiopharmaceutical will depend on the characteristics of the product and available information on the safety of not only the diagnostic radiopharmaceutical itself but also its carrier or ligand. These sections were also revised to state that the safety information that FDA may require may include the results of clinical studies, in addition to the results of preclinical studies. Additionally, these sections were revised to clarify that the agency will establish categories of diagnostic radiopharmaceuticals based on defined risk characteristics and, upon reviewing a particular diagnostic radiopharmaceutical's relevant product characteristics and safety information, will place the radiopharmaceutical into the appropriate safety risk category. FDA also deleted the requirements in proposed §§ 315.6(d) and 601.35(d) on the tests that must be included in a radiation dosimetry evaluation of a diagnostic radiopharmaceutical (i.e., dosimetry to total body, to specific organs or tissues, and, as appropriate, to target organs or tissues) in favor of addressing this matter in the medical imaging guidance.

Finally, FDA made minor editorial changes to the final rule in response to the President's June 1, 1998, memorandum on plain language in government writing.

III. Responses to Comments on the Proposed Rule

FDA received nine written comments on the proposed rule. The comments were submitted by manufacturers, trade associations, universities, and a health care organization.

A. General Responses

1. One comment expressed support for the intent of the proposed regulations, but it questioned how FDA could develop acceptable indications, as well as safety and effectiveness criteria for radiopharmaceuticals, without doing the same for all diagnostic drugs and biologics. The comment maintained that while radiopharmaceuticals may be a unique ''chemical'' class, they are part of the ''therapeutic'' class of diagnostic agents used for medical imaging. The comment further contended that because the proposed regulations on diagnostic radiopharmaceuticals were designed to clarify FDA's expectations and might reduce the cost of developing these products, adoption of these regulations would create a competitive disadvantage for companies developing nonradiopharmaceutical products for the same indications and efficacy endpoints.

Section 122(a)(1) of the Modernization Act directs FDA to develop regulations specifically governing the approval of diagnostic radiopharmaceuticals. It does not direct the agency to establish new approval procedures that would apply to all in vivo diagnostic agents, including radiopharmaceuticals and contrast agents. Consequently, as stated in §§ 315.1 and 601.30, the final rule applies to radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use; it does not apply to radiopharmaceuticals intended for therapeutic use or to nonradiopharmaceutical products. FDA will consider whether it should develop similar regulations for nonradiopharmaceutical diagnostic agents in the future.

However, FDA agrees with the comment that there are common principles in developing diagnostic imaging products. FDA's medical imaging draft guidance addresses such matters as conducting clinical studies and submitting applications for all medical imaging drugs and biologics, not just diagnostic radiopharmaceuticals. In doing so, the draft guidance elaborates on the concepts set forth in the proposed rule on diagnostic radiopharmaceuticals. Consequently, although the final rule applies only to diagnostic radiopharmaceuticals, FDA is proposing in the medical imaging draft guidance that the principles set forth in this final rule should apply to all medical imaging drugs and biologics, including contrast agents.

B. Definition

Proposed §§ 315.2 and 601.31 defined a diagnostic radiopharmaceutical as an article that is intended for use in the diagnosis or monitoring of a human disease or manifestation of disease and that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons. The definition also included any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of a previously defined article.

2. One comment, noting that three of the four indication categories under proposed §§ 315.4 and 601.33 did not include the word ''diagnostic,'' asked whether the regulations should state a definition of ''radiopharmaceutical'' rather than ''diagnostic radiopharmaceutical'' to be consistent with section 122 of the Modernization Act.

Although section 122(b) of the Modernization Act includes a definition of ''radiopharmaceutical'' rather than ''diagnostic radiopharmaceutical,'' the term applies only to radiopharmaceuticals ''intended for use in the diagnosis or monitoring of a disease or a manifestation of a disease in humans * * *.'' Consequently, FDA states in §§ 315.1 and 601.30 that the regulations in part 315 and part 601, subpart D, respectively, apply to radiopharmaceuticals intended for diagnostic and monitoring use and not to radiopharmaceuticals intended for therapeutic purposes. FDA believes that

the definition and use of the term ''diagnostic radiopharmaceutical'' in these regulations are consistent with the Modernization Act and the scope of these regulations. Although three of the four categories of indications do not include the word ''diagnostic,'' it is clear from the context of the regulations that each of the categories applies to diagnostic or monitoring indications and not to therapeutic indications.

3. Two comments asked that FDA clarify a statement in the preamble to the proposed rule (63 FR 28301 at 28303) that the definition of diagnostic radiopharmaceutical includes articles that exhibit spontaneous disintegration leading to reconstruction of unstable nuclei and the subsequent emission of nuclear particles or photons.

Proposed §§ 315.2 and 601.31 defined a diagnostic radiopharmaceutical as an article ''that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons * * *.'' This definition is identical to the definition of ''radiopharmaceutical'' in section 122(b) of the Modernization Act. FDA was concerned that this definition might be interpreted as excluding an article that exhibits spontaneous disintegration leading to the reconstruction of unstable nuclei and the subsequent emission of nuclear particles or photons (i.e., the electron capture process of decay). Therefore, the agency stated in the preamble that it interprets the definition of ''radiopharmaceutical'' in section 122(b) of the Modernization Act and ''diagnostic radiopharmaceutical'' in proposed §§ 315.2 and 601.31 as including such an article. This statement was intended to clarify that diagnostic radiopharmaceuticals include articles with unstable nuclei that do not initiate decay by spontaneous disintegration but by spontaneous incorporation of an electron into the nucleus, bonding with a proton to form a neutron. This is followed by neutrino emission from the nucleus and both x-ray and Auger electron emissions from the electron shells. Iodine-123 is an example of a radionuclide that decays in this manner.

C. Indications

Proposed §§ 315.4(a) and 601.33(a) specified the following categories of indications for which FDA may approve a diagnostic radiopharmaceutical: (1) Structure delineation; (2) functional, physiological, or biochemical assessment; (3) disease or pathology detection or assessment; and (4) diagnostic or therapeutic patient management.

4. One comment, referring to examples of structural delineation and functional/physiological/biochemical assessment indications provided in the preamble to the proposed rule, requested that FDA provide examples of actual claim language and primary endpoints of adequate and well controlled clinical trials for drugs with such types of indications.

FDA does not believe that it would be appropriate to suggest potential language for indications for use or primary clinical endpoints outside of the context of evaluating a specific diagnostic radiopharmaceutical for a desired indication. However, the medical imaging draft guidance provides examples of products with such categories of indications and discusses the kinds of claim statements that may be permitted in promotional materials for such products. The draft guidance also provides examples of the types of endpoints that are appropriate for clinical studies on medical imaging drugs and biologics.

5. One comment stated that the distinction between the disease detection and patient management categories of indications in proposed §§ 315.4(a)(3) and (a)(4) and 601.33(a)(3) and (a)(4) was vague and asked whether the former category allowed for use of the phrase ''as an aid in the diagnosis of [a specific disease].'' The comment further stated that the difference between the two categories appeared to be related to the ability to provide diagnostic information and/or lead to a decision on patient management. However, the comment found it difficult to understand how a diagnostic radiopharmaceutical could characterize a specific disease as described in the preamble (63 FR 28301 at 28303) and not be of diagnostic value (i.e., fall within the diagnostic or therapeutic patient management indication category).

FDA agrees that there is a need to further clarify the distinction between the disease or pathology detection and assessment indication category and the diagnostic or therapeutic patient management indication category. A disease or pathology detection or assessment claim is established by demonstrating that a diagnostic radiopharmaceutical provides clinically useful information that can assist in the detection, localization, or characterization of a specific disease or pathological state in a defined clinical setting. However, the way that the information affects patient management is implied and may not be directly studied. The phrases ''as an aid in'' or ''as an adjunct to'' may be appropriate for this type of indication. On the other hand, a diagnostic or therapeutic patient management claim is established by explicitly demonstrating a radiopharmaceutical's ability to provide imaging or related information that leads directly to an appropriate diagnostic or therapeutic management decision for patients in a defined clinical setting. FDA will revise the medical imaging draft guidance to further distinguish disease/pathology detection and assessment indications from patient management indications.

6. One comment, stating that reliance on patient management for a diagnostic claim might be unfounded, asked what indication language FDA might approve for a diagnostic radiopharmaceutical if there were no approved therapy for treating a specific disease.

A diagnostic or patient management decision need not necessarily relate to the use of an approved drug product or therapy. Therefore, the absence of an approved therapy for a particular disease would not necessarily mean that FDA would not approve a diagnostic radiopharmaceutical with an indication for diagnostic or therapeutic management of patients with that disease. However, the applicant would need to demonstrate that its product has some clinical value. For example, in a situation in which two disorders are difficult to distinguish but a treatment exists for only one of the two, a radiopharmaceutical might be used to distinguish between the two disorders, thereby directly affecting subsequent patient management. In addition, a diagnostic radiopharmaceutical could have clinical usefulness in providing disease progression information about an untreatable disease; a patient management claim might be appropriate if such information were shown to directly affect some aspect of patient management (e.g., symptomatic treatment, avoidance of unnecessary treatment). As with all diagnostic radiopharmaceuticals for which a patient management indication is sought, FDA would need to determine whether the proposed clinical studies on the product included endpoints for assessing the appropriateness of patient management or clinical outcomes. The medical imaging draft guidance provides further clarification on the indications that may be appropriate for a diagnostic radiopharmaceutical under these circumstances.

7. Two comments expressed concern that FDA might narrowly interpret the diagnostic or therapeutic patient management indication category, noting that the two examples provided in the preamble involved indications dealing

with initial patient management, i.e., deciding therapeutic course. The comments sought confirmation that this indication category would include diagnostic radiopharmaceuticals used in followup patient management, i.e., monitoring response to therapy.

Although the two examples in the proposed rule related to initial patient management rather than monitoring response to therapy, FDA affirms that the diagnostic or therapeutic patient management indication category includes drugs used to monitor patient response to therapy if the response to therapy has direct implications for subsequent patient management. Possible diagnostic or therapeutic patient management indications might include diagnostic evaluation, use of a nonregulated therapy such as surgery, and other significant aspects of how a patient is treated. For example, a diagnostic radiopharmaceutical might be used to evaluate whether therapy for a malignancy is causing tumor regression if that information directly affects subsequent patient management decisions. A patient management indication also might be appropriate for a radiopharmaceutical that provides a convenient, well tolerated, accurate test that has been shown to effectively replace a more cumbersome or risky standard battery of tests, regardless of the availability of therapy.

8. Proposed §§ 315.4(b) and 601.33(b) stated that where a diagnostic radiopharmaceutical is not intended to provide disease-specific information, the proposed indications for use might refer to a process or to more than one disease or condition. One comment stated that this provision properly implements the special rule in section 122(a)(2) of the Modernization Act that a radiopharmaceutical may be approved for indications referring to manifestations of disease (such as biochemical, physiological, anatomical, or pathological processes) common to, or present in, one or more disease states. However, the comment asked that the phrase ''biochemical, physiological, anatomical, or pathological'' be added before the word ''process'' to eliminate the possibility that ''process'' might be construed as referring to a diagnostic procedure.

FDA agrees with the comment and has revised §§ 315.4(b) and 601.33(b) accordingly.

D. Evaluation of Effectiveness

In proposed §§ 315.5 and 601.34, FDA set forth the specific criteria that the agency would use to evaluate the effectiveness of a diagnostic radiopharmaceutical. The proposed rule stated that effectiveness would be assessed by evaluating the ability of the diagnostic radiopharmaceutical to provide useful clinical information related to the proposed indications for use. The method of this evaluation would vary depending on the proposed indication.

9. One comment maintained that the proposed rule should have detailed the differences between diagnostic radiopharmaceuticals and conventional, nonradioactive drugs as a basis for a different regulatory treatment. For example, the comment stated that adequate and well controlled investigations are not applicable to diagnostic radiopharmaceuticals and that specific studies involving each potentially applicable disease state should not be required for such drugs. The comment argued that ''proof of principle'' is all that has been required by the Atomic Energy Commission (AEC) and that use of this standard would be a good way to implement the requirements of the Modernization Act.

Section 122(a)(1)(A) of the Modernization Act directs FDA to develop regulations for determining the safety and effectiveness of diagnostic radiopharmaceuticals under section 505 of the act (21 U.S.C. 355) and section 351 of the PHS Act (42 U.S.C. 262); it does not exempt diagnostic radiopharmaceuticals from the requirements of those statutory provisions. Under section 505(d)(5) of the act, FDA may refuse to approve a new drug application (NDA) if, among other things, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use in its proposed labeling. ''Substantial evidence'' is defined as adequate and well controlled investigations, including clinical investigations, by qualified experts, on the basis of which such experts may fairly and responsibly conclude that the drug will have its intended effect. Under section 351 of the PHS Act, FDA approves a biologics license application (BLA) on, among other things, a demonstration that the biological product is safe, pure, and potent. Potency has long been interpreted to include effectiveness ''as indicated by appropriate laboratory tests or by adequately controlled clinical data obtained through the administration of the product in the manner intended'' (21 CFR 600.3(s)). FDA believes that the standard of substantial evidence is appropriate for use in evaluating the sufficiency of evidence of effectiveness submitted in a BLA (see FDA's guidance for industry entitled ''Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products,'' May 1998). For these reasons, FDA may not establish regulations for diagnostic radiopharmaceuticals that exempt such drugs and biologics from the statutory requirements.

The ''proof of principle'' concept noted by the comment was used by the Nuclear Regulatory Commission (NRC), the successor agency to the AEC. The NRC licenses persons who use nuclear materials. NRC standards are directed exclusively at radiological health and safety. The NRC focuses on ensuring an adequate level of radiation protection without regard to whether a radiopharmaceutical actually works. Because it is FDA's statutory responsibility to determine the safety and effectiveness of drug products, the NRC's standards are not relevant to the approval of diagnostic radiopharmaceuticals under the act. Proof of principle, e.g., the metabolic, pharmacokinetic, and pharmacological database on a diagnostic radiopharmaceutical, is only part of the drug development process. This information alone is insufficient to meet the requirements in the act and in FDA regulations on safety and effectiveness and on product labeling statements regarding such matters as safe use, the adverse event profile, and clinical use information.

10. One comment maintained that because statements in the preamble describing the structure delineation and functional/physiological/biochemical assessment indication categories do not mention clinical benefit, unlike the descriptions of the other two categories, FDA should state that a demonstration of ''traditional'' clinical utility or benefit is not required for diagnostic radiopharmaceuticals with these types of indications. However, the comment noted that this interpretation contradicted the statement in proposed §§ 315.5(a) and 601.34(a) that the effectiveness of a diagnostic radiopharmaceutical is assessed by evaluating its ability to provide ''useful clinical information'' concerning its proposed indications. The comment stated that it was unclear how one could provide useful clinical information related to a proposed indication for use that would not be of diagnostic or patient management value. Alternatively, the comment asked that FDA provide an example of a drug that demonstrates clinical utility but does not aid in diagnosis or contribute to patient management.

Although not explicitly stated in the preamble discussion on indication categories, a demonstration of clinical

benefit, i.e., ability to provide useful clinical information related to proposed indications for use, is required for approval of all types of diagnostic radiopharmaceuticals under §§ 315.5(a) and 601.34(a). The indication categories are intended to describe the types of clinically useful information that could be derived from an imaging study, and the type of indication for a particular product is related to the type of clinical trial designs that are used in the clinical studies. The draft medical imaging guidance further addresses these matters.

It is indeed possible for a diagnostic radiopharmaceutical to provide useful clinical information without directly being effective for detecting or assessing a disease or aiding patient management. For example, a diagnostic radiopharmaceutical might be used to locate and outline a normal parathyroid gland; while this information might not directly result in disease diagnosis and might not be demonstrated to improve patient management, it could indirectly assist a physician in planning and performing surgery to remove a mass in the thyroid gland.

11. Proposed §§ 315.5(a)(1) through (a)(5) and 601.34(a)(1) through (a)(5) set forth the criteria for demonstrating effectiveness with respect to particular categories of indications. A structure delineation claim would be established by demonstrating the ability of the diagnostic radiopharmaceutical to locate and characterize normal anatomical structures. A claim of functional, physiological, or biochemical assessment would be established by demonstrating reliable measurement of functions or physiological, biochemical, or molecular processes. A claim of disease or pathology detection or assessment would be established by demonstrating in a defined clinical setting that the diagnostic radiopharmaceutical has sufficient accuracy in identifying or characterizing a disease or pathology. A claim of diagnostic or therapeutic patient management would be established by demonstrating in a defined clinical setting that the test is useful in diagnostic or therapeutic management of patients.

One comment suggested that the word ''normal'' be deleted from proposed §§ 315.5(a)(1) and 601.34(a)(1) because radiopharmaceuticals with structure delineation indications are used to locate and characterize structures that may be normal or abnormal, and in some cases they may be used to help determine the abnormal appearance of a structure.

FDA agrees to delete the word ''normal'' from §§ 315.5(a)(1) and 601.34(a)(1) because a structure delineation claim may be appropriate for a diagnostic radiopharmaceutical that is used to determine the anatomical appearance of a structure even when the anatomy is abnormal. However, to clarify FDA's intent as to what is needed to demonstrate a structure delineation claim, the agency is further revising these provisions to state that a claim of structure delineation is established by demonstrating the ability to locate anatomical structures and to characterize their anatomy. FDA recognizes the need to clarify when a structure delineation claim is appropriate rather than a claim in one of the other indication categories. The agency will consider revising the medical imaging draft guidance to further explain the scope of permissible structure delineation claims.

12. One comment maintained that the information provided by radiopharmaceuticals with functional, physiological, or biochemical assessment indications may be either quantitative, semiquantitative, or qualitative. To prevent §§ 315.5(a)(2) and 601.34(a)(2) from being interpreted as permitting only quantitative measurement of function or process in establishing a functional, physiological, or biochemical assessment claim, the comment requested that the phrase ''quantitative, semi-quantitative, or qualitative'' be added before the word ''measurement.''

FDA agrees with the comment that a diagnostic radiopharmaceutical with a functional, physiological, or biochemical assessment indication may be established through either a quantitative, semi-quantitative, or qualitative measurement of a function or process. However, the agency concludes that it is not necessary to revise §§ 315.5(a)(2) and 601.34(a)(2) as requested because these provisions do not require any specific type of measurement.

13. One comment asked FDA to confirm that claims involving structure delineation or physiological assessment would not require evaluation in a defined clinical setting under proposed §§ 315.5(a)(1) and (a)(2) and 601.34(a)(1) and (a)(2), as would be required for disease detection and patient management claims under proposed §§ 315.5(a)(3) and (a)(4) and 601.34(a)(3) and (a)(4). In particular, the comment asked whether, if a sponsor could demonstrate unequivocally a diagnostic radiopharmaceutical's ability to quantitate nucleic acid synthesis (one of the preamble's examples of a biochemical assessment indication), FDA would require the sponsor to demonstrate such effectiveness in a clinically relevant setting or patient population.

FDA believes that to demonstrate that a diagnostic radiopharmaceutical has the ability to provide useful clinical information in accordance with §§ 315.5(a) and 601.34(a), the drug must be evaluated in a defined clinical setting, regardless of its proposed indication. Consequently, FDA has revised §§ 315.5(a)(1) and (a)(2) and 601.34(a)(1) and (a)(2) to specify that structure delineation and functional, physiological, or biochemical assessment claims, like disease detection and patient management claims, must be demonstrated in a defined clinical setting. The medical imaging draft guidance provides further discussion and explanation of the defined clinical setting. Claims involving structure delineation or physiological assessment must be evaluated under a clinical protocol and require a population from a clinically relevant setting. Regarding the hypothetical situation posed by the comment, even if a sponsor were able to demonstrate unequivocally that a diagnostic radiopharmaceutical was able to quantitate nucleic acid synthesis, the sponsor would have to demonstrate the usefulness of the imaging information in a clinically relevant setting. The clinical setting might be broad, demonstrating the common value of nucleic acid synthesis. Alternatively, the clinical studies might involve patients with a need for a particular type of evaluation (e.g., radionuclide ejection fraction) regardless of the underlying disease.

14. Under proposed §§ 315.5(b) and 601.34(b), the accuracy and usefulness of diagnostic information provided by a diagnostic radiopharmaceutical would be determined by comparison with a reliable assessment of actual clinical status, which could be provided by a diagnostic standard or standards of demonstrated accuracy. One comment maintained that these sections should be deleted because the act does not require either accuracy or usefulness. The comment stated that practitioners determine the accuracy and usefulness of a diagnostic radiopharmaceutical and that this information may be found in peer-reviewed literature, in the United States Pharmacopoeia Drug Information, and at professional and continuing medical education meetings. The comment added that accuracy and usefulness were never a part of the AEC process.

FDA declines the request to delete §§ 315.5(b) and 601.34(b). Although section 505(d) of the act and section 351 of the PHS Act do not specifically require that a new drug or biologic be shown to be ''accurate'' and ''useful,'' they do authorize FDA, as noted previously, to refuse to approve an application if there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the proposed conditions of use, based on an evaluation of well controlled clinical trials on the product. The statistical assessment of such trials includes accuracy; the clinical assessment considers the usefulness of the diagnostic information in the studied clinical setting and the proposed indication. FDA acknowledges that in the practice of medicine physicians may obtain information about a particular diagnostic radiopharmaceutical from numerous sources, including the published literature, and they may make diagnosis and treatment decisions on the basis of such information. Such literature typically becomes available after a product is marketed. However, a diagnostic radiopharmaceutical may not be marketed unless the agency determines, on the basis of data from clinical trials and other information, that the drug is safe and effective under section 505 of the act or section 351 of the PHS Act, and that determination must include the accuracy and usefulness of the product.

E. Evaluation of Safety

Proposed §§ 315.6(a) and 601.35(a) listed the factors that FDA would consider in assessing the safety of a diagnostic radiopharmaceutical. These factors include the following: The radiation dose; the pharmacology and toxicology of the radiopharmaceutical (including any radionuclide, carrier, or ligand); the risks of an incorrect diagnostic determination; the drug's adverse reaction profile; and results of human experience with the drug for other uses.

15. One comment maintained that there is no ''pharmacology and toxicology of the radiopharmaceutical, including any radionuclide, carrier, or ligand,'' as stated in proposed §§ 315.6(a) and 601.35(a).

FDA disagrees with the comment. The agency is aware of specific diagnostic radiopharmaceuticals, ligands, and carriers that have been shown to have a pharmacological or toxicological effect on the human body. For example, biological antibodies used in radiopharmaceuticals have demonstrated pharmacological and immunologic activity. In addition, as the development of radiopharmaceuticals increasingly focuses on receptors and metabolic processes, ligands (either synthesized peptides or antibodies) could have agonist or antagonist activity at nanomolar levels.

16. One comment asked why the safety of a diagnostic radiopharmaceutical might relate to the pharmacological action of its ligand rather than an observed adverse event, suggesting that a deleterious pharmacological action would be manifested as an adverse event.

The pharmacological action of a diagnostic radiopharmaceutical's ligand directly affects the sponsor's plan for detecting adverse events associated with the administration of a radiopharmaceutical. Without knowledge of the pharmacological action, the sponsor's selected time intervals for monitoring (e.g., immediate reactions, 7- to 10-day reactions, 3- to 6-month reactions) may not allow for observation, detection, and reporting of adverse events that occur during other time intervals. Also, some adverse events are not reported by patients and may not be suggested by animal studies; they may be identified only by physical examination (e.g., detection of nystagmus by cranial nerve examination). In addition, if the pharmacological action of the ligand is not known, the sponsor may not determine and use the appropriate modality (e.g., clinical evaluation, laboratory assessment, radiographic imaging) to monitor adverse events. For example, in a radiopharmaceutical that binds irreversibly to activated platelet receptors, a pharmacology evaluation would demonstrate an inhibition of platelet aggregation. Subsequent clinical studies should evaluate the bleeding time and potential drug interaction with treatments that prolong bleeding. Therefore, it is appropriate to include both the pharmacology and toxicology of a diagnostic radiopharmaceutical (including any radionuclide, carrier, or ligand) as well as the drug's adverse reaction profile as separate factors to consider in evaluating the safety of a diagnostic radiopharmaceutical.

17. One comment stated that FDA should delete the risks of an incorrect diagnostic determination as a factor in assessing the safety of a diagnostic radiopharmaceutical. The comment maintained that such risks depend on physician competence, patient cooperation, equipment quality, and other factors that are not characteristics of a diagnostic radiopharmaceutical, and that such a provision does not appear in the act.

FDA disagrees with the proposed deletion. The risk of an incorrect diagnostic determination is an independent factor to be considered in evaluating the safety of a diagnostic radiopharmaceutical under section 505 of the act or section 351 of the PHS Act. For example, a new diagnostic radiopharmaceutical might produce images and clinical information that require additional physician knowledge and competence for adequate interpretation or that might suggest an incorrect diagnosis even though interpreted by a well trained physician. Misinterpretation of the diagnostic images in such circumstances might pose a significant threat to the health of patients.

18. One comment stated that a diagnostic radiopharmaceutical's adverse reaction profile should not be considered because it is generally nonexistent, nonspecific, or trivial.

FDA disagrees with the comment. It is possible for a diagnostic radiopharmaceutical to have a specific and significant adverse reaction profile. Examples are the development of angina after the injection of a synthetic radiopharmaceutical to evaluate myocardial perfusion and the immune system response to the administration of a radiolabeled small peptide or antibody. The production of a human antimurine antibody has been demonstrated in response to both first administration as well as multiple administrations of a murine antibody. The production of the immune response to the administration of the murine antibody has elicited life-threatening anaphylactoid responses. Therefore, a diagnostic radiopharmaceutical's adverse reaction profile is a relevant factor to consider in assessing the drug's safety.

19. Two comments addressed the proposed safety assessment factor concerning ''the results of human experience with the radiopharmaceutical for other uses.'' One comment found this factor to be confusing and asked that FDA explain the phrase and provide some examples. Another comment agreed with the proposed rule that, when an applicant is seeking approval for a new indication for a previously approved radiopharmaceutical, the clinical data in the approved application and postmarketing experience with that product should be considered in assessing the safety of that radiopharmaceutical for the proposed new use. However, the comment maintained that human safety data on a

ligand or carrier used in a radiopharmaceutical may be important even though the radiopharmaceutical has not been previously approved. The comment stated that the radionuclide component of a radiopharmaceutical may have a long history of use in other radiopharmaceuticals and that most radiopharmaceutical issues (other than radiation dosimetry issues) will arise from the potential pharmacological or toxicological properties of the compound used in the carrier or ligand, about which there may be relevant safety information from use in marketed products. Therefore, the comment recommended that the following factor be added to the end of §§ 315.6(a) and 601.35(a):

the results of previous human experience with the ligand or carrier component (if any) of the radiopharmaceutical where essentially the same chemical entity as the ligand or carrier has been used in a previously approved product (e.g., as the ligand or carrier in another diagnostic or therapeutic radiopharmaceutical or as the active ingredient in a nonradioactive product for therapeutic use).

FDA believes that human experience with a diagnostic radiopharmaceutical for previously approved uses (or even uses that have been studied but are unapproved) could provide important information about the safety of that radiopharmaceutical for a proposed new use. For example, the agency would review the safety experience of technetium-99m (Tc–99m) pyrophosphate used in bone imaging if a sponsor submitted an application for approval of that drug for a new indication, such as imaging of myocardial infarction. FDA agrees with the comment that the results of any human experience with the carrier or ligand of a diagnostic radiopharmaceutical, as used in a previously studied product (either as a ligand or carrier in a radiopharmaceutical or as an active ingredient in a nonradioactive drug product), should be considered in assessing the safety of a diagnostic radiopharmaceutical. Therefore, FDA has revised §§ 315.6(a) and 601.35(a) accordingly. However, the agency believes that this human experience must involve the exact chemical entity as the carrier or ligand of the diagnostic radiopharmaceutical undergoing safety assessment, rather than ''essentially the same chemical entity'' as the comment recommended. (For purposes of part 315 and subpart D of part 601, the terms ''carrier'' and ''ligand'' collectively refer to the entire nonradionuclidic portion of a diagnostic radiopharmaceutical.)

20. Proposed §§ 315.6(b) and 601.35(b) stated that the assessment of a diagnostic radiopharmaceutical's adverse reaction profile includes, but is not limited to, an evaluation of the potential of the drug (including its carrier or ligand) to elicit allergic or hypersensitivity responses, immunologic responses, changes in the physiologic or biochemical function of target and nontarget tissues, and clinically detectable signs or symptoms. One comment stated that although allergic and immunologic responses may be an issue with foreign proteins, a determination of antibody production in a small number of subjects would be enough to determine whether such responses are common.

FDA disagrees with the comment. The agency believes that there should be adequate clinical experience with a diagnostic radiopharmaceutical to identify uncommon as well as common allergic and immunologic responses to the radiopharmaceutical. Data on a small number of subjects generally are insufficient to identify an uncommon but potentially life-threatening adverse reaction.

21. One comment recommended adding the words ''Clinically significant'' before ''Changes in the physiologic or biochemical function of the target and nontarget tissues'' in proposed §§ 315.6(b)(3) and 601.35(b)(3) because such changes are relevant to assessing a diagnostic radiopharmaceutical's adverse reaction profile only when they are clinically significant. As an example, the comment stated that the process by which a radiopharmaceutical binds to an intended receptor on a cell surface might be regarded as a change in the biochemical function of the target tissue even though the change has no potential to adversely affect safety and has no other clinical significance. The comment contended that its suggested revision would be consistent with a statement in the agency's medical imaging draft guidance (i.e., that localization of a medical imaging drug in a target organ or tissue is not considered to have a biological effect unless it produces demonstrable perturbation).

FDA declines to revise §§ 315.6(b)(3) and 601.35(b)(3) as recommended. The agency believes that the potential of a product to change the physiologic or biochemical function of target and nontarget tissues should be evaluated. The clinical significance of any detected functional change should be assessed. If the functional change has little or no clinical significance, it likely will not affect the diagnostic radiopharmaceutical's adverse reaction profile.

22. One comment stated that the references to changes in the physiologic or biochemical function of target and nontarget tissues and to clinically detectable signs and symptoms should be deleted because such events do not occur (or not to any significant extent) with diagnostic radiopharmaceuticals.

FDA disagrees with the comment. FDA's experience with evaluating the safety of radiopharmaceuticals has demonstrated that the physiologic and biological function of target and nontarget tissues may be affected by the administration of a radiopharmaceutical. For example, as noted previously, the administration of a radiolabeled antibody can produce a strong immune system response. Moreover, changes in target and nontarget tissues can sometimes result in clinically detectable signs and symptoms, such as the anaphylactoid response discussed previously. Therefore, FDA may need information on a radiopharmaceutical's potential to produce changes in the physiologic or biochemical function of tissues as well as clinically detectable signs and symptoms to accurately assess the drug's adverse reaction profile.

23. Proposed §§ 315.6(c)(1) and 601.35(c)(1) stated that, among other information, FDA may require the following types of data to establish the safety of a diagnostic radiopharmaceutical: Pharmacology data, toxicology data, clinical adverse event data, and a radiation safety assessment. One comment maintained that pharmacology, toxicology, and clinical adverse event data are for the most part not relevant due to the minute mass of the radiopharmaceutical.

FDA disagrees with the comment. Diagnostic radiopharmaceuticals differ widely in mass, and the pharmacological and toxicological effects of a diagnostic radiopharmaceutical are not necessarily related to the mass of the drug product. However, the mass of a diagnostic radiopharmaceutical may be a relevant factor in FDA's determination of the type of pharmacology, toxicology, clinical adverse event monitoring, and radiation safety data needed to establish the safety of a diagnostic radiopharmaceutical.

24. Proposed §§ 315.6(c)(2) and 601.35(c)(2) stated that the amount of new safety data required for a diagnostic radiopharmaceutical would depend on the characteristics of the product and available information on the safety of the diagnostic radiopharmaceutical obtained from other studies and uses. Included among such information would be the dose, route of

administration, frequency of use, half-life of the ligand or carrier, half-life of the radionuclide, and results of preclinical studies. FDA would categorize diagnostic radiopharmaceuticals based on defined characteristics relevant to risk and would specify the amount and type of safety data appropriate for each category. For example, required safety data would be limited for a category of radiopharmaceuticals with a well established, low-risk profile.

One comment contended that these provisions fail to address the possibility of a reduction in required safety data for previously unapproved radiopharmaceuticals. The comment stated that where preexisting data demonstrate a history of safe use of a carrier or ligand of a diagnostic radiopharmaceutical, such information should permit a reduction in the amount of new safety data that the sponsor must provide. Therefore, the comment recommended that the phrase ''or its carrier or ligand component'' be added following ''radiopharmaceutical'' in §§ 315.6(c)(2) and 601.35(c)(2).

FDA agrees with the comment that such prior data may permit a reduction in the amount of new safety data that a sponsor may need to provide and has revised these sections accordingly.

25. One comment noted that ''results of preclinical studies,'' but not clinical studies, is listed among the kinds of information on the safety of a diagnostic radiopharmaceutical that might be used to determine the amount of new safety data required in an application. The comment argued that clinical information may also be important to consider in determining what new safety data is needed. Such clinical information could include data on a diagnostic radiopharmaceutical approved for a different indication, on a carrier or ligand that has a history of use as a carrier or ligand in an approved radiopharmaceutical or as the active ingredient in a therapeutic product, or from Phase 1 studies on the drug that is the subject of the pending application. Although the comment recognized that the list of information on the safety of a diagnostic radiopharmaceutical in proposed §§ 315.6(c)(2) and 601.35(c)(2) was not exclusive, the comment believed that failure to explicitly include the results of clinical studies might dissuade sponsors from providing FDA with useful clinical information early in the clinical development program for the drug.

FDA agrees with the comment and has revised these sections accordingly.

26. One comment agreed with FDA's proposal to define a category of low-risk radiopharmaceuticals that would be subject to reduced safety requirements. The comment stated that FDA should provide in a guidance document a description of the low-risk category, criteria for eligibility, and types of safety data required for products in this category. The comment contended that the medical imaging draft guidance does not specify the different safety requirements for Group 1 and Group 2 medical imaging drugs beyond stating that reduced safety monitoring is appropriate for Phase 2 and 3 studies on Group 1 drugs.

FDA agrees with the comment and will consider revising the medical imaging draft guidance to further address the type of safety information that may be appropriate for Group 1 and Group 2 medical imaging drugs.

27. One comment asked that proposed §§ 315.6(c)(2) and 601.35(c)(2) be revised to clarify that, even for radiopharmaceuticals that do not fall within a low-risk category, FDA will consider existing information and determine on an ad hoc basis the amount of new safety data that is required for a particular diagnostic radiopharmaceutical product.

FDA has revised §§ 315.6(c)(2) and 601.35(c)(2) to clarify the agency's approach to determining the amount of new safety data that will be required for a particular diagnostic radiopharmaceutical. As stated in revised §§ 315.6(c)(2) and 601.35(c)(2), FDA will consider certain product characteristics and available safety information obtained from other studies and uses in determining the amount of new safety information that is needed for each drug. The information that FDA may review includes, but is not limited to, the following: The dose, route of administration, and frequency of use of the diagnostic radiopharmaceutical; the half-life of the ligand, carrier, and radionuclide; and results of clinical studies. In the medical imaging guidance, FDA will establish categories of diagnostic radiopharmaceuticals based on defined characteristics relevant to safety risk and will specify the amount and type of safety data that is appropriate for each category (e.g., required safety data may be limited for diagnostic radiopharmaceuticals with a well established, low-risk profile). Based on its review of the previously listed product characteristics and safety information, FDA will place each diagnostic radiopharmaceutical into the appropriate safety risk category.

28. One comment stated that the regulation should specify a procedure by which a sponsor may provide FDA with information on the basis of which the agency can categorize a diagnostic radiopharmaceutical according to new safety data required. The comment maintained that this would enable manufacturers to make product development decisions with the assurance that a categorization process will be available and applied consistently. The comment recommended that the categorization procedure provide for the following: (1) Sponsor submission of a request for low-risk designation at a meeting prior to the submission of an investigational new drug application (IND) or any subsequent time; (2) FDA designation of the product as low risk if the sponsor submits preclinical data, clinical data, and/or other information demonstrating that the radiopharmaceutical possesses the characteristics of a low-risk category drug; and (3) FDA action on a designation request within 30 days of submission.

FDA agrees that there should be a standard procedure that the sponsor of a diagnostic radiopharmaceutical may follow to request that the agency assign the radiopharmaceutical to a particular safety risk category. FDA also agrees that such procedure should specify, among other things, when a request for categorization may be made and the information that should be submitted with a request. However, FDA believes that it is more practical to address this matter in the medical imaging guidance rather than in regulations.

29. One comment requested that proposed §§ 315.6(c)(2) and 601.35(c)(2) be revised to clarify that a diagnostic radiopharmaceutical that has not been previously approved may be eligible for low-risk categorization. The comment noted that this would allow low-risk categorization of a previously unapproved radiopharmaceutical when (1) there is a history of safe use of the radiopharmaceutical's ligand or carrier or (2) the sponsor submits sufficient preclinical and toxicology data on the radiopharmaceutical itself.

FDA agrees that, under §§ 315.6(c)(2) and 601.35(c)(2), a diagnostic radiopharmaceutical that has not been previously approved may be eligible for placement in a low-risk category under certain circumstances, such as those suggested by the comment. However, FDA finds it unnecessary to revise these sections of the regulations to specifically refer to diagnostic radiopharmaceuticals that have not been previously approved because the rule does not address the approval status of the radiopharmaceuticals. The agency intends to revise the medical imaging draft guidance to clarify that even a diagnostic radiopharmaceutical that has

not been previously approved may, under certain circumstances, fall within a low-risk category.

30. Proposed §§ 315.6(d) and 601.35(d) stated that a radiation safety assessment would establish the radiation dose of a diagnostic radiopharmaceutical by radiation dosimetry evaluations in humans and appropriate animal models. In making such an evaluation, dosimetry to the total body, to specific organs or tissues, and, if appropriate, to target organs or tissues must be considered, although the maximum tolerated dose need not be established.

One comment stated that a radiation safety assessment should usually consist of an estimate of radiation absorbed dose in a few normal subjects and that there is no need for subjects with renal or hepatic insufficiency or other diseases. The comment maintained that precise dosimetry is usually unnecessary, especially for Tc–99m agents, because absorbed doses are insignificant. The comment added that even though some radionuclides may give selected organ doses that are not insignificant, such doses are low and have not been associated with any hazard.

FDA does not agree that it is unnecessary to measure dosimetry and to assess the radiation safety of a diagnostic radiopharmaceutical. FDA agrees that current knowledge suggests that absorbed radiation doses from some diagnostic radiopharmaceuticals are not significant. However, as the comment notes, the experience with dosimetry and radiation safety demonstrates that this is not true for all diagnostic radiopharmaceuticals. Because the agency does not know the future significance of the absorbed radiation dose of a particular diagnostic radiopharmaceutical, current standardized dosimetry measurements are needed for all diagnostic radiopharmaceuticals. These standardized dosimetry measurements ensure that the absorbed radiation dose of a particular diagnostic radiopharmaceutical is recorded in a standardized procedure and that the current known risk of radiation injury from the radiopharmaceutical is as low as possible.

31. There were three comments on evaluation of radiation dosimetry. Two comments objected to the use of dosimetry to the total body because it assumes uniform, homogenous distribution of a radiopharmaceutical throughout the body. The comments contended that this is inaccurate because diagnostic radiopharmaceuticals must localize in certain organs or tissues to be clinically useful and because essentially all diagnostic radiopharmaceuticals undergo some type of elimination from the body that leads to concentration in the kidneys/urinary tract or liver/biliary tract/gastrointestinal tract. The comments maintained that because diagnostic radiopharmaceuticals are heterogeneously concentrated in various organs and tissues having different radiosensitivities, the radiation safety assessment should consider radiation absorbed doses for all organs and tissues in conjunction with their relative radiosensitivities using a so-called ''effective dose'' calculation.

FDA acknowledges that a diagnostic radiopharmaceutical is not distributed uniformly throughout the body but rather localizes in particular organs or tissues. Although FDA agrees that effective dose is a relevant measure of dosimetry, the measurement of total body dosimetry also may provide relevant information in some settings. FDA believes that each sponsor should use dosimetry measurements that are appropriate for a particular diagnostic radiopharmaceutical in the defined clinical setting, whether this requires measurement of dosimetry to the total body, to specific organs or tissues, and/or to target organs or tissues. However, FDA concludes that it is more appropriate to address this matter in the medical imaging guidance rather than the regulations so that dosimetry evaluations of diagnostic radiopharmaceuticals may better reflect developments in radiopharmaceutical science. Consequently, the agency is deleting the sentence in proposed §§ 315.6(d) and 601.35(d) specifying what must be considered in a radiation dosimetry evaluation.

32. A third comment on evaluation of radiation dosimetry noted that the ''Guideline for the Clinical Evaluation of Radiopharmaceutical Drugs'' states that organ and tissue dosimetries are required only in preclinical studies; for clinical studies, dosimetry calculations should be made only on the primary organ(s) of interest and should follow the system specified by the Medical Internal Radiation Dose Committee of the Society of Nuclear Medicine. The comment recommended that the final rule include similar recommendations. The comment also maintained that the final rule must distinguish preclinical from clinical expectations.

FDA believes that the appropriate design of the preclinical and clinical dosimetry studies for determining radiation dosimetry must be based on the characteristics of the radiopharmaceutical, e.g., biodistribution, pharmacological actions, and clearance pathways. FDA intends to address in the medical imaging guidance the preclinical and clinical dosimetry measurements that are considered currently appropriate for different types of diagnostic radiopharmaceuticals. Therefore, FDA declines to include in the regulations specific methods or models of dosimetry or to distinguish between the preclinical and clinical dosimetry requirements in the regulations.

33. There were two comments on maximum tolerated dose. One comment found the statement that the maximum tolerated dose need not be established to be ''curious'' because the maximum tolerated radiation dose was established decades ago. One comment asked that FDA clarify whether the phrase refers to the maximum tolerated dose associated with adverse events and laboratory abnormalities or to the maximum tolerated dose based on radiation dosimetry.

By stating in §§ 315.6(d) and 601.35(d) that the maximum tolerated dose need not be established, FDA is simply clarifying that there is no need to determine the maximum tolerated dose of radiation as part of the radiation dosimetry evaluation.

IV. Analysis of Economic Impacts

FDA has examined the impact of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze significant regulatory options that would minimize any significant economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any mandate that results in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year.

The agency has reviewed this final rule and has determined that it is consistent with the principles set forth in the Executive Order and in these two statutes. FDA finds that, while the rule

will not be an economically significant rule, it is a significant regulatory action as described in section 3 paragraph (f)(4) of the Executive Order. Further, the agency finds that, under the Regulatory Flexibility Act, the rule will not have a significant economic impact on a substantial number of small entities. Also, since the expenditures resulting from the standards identified in the rule are less than $100 million, FDA is not required to perform a cost/benefit analysis according to the Unfunded Mandates Reform Act.

The final rule clarifies existing FDA requirements for the approval and evaluation of drug and biological products already in place under the act and the PHS Act. Existing regulations (parts 314 and 601) specify the type of information that manufacturers are required to submit so that the agency may properly evaluate the safety and effectiveness of new drugs or biological products. Such information is usually submitted as part of an NDA, BLA, or supplement to an approved application. The information typically includes both nonclinical and clinical data concerning the product's pharmacology, toxicology, adverse events, radiation safety assessments, chemistry, and manufacturing and controls. The final regulation recognizes the unique characteristics of diagnostic radiopharmaceuticals and sets out the agency's approach to the evaluation of these products. For certain diagnostic radiopharmaceuticals, the final regulation may reduce the amount of safety information that an applicant must obtain by conducting new clinical studies. This would include approved radiopharmaceuticals with well established, low-risk safety profiles because such products might be able to use scientifically sound data established during use of the radiopharmaceutical to support the approval of a new indication for use. In addition, the clarification achieved by the final rule is expected to reduce the costs of submitting an application for approval of a diagnostic radiopharmaceutical by improving communications between applicants and the agency and by reducing wasted effort directed toward the submission of data that is not necessary to meet the statutory approval standard.

Manufacturers of diagnostic radiopharmaceuticals are defined by the Small Business Administration as small businesses if such manufacturers employ fewer than 500 employees. The agency finds that only 2 of the 8 companies that currently manufacture or market radiopharmaceuticals have fewer than 500 employees.[1] Moreover, the final rule would not impose any additional costs but, rather, might reduce the clinical costs associated with the existing regulations by clarifying data submission requirements. One comment stated that the regulatory costs currently associated with developing new radiopharmaceuticals have made it difficult for more than two small entities to stay in business. While the agency is not aware of any safe and effective radiopharmaceuticals that have been prevented from entering the marketplace, it believes that this rule might reduce costs and therefore benefit small entities. Therefore, in accordance with the Regulatory Flexibility Act, FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. The Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The title, description, and the 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 the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring.

Description: FDA is finalizing regulations for the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring. The final rule clarifies existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the act and the PHS Act. Those regulations, which appear primarily in parts 314 and 601, specify the information that manufacturers must submit to FDA for the agency to properly evaluate the safety and effectiveness of new drugs or biological products. The information, which is usually submitted as part of an NDA or BLA, or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set out in § 314.50 and for a new biological product in § 601.2. Under part 315 and §§ 601.30 through 601.35 of part 601, information required under the act and the PHS Act, and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals, will still need to be reported.

Description of Respondents: Manufacturers of in vivo radiopharmaceuticals used for diagnosis and monitoring.

As required by section 3506 (c)(2)(B) of the PRA, FDA provided an opportunity for public comment on May 22, 1998 (63 FR 28301), on the information collection provisions of the proposed rule. FDA received one comment on the information collection provisions. The comment stated that use of the figure of seven approved diagnostic radiopharmaceuticals in fiscal year 1997 (FY 1997) resulted in a very low estimate of the expected number of future annual applications. The comment suggested that 50 applications would be a more appropriate figure.

Based on 5 years of experience, FDA believes that the estimate of the number of applications for approval of in vivo diagnostic radiopharmaceuticals is a reasonable one. In FY 1992 to 1997, FDA approved 13 in vivo diagnostic radiopharmaceuticals. In FY 1998, only one such product was approved. The agency does not expect an increase in applications for approval of diagnostic radiopharmaceuticals in the near future. Although sponsors may submit higher numbers of IND's for diagnostic radiopharmaceuticals each year, the annual number of NDA's, abbreviated new drug applications, and BLA's approved is small. FDA therefore declines to change its estimate.

In a notice of action on the proposed rule dated July 17, 1998, OMB stated that it had concerns about the utility and burden of the information collected to demonstrate the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical. OMB maintained that the burden and utility of this information collection should be assessed in light of public comments on the proposed rule and that FDA should specifically address such comments in the preamble to the final rule.

Section 122 of the Modernization Act directs FDA to develop regulations on the approval of diagnostic radiopharmaceuticals under section 505 of the act. As discussed previously, FDA

[1] *Medical & Healthcare Marketplace Guide*, 13th ed., Dorland's Directories, 1997.

received only one comment on the information collection provisions of the proposed rule. None of the manufacturers of diagnostic radiopharmaceuticals who submitted comments on the proposed rule questioned the need for the submission of information to demonstrate the safety and effectiveness of a product to obtain marketing approval. Rather, their comments primarily sought clarification or proposed minor modification of the proposed regulations.

To estimate the potential number of respondents that would submit applications or supplements for diagnostic radiopharmaceuticals, FDA used the number of approvals granted in FY 1997 to approximate the number of future annual applications. In FY 1997, FDA approved seven diagnostic radiopharmaceuticals and received one new indication supplement; of these, three respondents received approval through the Center for Drug Evaluation and Research and five received approval through the Center for Biologics Evaluation and Research. The annual frequency of responses was estimated to be one response per application or supplement. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the final regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that are affected by these final regulations. The final rule would not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated current burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 under OMB control number 0910–0001 and § 601.2 under OMB control number 0910–0124. In fact, clarification in the final rule of FDA's standards for evaluation of diagnostic radiopharmaceuticals is expected to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid conducting unnecessary clinical studies. The following table indicates estimates of the annual reporting burdens for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations, §§ 314.50 and 601.2. The burden totals do not include an increase in burden because no increase is anticipated. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

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
315.4, 315.5, and 315.6	3	1	3	2,000	6,000
601.33, 601.34, and 601.35	5	1	5	2,000	10,000
Total	8		8		16,000

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

The information collection provisions of the final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the 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.

VI. 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.

List of Subjects

21 CFR Part 315

Biologics, Diagnostic radiopharmaceuticals, Drugs.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended to read as follows:

1. Part 315 is added to read as follows:

PART 315—DIAGNOSTIC RADIOPHARMACEUTICALS

Sec.
315.1 Scope.
315.2 Definition.
315.3 General factors relevant to safety and effectiveness.
315.4 Indications.
315.5 Evaluation of effectiveness.
315.6 Evaluation of safety.

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 315.1 Scope.

The regulations in this part apply to radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use. They do not apply to radiopharmaceuticals intended for therapeutic purposes. In situations where a particular radiopharmaceutical is proposed for both diagnostic and therapeutic uses, the radiopharmaceutical must be evaluated taking into account each intended use.

§ 315.2 Definition.

For purposes of this part, *diagnostic radiopharmaceutical* means:

(a) An article that is intended for use in the diagnosis or monitoring of a disease or a manifestation of a disease in humans and that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons; or

(b) Any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of such article as defined in paragraph (a) of this section.

§ 315.3 General factors relevant to safety and effectiveness.

FDA's determination of the safety and effectiveness of a diagnostic radiopharmaceutical includes consideration of the following:

(a) The proposed use of the diagnostic radiopharmaceutical in the practice of medicine,

(b) The pharmacological and toxicological activity of the diagnostic radiopharmaceutical (including any carrier or ligand component of the diagnostic radiopharmaceutical), and

(c) The estimated absorbed radiation dose of the diagnostic radiopharmaceutical.

§ 315.4 Indications.

(a) For diagnostic radiopharmaceuticals, the categories of proposed indications for use include, but are not limited to, the following:

(1) Structure delineation;

(2) Functional, physiological, or biochemical assessment;

(3) Disease or pathology detection or assessment; and

(4) Diagnostic or therapeutic patient management.

(b) Where a diagnostic radiopharmaceutical is not intended to provide disease-specific information, the proposed indications for use may refer to a biochemical, physiological, anatomical, or pathological process or to more than one disease or condition.

§ 315.5 Evaluation of effectiveness.

(a) The effectiveness of a diagnostic radiopharmaceutical is assessed by evaluating its ability to provide useful clinical information related to its proposed indications for use. The method of this evaluation varies depending upon the proposed indication(s) and may use one or more of the following criteria:

(1) The claim of structure delineation is established by demonstrating in a defined clinical setting the ability to locate anatomical structures and to characterize their anatomy.

(2) The claim of functional, physiological, or biochemical assessment is established by demonstrating in a defined clinical setting reliable measurement of function(s) or physiological, biochemical, or molecular process(es).

(3) The claim of disease or pathology detection or assessment is established by demonstrating in a defined clinical setting that the diagnostic radiopharmaceutical has sufficient accuracy in identifying or characterizing the disease or pathology.

(4) The claim of diagnostic or therapeutic patient management is established by demonstrating in a defined clinical setting that the test is useful in diagnostic or therapeutic patient management.

(5) For a claim that does not fall within the indication categories identified in § 315.4, the applicant or sponsor should consult FDA on how to establish the effectiveness of the diagnostic radiopharmaceutical for the claim.

(b) The accuracy and usefulness of the diagnostic information is determined by comparison with a reliable assessment of actual clinical status. A reliable assessment of actual clinical status may be provided by a diagnostic standard or standards of demonstrated accuracy. In the absence of such diagnostic standard(s), the actual clinical status must be established in another manner, e.g., patient followup.

§ 315.6 Evaluation of safety.

(a) Factors considered in the safety assessment of a diagnostic radiopharmaceutical include, among others, the following:

(1) The radiation dose;

(2) The pharmacology and toxicology of the radiopharmaceutical, including any radionuclide, carrier, or ligand;

(3) The risks of an incorrect diagnostic determination;

(4) The adverse reaction profile of the drug;

(5) Results of human experience with the radiopharmaceutical for other uses; and

(6) Results of any previous human experience with the carrier or ligand of the radiopharmaceutical when the same chemical entity as the carrier or ligand has been used in a previously studied product.

(b) The assessment of the adverse reaction profile includes, but is not limited to, an evaluation of the potential of the diagnostic radiopharmaceutical, including the carrier or ligand, to elicit the following:

(1) Allergic or hypersensitivity responses,

(2) Immunologic responses,

(3) Changes in the physiologic or biochemical function of the target and nontarget tissues, and

(4) Clinically detectable signs or symptoms.

(c)(1) To establish the safety of a diagnostic radiopharmaceutical, FDA may require, among other information, the following types of data:

(i) Pharmacology data,

(ii) Toxicology data,

(iii) Clinical adverse event data, and

(iv) Radiation safety assessment.

(2) The amount of new safety data required will depend on the characteristics of the product and available information regarding the safety of the diagnostic radiopharmaceutical, and its carrier or ligand, obtained from other studies and uses. Such information may include, but is not limited to, the dose, route of administration, frequency of use, half-life of the ligand or carrier, half-life of the radionuclide, and results of clinical and preclinical studies. FDA will establish categories of diagnostic radiopharmaceuticals based on defined characteristics relevant to risk and will specify the amount and type of safety data that are appropriate for each category (e.g., required safety data may be limited for diagnostic radiopharmaceuticals with a well established, low-risk profile). Upon reviewing the relevant product characteristics and safety information, FDA will place each diagnostic radiopharmaceutical into the appropriate safety risk category.

(d) Radiation safety assessment. The radiation safety assessment must establish the radiation dose of a diagnostic radiopharmaceutical by radiation dosimetry evaluations in humans and appropriate animal models. The maximum tolerated dose need not be established.

PART 601—LICENSING

2. The authority citation for part 601 is revised to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.33 [Redesignated as § 601.28]

3. Section 601.33 is redesignated as § 601.28 and transferred from subpart D to subpart C, and the redesignated section heading is revised to read as follows:

§ 601.28 Foreign establishments and products: samples for each importation.

* * * * *

4. Subpart D is revised to read as follows:

Subpart D—Diagnostic Radiopharmaceuticals

Sec.

601.30 Scope.
601.31 Definition.
601.32 General factors relevant to safety and effectiveness.
601.33 Indications.
601.34 Evaluation of effectiveness.
601.35 Evaluation of safety.

Subpart D—Diagnostic Radiopharmaceuticals

§ 601.30 Scope.

This subpart applies to radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use. It does not apply to radiopharmaceuticals intended for therapeutic purposes. In situations where a particular radiopharmaceutical is proposed for both diagnostic and therapeutic uses, the radiopharmaceutical must be evaluated taking into account each intended use.

§ 601.31 Definition.

For purposes of this part, *diagnostic radiopharmaceutical* means:

(a) An article that is intended for use in the diagnosis or monitoring of a disease or a manifestation of a disease in humans and that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons; or

(b) Any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of such article as defined in paragraph (a) of this section.

§ 601.32 General factors relevant to safety and effectiveness.

FDA's determination of the safety and effectiveness of a diagnostic radiopharmaceutical includes consideration of the following:

(a) The proposed use of the diagnostic radiopharmaceutical in the practice of medicine;

(b) The pharmacological and toxicological activity of the diagnostic radiopharmaceutical (including any carrier or ligand component of the diagnostic radiopharmaceutical); and

(c) The estimated absorbed radiation dose of the diagnostic radiopharmaceutical.

§ 601.33 Indications.

(a) For diagnostic radiopharmaceuticals, the categories of proposed indications for use include, but are not limited to, the following:

(1) Structure delineation;

(2) Functional, physiological, or biochemical assessment;

(3) Disease or pathology detection or assessment; and

(4) Diagnostic or therapeutic patient management.

(b) Where a diagnostic radiopharmaceutical is not intended to provide disease-specific information, the proposed indications for use may refer to a biochemical, physiological, anatomical, or pathological process or to more than one disease or condition.

§ 601.34 Evaluation of effectiveness.

(a) The effectiveness of a diagnostic radiopharmaceutical is assessed by evaluating its ability to provide useful clinical information related to its proposed indications for use. The method of this evaluation varies depending upon the proposed indication(s) and may use one or more of the following criteria:

(1) The claim of structure delineation is established by demonstrating in a defined clinical setting the ability to locate anatomical structures and to characterize their anatomy.

(2) The claim of functional, physiological, or biochemical assessment is established by demonstrating in a defined clinical setting reliable measurement of function(s) or physiological, biochemical, or molecular process(es).

(3) The claim of disease or pathology detection or assessment is established by demonstrating in a defined clinical setting that the diagnostic radiopharmaceutical has sufficient accuracy in identifying or characterizing the disease or pathology.

(4) The claim of diagnostic or therapeutic patient management is established by demonstrating in a defined clinical setting that the test is useful in diagnostic or therapeutic patient management.

(5) For a claim that does not fall within the indication categories identified in § 601.33, the applicant or sponsor should consult FDA on how to establish the effectiveness of the diagnostic radiopharmaceutical for the claim.

(b) The accuracy and usefulness of the diagnostic information is determined by comparison with a reliable assessment of actual clinical status. A reliable assessment of actual clinical status may be provided by a diagnostic standard or standards of demonstrated accuracy. In the absence of such diagnostic standard(s), the actual clinical status must be established in another manner, e.g., patient followup.

§ 601.35 Evaluation of safety.

(a) Factors considered in the safety assessment of a diagnostic radiopharmaceutical include, among others, the following:

(1) The radiation dose;

(2) The pharmacology and toxicology of the radiopharmaceutical, including any radionuclide, carrier, or ligand;

(3) The risks of an incorrect diagnostic determination;

(4) The adverse reaction profile of the drug;

(5) Results of human experience with the radiopharmaceutical for other uses; and

(6) Results of any previous human experience with the carrier or ligand of the radiopharmaceutical when the same chemical entity as the carrier or ligand has been used in a previously studied product.

(b) The assessment of the adverse reaction profile includes, but is not limited to, an evaluation of the potential of the diagnostic radiopharmaceutical, including the carrier or ligand, to elicit the following:

(1) Allergic or hypersensitivity responses,

(2) Immunologic responses,

(3) Changes in the physiologic or biochemical function of the target and nontarget tissues, and

(4) Clinically detectable signs or symptoms.

(c)(1) To establish the safety of a diagnostic radiopharmaceutical, FDA may require, among other information, the following types of data:

(A) Pharmacology data,

(B) Toxicology data,

(C) Clinical adverse event data, and

(D) Radiation safety assessment.

(2) The amount of new safety data required will depend on the characteristics of the product and available information regarding the safety of the diagnostic radiopharmaceutical, and its carrier or ligand, obtained from other studies and uses. Such information may include, but is not limited to, the dose, route of administration, frequency of use, half-life of the ligand or carrier, half-life of the radionuclide, and results of clinical and preclinical studies. FDA will establish categories of diagnostic radiopharmaceuticals based on defined characteristics relevant to risk and will specify the amount and type of safety data that are appropriate for each category (e.g., required safety data may be limited for diagnostic radiopharmaceuticals with a well established, low-risk profile). Upon reviewing the relevant product characteristics and safety information, FDA will place each diagnostic radiopharmaceutical into the appropriate safety risk category.

(d) Radiation safety assessment. The radiation safety assessment must establish the radiation dose of a diagnostic radiopharmaceutical by radiation dosimetry evaluations in humans and appropriate animal models. The maximum tolerated dose need not be established.

Dated: April 16, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12320 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Boehringer Ingelheim Vetmedica, Inc. The supplemental ANADA provides for establishment of a 28-day withdrawal period for subcutaneous use of oxytetracycline injection in cattle and for intramuscular use in swine.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506, filed supplemental ANADA 200–008 that provides for establishment of a 28-day withdrawal period for subcutaneous use in cattle and intramuscular use in swine of Oxytet™ 200 and Bio-Mycin® 200 (oxytetracycline injection). The 28-day withdrawal period for the intravenous and intramuscular use of oxytetracycline injection in cattle, assigned as part of the original approval, remains unchanged. The drug is for intramuscular, subcutaneous, or intravenous treatment of beef cattle and nonlactating dairy cattle as follows: (1) Bacterial pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Haemophilus* spp.; (2) infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; (3) foot rot and diptheria caused by *Fusobacterium necrophorum*; (4) bacterial enteritis (scours) caused by *Escherichia coli*; (5) wooden tongue caused by *Actinobacillus lignieresii*; (6) leptospirosis caused by *Leptospira pomona*; and (7) wound infections and acute metritis caused by strains of streptococcal and staphylococcal organisms. The drug is for intramuscular use in swine for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*, pneumonia caused by *P. multocida*, and leptospirosis caused by *L. pomona*, and in sows as an aid in the control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*. The ANADA is approved as of March 16, 1999, and the regulations are amended by revising § 522.1660(d)(2)(iii) (21 CFR 522.1660(d)(2)(iii)) to reflect the approval. Because the current regulation failed to reflect the previously established 36-day withdrawal period for subcutaneous use of oxytetracycline injection in cattle, no revision to § 522.1660(d)(1)(iii) is required for this supplemental approval that establishes a 28-day withdrawal period for subcutaneous use of oxytetracycline injection in cattle. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.1660 is amended by revising paragraph (d)(2)(iii) to read as follows:

§ 522.1660 Oxytetracycline injection.

* * * * *

(d) * * *

(2) * * *

(iii) *Limitations.* Administer intramuscularly. Do not inject more than 5 milliliters per site in adult swine. Discontinue treatment at least 28 days prior to slaughter when provided by 000010, 000069, 011722, 053389, 059130, and 061623.

Dated: May 3, 1999.

Margaret Ann Miller,

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

[FR Doc. 99–12284 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin; Ivermectin and Clorsulon

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Merial Ltd. One supplement provides for use of ivermectin injection, and the other provides for the use of ivermectin and clorsulon injection, for 28-day persistent control of lungworms in cattle. In addition, a tolerance for ivermectin residues in cattle muscle is established.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, is sponsor of NADA 128–409 that provides for use of Ivomec® Injection (1 percent ivermectin) and NADA 140–833 that provides for use of Ivomec® Plus Injection (1 percent ivermectin and 10 percent clorsulon) in cattle. The NADA's provide for use of the drugs for the treatment and control of gastrointestinal roundworm, lungworm,

grub, lice, and mange mite infections, to control infection and to protect from reinfection with *Dictyocaulus viviparus* and *Ostertagia ostertagi* for 21 days after treatment, and *Haemonchus placei, Trichostrongylus axei, Cooperia punctata, C. oncophora,* and *Oesophagostomum radiatum* for 14 days after treatment. Also, NADA 140–833 provides for treatment and control of liver flukes. Merial Ltd. filed supplements to both NADA's that amend their use to provide for control of infection and protection from reinfection of *Dictyocaulus viviparus* for 28 days after treatment. The supplements are approved as of April 1, 1999, and the regulations are amended in 21 CFR 522.1192(d)(2)(ii) and 522.1193(d)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has revised the tolerances for residues of ivermectin to establish an acceptable daily intake and a swine muscle tolerance (63 FR 54352, October 9, 1998). At this time, FDA further amends the ivermectin residue tolerances in 21 CFR 556.344 to establish a cattle muscle tolerance.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these supplemental approvals for food-producing animals qualify for 3 years of marketing exclusivity beginning April 1, 1999, because the supplements contain substantial evidence of effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplements and conducted or sponsored by the applicant. Exclusivity applies only to the additional indication for persistent effectiveness.

FDA has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.1192 [Amended]

2. Section 522.1192 *Ivermectin injection* is amended in paragraph (d)(2)(ii) in the last sentence by removing ''*D. viparus* and'' and adding in its place ''*D. viviparus* for 28 days after treatment,''.

3. Section 522.1193 is amended in paragraph (d)(2) by revising the last sentence to read as follows:

§ 522.1193 Ivermectin and clorsulon injection.

* * * * *

(d) * * *

(2) * * * It is also used to control infections of *D. viviparus* for 28 days afer treatment, *O. ostertagi* for 21 days after treatment, and *H. placei, T. axei, C. punctata, C. oncophora, and O. radiatum* for 14 days after treatment.

* * * * *

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

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

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

5. Section 556.344 is amended by adding paragraph (b)(2)(ii) to read as follows:

§ 556.344 Ivermectin.

* * * * *

(b) * * *

(2) * * *

(ii) *Cattle*. 10 parts per billion.

Dated: May 3, 1999.

Margaret Ann Miller,

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

[FR Doc. 99–12286 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs For Use In Animal Feeds; Sulfadimethoxine with Ormetoprim

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Roche Vitamins, Inc. The supplemental NADA provides for use of sulfadimethoxine/ormetoprim type A medicated articles to make type C medicated chukar partridge feeds used for the prevention of coccidiosis. Also, FDA is amending the regulations to reflect tolerances for residues of sulfadimethoxine and for ormetoprim in edible chukar partridge tissues.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, filed supplemental NADA 40–209 that provides for use of Rofenaid® 40 (113.5 grams per pound (g/lb) (25 percent) sulfadimethoxine with 68.1 g/lb (15 percent) ormetoprim) type A medicated articles to make type C chukar partridge feeds containing 113.5 grams per ton (g/t) sulfadimethoxine and 68.1 g/t ormetoprim. The type C chukar partridge feeds are fed continuously to young birds up to 8 weeks of age for the prevention of coccidiosis caused by *Eimeria kofoidi* and *E. legionensis*. The supplemental NADA is approved as of April 1, 1999. The regulations are amended in 21 CFR 558.575 to redesignate paragraph (c) as paragraph (d), to reserve paragraph (c), to amend paragraph (a) to reflect the redesignation and to reflect the approval, and to add paragraph (d)(7) to further reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, tolerances are established for sulfadimethoxine and for ormetoprim residues in edible chukar partridge tissues. The regulations are amended in 21 CFR 556.490 and 556.640, accordingly.

Approval of this supplement is based on data and information in Public Master File (PMF) 5157. The notice of availability of a summary of the data and information in PMF 5157 and of permission to use it to support approval of a NADA or supplemental NADA was published in the **Federal Register** of July 19, 1996 (61 FR 37753).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

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

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

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

2. Section 556.490 is revised to read as follows:

§ 556.490 Ormetoprim.

(a) [Reserved]

(b) *Tolerances*. A tolerance of 0.1 part per million (ppm) is established for negligible residues of ormetoprim in uncooked edible tissues of chickens, turkeys, ducks, salmonids, catfish, and chukar partridges.

3. Section 556.640 is revised to read as follows:

§ 556.640 Sulfadimethoxine.

(a) [Reserved]

(b) *Tolerances*. (1) A tolerance of 0.1 part per million (ppm) is established for negligible residues of sulfadimethoxine in uncooked edible tissues of chickens, turkeys, cattle, ducks, salmonids, catfish, and chukar partridges.

(2) A tolerance of 0.01 ppm is established for negligible residues of sulfadimethoxine in milk.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR part 558 continues to read as follows:

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

5. Section 558.575 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), reserving paragraph (c), and adding paragraph (d)(7) to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

(a) *Approvals*. Type A medicated articles to sponsors as identified in § 510.600(c) of this chapter for uses as in paragraph (d) of this section as follows:

(1) 25 percent sufadimethoxine and 15 percent ormetoprim to 000004 for use for poultry as in paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(7) of this section.

(2) 25 percent sulfadimethoxine and 5 percent ormetoprim to 000004 for use for fish as in paragraphs (d)(5) and (d)(6) of this section.

* * * * *

(c) [Reserved]

(d) * * *

(7) *Chukar partridges*—(i) *Amount per ton*. Sulfadimethoxine 113.5 grams (0.0125 percent) plus ormetoprim 68.1 grams (0.0075 percent).

(ii) *Indications for use*. For prevention of coccidiosis caused by *Eimeria kofoidi* and *E. legionensis*.

(iii) *Limitations*. Feed continuously to young birds up to 8 weeks of age as sole ration.

Dated: April 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–12285 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG 1998–3423]

RIN 2115–AF55

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: To comply with the National Invasive Species Act of 1996 (NISA), the Coast Guard establishes both regulations and voluntary guidelines to control the invasion of aquatic nuisance species (ANS). Ballast water from ships is one of the largest pathways for the intercontinental introduction and spread of ANS. This rule amends existing regulations for the Great Lakes ecosystem, establishes voluntary ballast water management guidelines for all other waters of the United States, and establishes mandatory reporting for nearly all vessels entering waters of the United States.

DATES: This interim rule is effective July 1, 1999. Comments and related material must reach the Docket Management Facility on or before July 16, 1999. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 16, 1999.

ADDRESSES: You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one of the following methods to help us avoid confusion in the public docket:

(1) By mail to the Docket Management Facility (USCG–1998–3423), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You may also mail comments on collection of information to the Office of Information and Regulatory Affairs,

Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 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. You may also find this docket on the Internet at http://dms.dot.gov.

You can get the International Maritime Organization (IMO) publications and documents referred to in this preamble from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Mary Pat McKeown, Project Manager, U.S. Coast Guard Headquarters, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0500. 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 you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–3423), indicate the specific section of this document to which each comment applies, and give the reason for each comment. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim rule in view of the comments.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On April 8, 1993, the Coast Guard published a final rule titled ''Ballast Water Management for Vessels Entering the Great Lakes'' in the **Federal Register** (58 FR 18330). The rule established mandatory procedures for the Great Lakes in 33 CFR part 151, subpart C.

On December 30, 1994, we published a final rule titled ''Ballast Water Management for Vessels Entering the Hudson River'' in the **Federal Register** (59 FR 67632). The rule amended the regulations in 33 CFR part 151 to include requirements for portions of the Hudson River, which connects to the Great Lakes.

On April 10, 1998, we published a notice of proposed rulemaking (NPRM) titled ''Implementation of the National Invasive Species Act of 1996 (NISA)'' in the **Federal Register** (63 FR 17782). The Coast Guard received 53 letters commenting on the NPRM. Several letters requested more time to comment.

On June 16, 1998, we published a notice (63 FR 32780) to reopen the comment period until August 8, 1998. On June 16, 1998, we also published a correction notice in the **Federal Register** (63 FR 32780), making minor editorial corrections to the NPRM. No public meeting was requested, and none was held.

Background and Purpose

Aquatic nuisance species invasions through ballast water are now recognized as a serious problem threatening global biological diversity and human health.

On November 29, 1990, Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) (Pub. L. 101–646). Congress enacted NANPCA to prevent and control infestations of zebra mussels and other nonindigenous aquatic nuisance species in coastal and inland waters of the United States.

On October 26, 1996, Congress enacted the National Invasive Species Act of 1996 (NISA) (Pub. L. 104–332) which amended and reauthorized NANPCA (the Act). Congress enacted the Act to provide for ballast water management to prevent the introduction and spread of nonindigenous species into the waters of the United States.

On November 27, 1997, the IMO Marine Environmental Protection Committee (MEPC) adopted Resolution A.868(20), ''Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens.'' The IMO recommends that all maritime nations of the world adopt and use these voluntary guidelines.

The regulations and guidelines in this rule will help control the spread of invasive species. This rule will implement the Act by—

- Requiring operators of vessels entering waters of the United States from beyond the EEZ to submit a ballast water management report;
- Providing voluntary ballast water management guidelines for operators of vessels entering waters of the United States from beyond the Exclusive Economic Zone (EEZ); and
- Promoting ballast water management for operators of all vessels in waters of the United States.

Discussion of Comments and Changes

The Coast Guard received 53 comment letters, containing 361 specific comments on the NPRM. The paragraphs in this section discuss the comments we received and the Coast Guard's responses, and explain any changes we made to the proposed regulations. General comments on the rulemaking are discussed first, followed by comments on specific sections of the regulation. Other changes to the proposed rule, not based on comments, are discussed last.

General Comments

Several comments asked the Coast Guard to extend the comment period to allow adequate time to comment on the proposed requirements in the NPRM. We determined that allowing the public more time to comment would help us develop a better rule. Therefore, we extended the comment period until August 8, 1998.

Numerous comments asked for more stringent regulations and more restrictive ballast water management control methods. Other comments asked for less strict regulations and more lenient requirements for ballast water management control methods.

The Coast Guard has determined that the regulations adopted in this rule accurately reflect the requirements of the Act and represent the most practical and effective ballast water management method available at this time. We will continue to support and encourage the development of more efficient and effective methods of protecting waters of the United States from non-indigenous aquatic nuisance species.

Three comments wanted to make sure that the regulations in the proposed rule will be the national requirements. The

comments didn't want States or other levels of government to issue other regulations that exceed or make significant changes to these regulations.

It has long been the Coast Guard's position that consistent standards of universal application, coupled with Federal initiatives to address unique regional concerns, are the best means of meeting local and national environmental goals with the least disruption to international maritime commerce. To avoid potential conflicts and duplication, we request that any political subdivision of the United States contemplating any laws, regulations, or requirements regarding the discharge of ballast water, consider this regulation prior to taking action.

The Coast Guard will try to maintain nationwide consistency in methods for control of invasive species and is committed to ensuring national consistency for any regulations touching on the design, construction, equipment, manning and operation of vessels that were established as international rules and regulations adopted by the International Maritime Organization and ratified by the United States.

However, this regulation isn't intended to preempt any State, regional, or local efforts that exceed but do not conflict with the standards set forth in this rule. Section 1205 of the Act states that—

> Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife.

Five comments addressed statements in the Background and Purpose section of the NPRM. One comment noted that cholera was detected in ballast water; however, there wasn't conclusive evidence that linked the strain of cholera detected to the contaminated shellfish in Mobile Bay. Another comment agreed with the statement that more than 40 species have appeared in the Great Lakes since 1960. However, the comment noted that ''very few (species) if any, have been introduced since the Canadian voluntary ballast water exchange guidelines of 1989 and the USCG exchange requirements of 1993.'' Another comment noted that in the Description of the Problem section of the NPRM, the reference to Purple Loosestrife implies that the species entered the United States only through ballast water. The comment noted that the species may have entered the United States through solid ballast, but the floral industry is primarily responsible for bringing the Purple Loosestrife into the United States. Therefore, the comment suggested that we use other suitable examples such as the round nosed goby or the spiny waterflea.

Fifty-six comments discussed the organization and clarity of the regulations. Four comments expressed support for the proposed rule and suggested minor modifications. One comment supported the proposed rule as written. Ten comments stated that the regulations were confusing as written. One comment requested a ''plain English guide for mariners.'' The Coast Guard has revised this rule to better organize and clarify the information. Specific changes are discussed within each section.

We received eight comments on the IMO ''Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens'' (IMO Resolution A.868(20), adopted November 1997). Two comments wanted the Coast Guard to continue to issue regulations that are consistent with IMO guidelines.

The Coast Guard will be consistent with any international agreement, agreed to by the United States, governing management of the transfer of nonindigenous aquatic species by vessel.

Five comments discussed the ballast water management plan. Four of the comments supported a request that a ballast water management plan be carried and maintained aboard the vessel. The other comment opposed the request to carry and maintain a ballast water management plan.

In § 151.2035(a)(7), we request that owners and operators develop ballast water management plans specific to their vessels. The Coast Guard is working with IMO to identify what information needs to be contained in the ballast water management plan. When that information is determined, we will publish it in the **Federal Register**.

Fifteen comments related to what would trigger the implementation of mandatory national ballast water management regulations.

The Act requires the Coast Guard to publish national voluntary guidelines for the control of aquatic nuisance species. The Act lists the specific criteria that will cause or allow these guidelines to become mandatory. These are detailed in the following paragraphs.

Two comments asked what would happen if a vessel fails to comply with the mandatory reporting requirements. The Act directs the Coast Guard to assess the rate of compliance with the guidelines, using the ballast water management reports we receive from the owners and operators who submit the reports in accordance with the Act. If we can't assess the rate of compliance with these guidelines because we don't have adequate reports (i.e., numbers of reports or accurate reports), then we are required to issue regulations making the voluntary guidelines mandatory.

If we find that the voluntary guidelines are not adequate or effective, at reducing introduction and spread of nonindigenous aquatic species into waters of the United States, the Coast Guard must establish mandatory requirements.

Thirteen comments asked us to clarify what criteria we will use to determine the adequacy and effectiveness of the voluntary guidelines.

The authority and responsibility for developing these criteria was given to the Aquatic Nuisance Species Task Force (ANSTF) by the Act. The ANSTF has formed the Ad Hoc Voluntary Ballast Water Guidelines Effectiveness Criteria Committee to develop these criteria. The committee's meetings will be open to the public. The U.S. Fish and Wildlife Service will announce the dates and times for the meetings in the **Federal Register**. In addition, the Coast Guard worked with the Smithsonian Environmental Research Center and came up with suggestions for monitoring the rate of compliance with the guidelines. The suggestions are listed in the ''National Ballast (Water) Information Clearinghouse: Function, Design, and Implementation'' Progress Report I, which has been submitted by the Department of Transportation to Congress and the ANSTF.

One comment asked us to consider conducting a risk assessment of the Gulf Coast. The Coast Guard encourages studies which would detail what species are present and what species may threaten specific water bodies. We recommend that you submit your proposals to conduct these studies to the ANSTF, and to any other appropriate funding agency.

One comment asked the Coast Guard to develop a chart showing the 500 meter (1640 feet/273 fathoms) or 2,000 meter (6,650 feet/1,093 fathoms) contour line. Bathymetric charts which show the measurement of the depth of large bodies of water are already available. You can buy the charts from a vendor, or from an organization such as the National Oceanographic and Atmospheric Administration National Data Center or the U.S. National Geophysical Data Center. However, vessel owners and operators are already required to maintain detailed navigation charts aboard their vessels that show the depths of the waters where they operate.

Several comments were concerned that the estimate of costs for preparing, submitting, collecting, collating, and filing the information obtained seemed to be a low estimate. Due to the expansion of the Coast Guard Aquatic Nuisance Species program efforts this fiscal year, and the current number of vessels to be considered (as obtained from the Coast Guard Marine Safety Management System), these comments are correct. The Coast Guard has reexamined these costs and the current Regulatory Evaluation accurately reflects current costs.

Several comments wanted the Coast Guard to consider costs associated with ballast exchange and ballast water management plans in the rule implementing the voluntary national guidelines. The Coast Guard will estimate the costs and benefits of required portion of the rulemaking. Costs associated with the ballast water management plan and ballast water exchange are voluntary and we didn't address these costs in this rule.

Two comments specified that the spread of aquatic nuisance species is a naturally occurring phenomenon and not pollution. These comments further stated that nature will always ''create checks and balances in the medium and long term.'' These comments also stated that aquatic nuisance species are a quarantine problem, not a pollution problem.

The Coast Guard disagrees with some of these comments. We agree that some spread of exotic species does occur naturally and nature does create ''checks and balances.'' However, shipping allows many organisms to bypass natural barriers such as the open ocean, different salinity levels, and ability to reach hospitable ecosystems, etc. This means that the natural checks and balances are disrupted and can no longer prevent introductions and degradation of ecosystems. Further, while there is overlap with quarantine issues, anything that makes an ecosystem less suitable for an activity, or unfit for or harmful to living things is a pollutant.

One comment asked the Coast Guard to accept dual load lines. The comment stated that dual load lines on the vessel will reduce the amount of ballast water the vessel will carry into waters of the United States.

We would have to consider many factors not within the scope of this rulemaking to determine whether the United States should accept dual load lines. This rulemaking doesn't address dual load lines and we didn't make any changes based on this comment.

One comment wanted to know if the Coast Guard intended to ''incorporate by reference'' or require vessel operators to carry the ''Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens (IMO Resolution A.868(20), adopted November 1997).'' We want to ensure that vessel operators are aware that these guidelines exist, but we aren't incorporating them by reference or requiring vessel operators to carry the guidelines on board their vessels. Many of the recommendations we make in this rule are adapted from those guidelines. However, we have made revisions based upon the needs of our domestic waters.

Two comments wanted to know how the Coast Guard will handle the issue of a vessel operator who declares ''No Ballast on Board (NOBOB).'' A vessel with NOBOB may not have a large quantity of ballast water on board, but the vessel does retain sediment and residual ballast water. The Coast Guard requests in this regulation that all vessels remove sediments in an appropriate manner on a regular basis. We are working on identifying possible management methods to reduce the threat of a vessel operator claiming NOBOB. However, it would be premature to issue regulations specifically for these vessels at this time. To ask a vessel operator in a NOBOB status to conduct a ballast water exchange could destabilize a vessel, causing it to submerge its load line or compromise seaworthiness by exceeding hull girder stress limits, or increase the stresses on the hull to the point they fracture.

Comments on Specific Sections of the Rule

What Vessels Does This Subpart Apply to (§ 151.1502)?

Thirty-eight comments discussed the NPRM's applicability section, § 151.1502. Many of the comments seemed to misunderstand the applicability section. Others seemed to misunderstand who is exempt from the requirements of this rule. One comment suggested that we separate the existing mandatory ballast control regulations for the Great Lakes and the Hudson River to make it easier to understand the national program. Two comments stated that the NPRM proposes changes that could increase the chances of invasive species entering the Great Lakes.

In response to these comments, we have changed the organization of the rule. We will revise the existing regulations in 33 CFR 151 subpart C. The new subpart C will detail the additional requirements for vessels entering the Great Lakes and Hudson River. We will add a new subpart D to 33 CFR part 151. Subpart D will detail mandatory and voluntary requirements for all vessels operating in waters of the United States (including the Great Lakes and Hudson River). The section numbers in this rule are different from the section numbers in the NPRM because of these changes. Please use the following cross-reference table to follow these changes.

Instructions for the Table: Find the old section number listed in the NPRM in the first column and read across to the second column to find the corresponding new section number in this rule. The third column lists the section numbers for subpart C.

Description of section	33 CFR		
	Section numbers in the NPRM	Section numbers in subpart D (waters of the United States including the Great Lakes and Hudson River)	Section numbers in subpart C (Great Lakes and Hudson River)
Purpose	151.1500	151.2000	151.1500.
Applicability:			
For Vessels	151.1502	151.2005, 151.2010 and 151.2015.	151.1502.
For Ballast Water		151.2020	
Definitions	151.1504	151.2025	151.1504.
Penalties	151.1506	16 U.S.C. under certain provisions.	151.1506, 151.1508, 16 U.S.C.
Mandatory Requirements	151.1508	151.2040	151.1510.
Safety	151.1510	151.2030	151.1512.

Description of section	33 CFR		
	Section numbers in the NPRM	Section numbers in subpart D (waters of the United States including the Great Lakes and Hudson River)	Section numbers in subpart C (Great Lakes and Hudson River)
Alternative Methods:			
Required	151.1512		151.1514.
Requested		151.2035(b)	
Mandatory:			
Reporting	151.1514	151.2040	151.2040.
Recordkeeping	151.1514	151.2045	151.2045 (also satisfies § 151.1516).
Voluntary Guidelines	151.1516	151.2035	
Compliance and Monitoring	151.1518	151.2050	151.1516.

Five comments requested that we add an exemption for other types of vessels operating on voyages between the States and Territories of the United States. One comment stated that there shouldn't be any exemptions for owners and operators of passenger vessels.

The applicability and exemptions in this rule are taken directly from the Act. Additionally, we don't have scientific and technological support to include exemptions for other vessels, or for other voyages outside of the EEZ. The Coast Guard can only remove the exemption for passenger vessels if we find that their ballast water treatment systems are less effective than ballast water exchange. The regulations that apply to voyages between States and Territories of the United States are in subparts C and D.

Two comments expressed concern about the regulations that apply to Mobile Offshore Drilling Units (MODU). One of these comments had specific concerns about ballast procedures for tanks that may be in continuous contact with the sea.

The Coast Guard has determined that a blanket exemption for MODUs isn't warranted. However, we encourage vessel owners and operators to bring their specific ballast issues to the Coast Guard for consideration for alternative compliance. Methods for submitting alternative compliance proposals are detailed in § 151.2035(b)(3) of this regulation. We will need more detailed information on flow rates, volumes exchanged, etc., before we can make a determination on whether a particular MODU should be exempt.

Two comments asked us to clarify whether this rule applies to foreign vessels. In § 151.2005, we state that this regulation applies to the owners and operators of U.S. and foreign vessels.

Three comments asked us to clarify whether the mandatory requirements in this rule apply to military vessels. In § 151.2010, we clarify that mandatory provisions of this rule don't apply to vessels of the Department of Defense, the Coast Guard, or those vessels of the Armed Forces that are subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces (UNDS).'' (Federal Water Pollution Control Act—33 U.S.C. 1322(n)). We don't intend for these regulations to replace or interfere with practices already addressed by section 1103 of the Act or by UNDS.

Five comments suggested that we also provide guidelines or requirements for owners and operators on domestic voyages.

The Coast Guard agrees with these comments. In § 151.2035(a), we have included guidelines (precautionary practices) for all vessels equipped with ballast tanks that operate in waters of the United States. However, the Act doesn't give the Coast Guard the authority to require owners and operators of vessels engaged in domestic trade to perform ballast water management methods such as ballast water exchange.

One comment requested that ballast water management methods, such as ballast water exchange only apply to vessels that have operated beyond the EEZ for more than 48 hours. The Coast Guard has reviewed the legislation and determined that this is contrary to the intent of the Act.

One comment noted that in the regulations we consider a transit from Alaska, or Hawaii to the continental United States a voyage, but we don't consider a transit from a Canadian port to the continental United States, Hawaii, or Alaska a voyage. Two comments wanted to know if the proposed regulations apply to voyages from U.S. territories.

We understand that the wording of this section in the NPRM was unclear. We have reworded § 151.2025 to clarify when this regulation applies. Any vessel, unless exempted by § 151.2010, on a voyage to a U.S. port, that in any portion of that voyage has operated beyond the EEZ of the United States or an equivalent zone of Canada (generally 200 miles seaward of the baseline) is subject to the mandatory reporting requirements. The vessel operator must or may (depending on which port they are going to) conduct ballast water management practices as detailed in the regulation. This includes voyages to any port in the U.S. or its territories, from any other port in the U.S. or its territories, if the vessel has operated more than 200 miles from the baseline of the United States or Canada. If a vessel operator remains in areas less than 200 miles from the baseline of the United States or Canada during a voyage, then they are not subject to the mandatory requirements. However, we request that the operator follow the voluntary guidelines in § 151.2035.

One comment wanted to know if the regulations apply to only segregated ballast water. Two comments wanted to know if all ballast water, including that which was taken on in the high seas, was subject to the regulations in the NPRM. One of these comments also stated that we shouldn't require an open ocean exchange of water that has been taken on in open ocean.

We have revised the regulations to clarify these issues. The regulations apply to any ballast water, taken in waters within 200 miles from any shore, or in waters less than 2,000 meters (6,650 feet/1,093 fathoms) deep, that could be discharged into waters of the United States.

One comment asked the Coast Guard to address ''innocent passage'' in this rule. Innocent passage occurs when a foreign vessel navigates through the U.S. territorial sea for the purpose of traversing the sea without entering U.S. internal waters or calling at a U.S. port. A foreign vessel is also considered in innocent passage when in transit to or from a U.S. port. However, a vessel that actually enters U.S. internal waters (i.e., waters shoreward of the territorial sea baseline) or that enters a U.S. port no

longer has innocent passage status, and the mandatory reporting requirements of this rule, as well as the voluntary ballast water management guidelines apply. In plain terms, if you are bound for or departing from a U.S. port, these regulations apply.

We have added a provision for innocent passage to § 151.2015. For the purpose of defining whether a vessel is navigating in the territorial sea, the Coast Guard defines the territorial sea for this regulation as extending to 12 nautical miles from the baseline, under Presidential Proclamation No. 5928 of December 27, 1988. Innocent passage doesn't include a vessel that enters the Snell Lock at Massena, New York, on the St. Lawrence River, regardless of its destination.

Two comments questioned if the mandatory regulations for the Great Lakes and Hudson River apply to a vessel that operates beyond the EEZ, and then makes stops in other waters of the United States before entering the Great Lakes or Hudson River.

The Coast Guard has determined that the mandatory regulations in 33 CFR part 151, subpart C apply to any vessel operated as described in the previous paragraph. In addition, §§ 151.2035(b), 151.2040, and 151.2045 of subpart D do not apply to vessels that only transit between ports in the United States, or between ports in the United States or Canada without entering waters beyond the EEZ of Canada or the United States.

What Definitions Apply to Subpart C (§ 151.1504)?

Thirty-three comments discussed the definitions section of the NPRM. Four comments concerned the definition of ''environmentally sound.'' One of these comments noted that people might misinterpret the definition with regard to releases of ''harmful concentrations'' of chemicals, as some individuals don't consider concentrations to be harmful when released into water bodies where significant dilution occurs.

The Coast Guard agrees that the proposed changes to the definition could cause confusion. No ballast water management method would be accepted if it violated any existing water quality standards. Therefore, the definition of ''environmentally sound'' currently in force in 33 CFR 151.1504 will not be changed. The definition is the same definition used in the Act.

Two comments questioned whether we had scientific support for the definition of ''reasonably effective ballast water management system.'' Eight comments stated that we should be cautious when we estimate percentages for the volume of ballast water exchanged, and for the kill or removal rate. Four comments wanted a method for determining when you have met a 90 percent kill or removal rate.

The Coast Guard agrees with these comments and we have deleted this definition. The Coast Guard will continue to support research that will identify ballast water management methods that are ''as effective as ballast water exchange.''

One comment stated that this rule should also address ballast water carried in cargo tanks. In § 151.1504, we have revised the rule to clarify that the definition of ''ballast tanks'' includes any tank or hold used for carrying ballast water. In § 151.1504, we have also added the phrase ''regardless of how it is carried on the vessel'' to the definition of ''ballast water.''

Eight comments discussed the definition of ''reasonably complete ballast water exchange.'' Three comments stated that they support the standard to exchange 90 percent of the original water in the ballast tank. Two comments suggested that we raise the standard, and two comments suggested that we lower the standard.

The Coast Guard's goal is for owners and operators to exchange 100 percent of the original water in the ballast tank. However, owners and operators should consider the operating systems and physical limitations of the vessel before conducting an exchange. We didn't change the existing regulations for the Great Lakes and Hudson River in § 151.1510 of subpart C. Owners and operators of all other vessels are requested to conduct an exchange as follows:

- *For a flow through exchange.* Exchange the equivalent of three times the volume of water in the ballast tank.
- *For an empty/refill exchange.* If conditions are safe and it is practical, try to replace 100 percent of the volume of ballast water.

Four comments concerned the proposed change to the minimum depth requirement from 2,000 meters to 500 meters, for a ballast water exchange. Two comments pointed out deficiencies in the scientific support for such a change. One comment indicated that reducing the requirement may create a conflict for complying with U.S. regulations and following Canadian voluntary guidelines.

In response to these comments, and to ensure that owners and operators are able to satisfy the requirements of the United States and Canada, we do not plan on changing the depth requirement until agreement, based upon sound scientific evidence, is reached.

Why Must I Meet the Requirements of the Regulations in This Subpart and What Are the Penalty Provisions (§ 151.1506)?

Two comments requested clarification of the penalty provisions. The penalty provisions for the Great Lakes and Hudson River ballast water management requirements will remain unchanged. The penalty provisions include restriction of operation, revocation of Customs clearance, and possible civil and criminal penalties. The new voluntary national guidelines do not carry penalty provisions. However, if vessel operators fail to make the mandatory reports, then the Coast Guard is directed under NISA to implement a mandatory national program that will carry the same penalty provisions that apply in Great Lakes and Hudson River.

What are the Mandatory Ballast Water Management Requirements (§ 151.1508)?

Three comments expressed concern that the proposed rule may make ballast water exchange a standard, and rule out other ballast water management techniques that may be more effective.

The Coast Guard agrees with these comments. We have revised the rule to include language that encourages the development of alternative technologies for managing ballast water.

Eleven comments discussed an acceptable salinity level for an open ocean exchange as it applies to mandatory exchange for the Great Lakes and Hudson River. Four comments questioned the scientific support for the proposed change. One comment questioned whether we considered ''instrument error'' when we proposed changing the salinity level. One comment stated that measuring the level of salinity is not enough to determine if an exchange has been done as it applies to coastal ports. The comment also asked the Coast Guard to develop alternative tests.

The Coast Guard agrees with these comments. We are not changing the salinity standard as proposed in the NPRM. The Coast Guard recognizes that salinity can't be used as the only verification of open ocean exchange at a coastal port. Salinity also can't be used as the sole measure to confirm proper operation of alternative control methods as developed. The Coast Guard is awaiting a final report on parameters to be used for verification, and is engaged in preliminary stages of additional studies to obtain a full complement of methods to be used. Over the next 30 months, we will test the identified parameters in the field to ensure their

efficiency and accuracy and to streamline sampling procedures. We will also test protocols and parameters during this phase. The Coast Guard finds it inappropriate to publish parameters under consideration for coastal ports, other than the screening mechanism of salinity, until those parameters have been confirmed as definitive.

Twenty-eight comments concerned alternative environmentally sound methods of ballast water management. Twenty-eight comments asked that we clarify the requirement for approval of other environmentally sound methods of ballast water management. The comment also asked the Coast Guard to explain the process of submitting alternative ballast water management methods for approval.

The Coast Guard will approve alternative methods of ballast water management (under 33 CFR 151.2035(b)(3)). The request to approve an alternative method must be submitted to, and approved by, the Coast Guard before a vessel's scheduled voyage. The requestor must provide adequate time for the Coast Guard to process, analyze, and consider the alternative method for approval. Send your request to U.S. Coast Guard Headquarters, (G–MSO–4), 2100 Second Street SW., Washington, DC 20593–0001. The phone number is (202) 267–0500. Each proposal is evaluated on a case-by-case basis. The Coast Guard is working with the ANSTF Ballast Water and Shipping Committee to develop a standardized protocol and requirements for approval. Industry, government agencies, and non-government organizations will develop the requirements. We will approve an alternative method only after we consider the following:

- Does the method conform to existing laws and standards?
- How effective is the method in reducing the viability of organisms within the vessel's ballast water?
- How will the vessel operator verify that the system is operating as designed?

We will incorporate the protocol and requirements into 33 CFR part 151 subpart D when it's completed.

Four comments asked us to clarify if retaining ballast water on board is a viable ballast water management method. Section 151.2035(b)(2), states that retaining ballast water on board is an option.

Three comments asked the Coast Guard to consider whether discharge to an approved reception facility is a viable method of ballast water control management. We agree. Section 151.2035(b)(4) states that discharging ballast water to an approved reception facility is an option.

One comment suggested that we allow vessel owners and operators to discharge ballast water at publicly-owned treatment plants. The Coast Guard has determined that each treatment plant will have to be considered on a case-by-case basis. To determine if vessel owners and operators can be allowed to discharge ballast water at a publicly-owned treatment plant, we will need specific information, including whether or not—

- The plant has the capacity to handle the volume of ballast water discharged from a vessel;
- The treatment methods used at the plant are effective in killing the full range of genus and species of organisms found in the ballast water;
- Allowing vessel owners and operators to discharge ballast water will violate any local or State regulations;
- The waste water treatment plant will accept the ballast water; and
- The waste water treatment plant is aware of the salinity levels of the ballast water.

Two comments encouraged the development of shoreside ballast water reception facilities. Two comments suggested that we continue to develop alternative technologies to ballast water exchange. Two comments asked that we give chemical treatment methods fair consideration as an alternative method of ballast water management. One comment stated that chemical treatments are an essential tool for ''integrated pest management.'' Four comments asked that we also consider by-products and concentration levels in any effluent when we consider chemical treatments.

The Coast Guard supports all of these statements. We will continue to encourage advances in methods of treating ballast water. We will consider applicable laws, regulations, and the consequences of a treatment before we approve any method.

Two comments recommended that we consider risk-based assessment as an acceptable alternative compliance mechanism. The Coast Guard recognizes that some waters may pose higher risks of containing potential invasive species than other waters. However, it has not been proven that any waters pose no risk. Historical patterns show that zebra mussels may have been shipped for more than 50 years before establishing a sustainable population in the Great Lakes and becoming a nuisance species. Therefore, we have determined that we don't have a sound, definitive scientific basis to approve risk-based assessment as an alternative ballast water management option.

Two comments requested a means of sharing knowledge of alternative compliance methods. The Coast Guard is working with the Smithsonian Environmental Research Center to incorporate a research and technology section into the National Ballast Water Information Clearinghouse (NBIC) (NBIC Web site: *www.serc.si.edu/invasions/ballast.htm).*

Two comments discussed the research and development of specific ballast water control methods. The Coast Guard encourages companies to continue to research and develop other ballast control methods. Two comments suggested that we specify alternate ballast water exchange sites in this rule. The establishment of alternative discharge areas must be based on the best scientific data available. Therefore, the Coast Guard leaves in place the provisions in § 151.1514 that address ballast water management alternatives under extraordinary conditions. This section applies specifically to the waters of the Great Lakes and Hudson River, North of George Washington Bridge. The requests for alternative sites requests go directly to the Captain of the Port (COTP) of the affected zone. In addition, the Coast Guard is reviewing a study entitled ''Ballast Exchange Study Consideration of Back-up Exchange Zones and Environmental Effects of Ballast Exchange and Ballast Release.'' After this study is accepted by the ANSTF, the Coast Guard will consider the areas detailed for pre-accepted alternate exchange sites. If accepted, we will publish a detailed list of these areas with a request for comments in the **Federal Register**. We have reserved § 151.2055 in this rule and will list the sites in that section when they are approved.

We received three comments on the disposal of sediment ashore. One comment suggested removing the reference to ''sediment ashore'' from the rule. One comment suggested that we require a disposal facility be built at every port. One comment noted that the proposed regulation might contradict existing Federal regulations. One comment noted that restrictions on disposal of sediments ashore may also be under the jurisdiction of entities other than the Coast Guard, such as the Animal and Plant Health Inspection Service, 7 CFR part 330.

We have changed § 151.2035(a)(3) to state that sediments must be disposed in accordance with local, State, and Federal regulations. This requirement is to ensure that vessel representatives are aware that disposal of sediments within

the United States must be done in accordance with existing regulations or laws.

Three comments suggested that we refer to the owner, operator, agent, or person-in-charge within the appropriate sections of the rule. Two comments noted that some types of vessels subject to this rule might not be under the command of a master. One comment noted that reporting requirements on a vessel are often satisfied by the vessel agent. The Coast Guard agrees with these comments. We refer to the owner, operator, agent, or person-in-charge in the appropriate sections of the rule.

Is the Master Still Responsible for the Safety of the Vessel (§ 151.1510)?

Seven comments stated that the NPRM didn't adequately address safety exemptions. The Coast Guard agrees with this comment. In § 151.2030, we now use language similar to the Act, which clearly states the safety exemptions.

Three comments asked what will happen if they use the safety exemption, and don't conduct a ballast exchange. We have included in § 151.2030(b) the provisions of the Act which address this concern. Vessels subject to 33 CFR part 151 subpart C must comply with the requirements of § 151.1514 subpart C (Ballast water management alternatives under extraordinary conditions). Vessels not subject to 33 CFR part 151 subpart C shall not be required to perform a ballast water management practice which the master has found to threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

What Are the Mandatory Reporting and Recordkeeping Requirements (§ 151.1514)?

Four comments suggested that we provide more options for submitting the required information to the Coast Guard. One comment noted that the proposed requirements for submitting information may bypass existing Canadian reporting requirements for shared waters. One comment asked that we allow the information to be submitted electronically.

The Coast Guard agrees with these comments. In § 151.2040(c), we have added other options for submitting the required information.

Two comments wanted to submit ''one standard voyage profile regarding ballast water management versus trip by trip reports.'' The Coast Guard is not prepared to approve this. We will require individual reports. This approach may be reconsidered at a later date depending on the quality and detail of the reports that are received.

Two comments stated that owners and operators of container ships and roll-on/roll-off (RoRo) vessels may have difficulty submitting the information as proposed in the NPRM. These comments noted that the actual discharge amount and location of discharge might be different than expected because of operational considerations.

We have determined that the owners and operators of these vessels must still submit the required information. However, in § 151.2040(d), we allow owners and operators to submit an amended form before leaving waters of the United States. This allowance will accommodate the owner or operator of any vessel who finds that the information they originally submitted to the Coast Guard has changed.

Two comments stated that we should remove the requirement to submit information about the salinity of the ballast water discharged, and the temperature of the ballast water at its source. The Coast Guard disagrees with this comment. The Act directs the Coast Guard to consider the various characteristics of the point of origin (of ballast water) and receiving water bodies. Salinity and temperature are essential to obtaining that information.

One comment requested the removal of sea height at the time of an exchange as required information. This comment expressed concern that this data may be dangerously extrapolated to set definitive sea state standards at which ballast water exchange must be conducted.

The Coast Guard has determined that this information is necessary to get an accurate collection of data on ballast water practices. However, we will ensure that any reports of data include qualifying statements. For example, ''while 65 percent of vessels conducting ballast water exchange did so in seas with waves of up to 1 foot in height, complete data is not available on vessels not conducting an exchange for safety reasons under those same conditions. This data should never be used to determine safe operating parameters at which all ships can conduct an exchange. We must consider each ship's unique operating, structural, and stability issues.''

Are There Methods to Monitor Compliance With This Subpart (§ 151.1518)?

Three comments suggested that the phrase ''may take samples'' should be replaced with ''shall take samples.'' The Coast Guard recognizes the concern; however, logistical constraints may preclude the taking of samples during each boarding of the vessel. Additionally, as parameters are identified for testing procedures, cost per sample analysis may increase. Resources availability will determine the number of samples taken. Use of the term ''may'' leaves the Coast Guard flexibility to address these issues and to implement valid sampling procedures.

Appendix to Subpart C of Part 151

We received nine comments about the sample ballast water reporting form and its directions. One comment suggested ''streamlining the form'' or making the form more efficient. One comment asked the Coast Guard to use standard forms. Two comments asked that we make the forms consistent with IMO forms. Three comments suggested changes to the instructions for the forms. Two comments noted that § 151.1514 of the NPRM affects the information requested on the form.

In response to these comments and based on what we have learned during pilot programs, we have changed the proposed form to make it easier to use and quicker to convert from a paper copy to an electronic submittal form. The Coast Guard will continue to accept the IMO ''Ballast Water Reporting Form'' and the St. Lawrence Seaway required ''Pre-entry Information from Foreign Flagged Vessels Form'' as satisfying the information and reporting requirements of this rule. The Coast Guard will coordinate with IMO and Canada to encourage standardization of a ballast water reporting form. The Coast Guard feels that to sacrifice an improved product in attempt to maintain standardization of the proposed form is not in the best interest of this program.

Two comments asked the Coast Guard to ensure that the data obtained from the mandatory reports will be useful for local, regional, and state governments and organizations. The Coast Guard has been working to ensure that the data will be entered in a usable form to identify ballast patterns that are essential to sound decisions on ballast water management. For a more detailed description of the NBIC, please review the NBIC Web site at *www.serc.si.edu/invasions/ballast.htm*.

One comment wondered if there are plans to distribute the form and instructions. The Coast Guard will distribute copies of the form and provide multiple copies to agencies and entities that will be able to disseminate them. The form and instructions will also be available at the NBIC Web site.

Other Changes to the Proposed Regulations

In addition to the changes made to the regulations as a result of the comments, we have defined the term ''voyage'' in § 151.2025 to include intermediate port calls and avoid confusion with the definition of (Great Lakes or Hudson River) voyage in § 151.1504 of subpart C. We have also revised the definition in § 151.2025 to clarify that the equivalent zone of Canada is considered part of the EEZ, as provided in the Act.

Regulatory Evaluation

The rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget (OMB) under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Summary of Costs

The rule will cost industry the time and resources it will take to submit the paperwork required by this rule. A vessel's officer is likely to be the person tasked with completing the report, so we based our estimate on the current annual salary for a third mate on a U.S. merchant vessel, and included administrative costs ($9 per report for photocopying, etc.). We calculated that it will cost $35 to submit each report. The following equation illustrates the calculation:

$81,840 ÷ 2,080 hours × 40 minutes + $9 = $35

We used the U.S. Coast Guard Marine Safety Management System (MSMS) to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report ($35) by the number of vessel arrivals from outside the Exclusive Economic Zone (30,877) to get a total annual cost of $1,080,695. The following equation illustrates the calculation:

$35 × 30,877 = $1,080,695

The rule will cost the Federal government the time it will take Coast Guard personnel to review ballast water management record information. The Coast Guard will add 30 E–5 billets to verify compliance and collect the information this rule will require. Commandant Instruction 7310.1E states that the hourly cost for an E–1 to E–5 range billet is $15 per hour. This translates to yearly cost of $31,200 per billet (2080 × $15 = $31,200). Therefore, the cost of 30 billets will equal $936,000 ($31,200 × 30=$936,000). We estimate that the total cost to the Coast Guard to collect and send the appropriate paperwork to the National Ballast Water Information Clearinghouse (NBIC) is $75,000. The total annual cost was calculated as illustrated in the following equation:

30 [billets] × $2,500 [administrative costs] = $75,000

The Coast Guard will also allocate $300,000 per year to the NBIC. The NBIC will provide analysis, synthesis, and interpretation of data collected under the Act. Therefore, the total government cost of this rule is $1,311,000 annually. The total government cost was calculated as illustrated in the following equation:

$936,000 + $300,000 + $75,000 = $1,311,000

Summary of Benefits

This rule is the next step in an ongoing effort to reduce the numbers of non-indigenous species invading the waters of the United States.

According to the U.S. Congress' Office of Technology Assessment, ''Harmful Non-Indigenous Species in the United States,'' the economic impact on the United States from introductions of non-indigenous species has exceeded several billions of dollars through—

- Efforts to prevent and reduce further infestations;
- Repairs of damage to various infrastructures; and
- Lost revenues.

For example, the Great Lakes Fishery Commission estimates the European ruffe, a fish that entered the Great Lakes via expelled ballast water in the early 1980's, could cause annual losses of $90 million if the European ruffe is not controlled.

As international maritime trade continues to expand, the economic impact of non-indigenous species invasions will continue to increase. This increase may necessitate more extensive long-term control efforts, including improving ballast water management practices. The reporting requirements in this rule will allow the Coast Guard to receive the information it needs to make decisions on what measures may be required in the future to help solve the aquatic nuisance species problem.

Impact on Small Entities

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), require the Coast Guard to consider whether the interim rule will have a significant economic impact on a substantial number of small entities. ''Small entities,'' include: (1) Small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

The rule applies to any vessel with ballast tanks entering the waters of the United States after operating beyond the EEZ. Vessels engaged in coastwise trade (within the EEZ) and passenger vessels equipped with treatment systems designed to eliminate aquatic species in their ballast tanks will be exempt from the mandatory provisions of the rule. The rule requires vessel operators to report their ballast water management efforts. We estimate that each report will cost the vessel operator $35. This sum is very low on an absolute dollar basis. We believe that it will account for a very low percentage of the operating costs of even the smallest commercial vessel operations. For this reason, the Coast Guard certifies under 5 U.S.C. 605(b) that the rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Mary Pat McKeown, Project Manager, Office of Operating and Environmental Standards (G–MSO) at 202–267–0500.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3520) require the Office of Management and Budget (OMB) to review each rule that contains a collection-of-information. The Office of Management and Budget must determine if the practical value of the information is worth the burden of collecting the information. Collection-of-information requirements include reporting, recordkeeping, notification, monitoring, posting, labeling, and other similar requirements.

The rulemaking will require the owner or operator of a vessel with ballast tanks, entering the waters of the United States from outside the EEZ, to submit paperwork to the Coast Guard. The paperwork will document the owner's or operator's ballast water management practices. The provisions of the Act require the Coast Guard, in consultation and cooperation with the Aquatic Nuisance Species Task Force and the Smithsonian Institution Environmental Research Center, to develop and maintain the National Ballast Water Information Clearinghouse (NBIC). The purpose of the NBIC is to determine the patterns of ballast water delivery and management in the waters of the United States. The information obtained from the mandatory reports that owners and operators must submit will be entered into a database at the NBIC. The rulemaking requires submission of the following information:

- Vessel type, owner or operator, gross tonnage, call sign, and Port of Registry (Flag);
- Port of arrival, vessel agent, last port and country of call, and next port and country of call;
- Total ballast water capacity, total volume of ballast water on board, total number ballast water tanks, and total number of ballast water tanks in ballast;
- Total number of ballast tanks/holds that are to be discharged into the waters of the United States or at a reception facility, the number of tanks that were exchanged or treated using an alternative method of compliance; type of alternative compliance method, if used for treatment; whether the vessel has a ballast water management plan and IMO guidelines on board, and whether the ballast water management plan was used;
- Origin of ballast water—this includes date(s), location(s), volume(s) and temperature(s) (if a tank has been exchanged this is the ballast water that was taken on in port and then replaced during the exchange);
- Date(s), location(s), volume(s), method, thoroughness (percentage exchanged if exchange conducted), sea height at time of exchange if exchange conducted, of any ballast water exchanged or treated;
- Expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or at a reception facility; and
- Location of the facility used for disposal of sediment carried into the waters of the United States, if sediment is to be discharged within the jurisdiction of the United States.

If we did not require owners or operators to provide this information, it would be impossible to produce the studies and congressional reports on ballast water management patterns that the provisions of the Act require. The Coast Guard will use the information to—

- Ensure that an owner or operator has complied with the ballast water management regulations; and
- Assess the rate of compliance with the voluntary guidelines listed in the rule.

As stated under **Regulatory Evaluation** in this document, the vessel's officer is likely to be the person tasked with completing the report, so we based our cost estimate on the current annual salary for a third mate on a U.S. merchant vessel and included administrative costs. We calculated that it will cost $35 to submit each report. We used the U.S. Coast Guard Marine Safety Management System to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report ($35) by the number of vessel arrivals from outside the EEZ (30,877) to get a total annual cost of $1,080,695. The annual burden on industry will be 20,585 hours per year, and the cumulative burden for 3 years is 61,755 hours.

The title and description of the information collection, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Implementation of the National Invasive Species Act of 1996 (NISA)

Summary of Collection of Information: This rule contains collection-of-information requirements in the following sections: §§ 151.2040 and 151.2045.

Need for Information: This rule will require owners or operators of each vessel with ballast water tanks, who enter the United States after operating outside the EEZ, to provide to the U.S. Coast Guard information regarding ballast water management practices.

Proposed Use of Information: The information is needed to ensure that the mandatory ballast water management regulations are complied with prior to allowing the vessel to enter U.S. ports, and to assess the effectiveness of the voluntary guidelines. The information will be used by the Coast Guard Headquarters staff and researchers from both private and other governmental agencies to assess the effectiveness of voluntary ballast-water management guidelines for vessels with ballast tanks that enter U.S. waters after operating outside the EEZ. The information will be provided to Congress on a regular basis as required by the Act.

Description of the Respondents: Any vessel (owner or operator) with ballast tanks entering U.S. waters after operating outside the EEZ.

Number of Respondents: 30,877 vessel entries.

Frequency of Response: Whenever a vessel with ballast tanks enters the United States after operating outside the EEZ.

Burden of Response: 40 minutes per respondent.

Estimated Total Annual Burden: 20,585 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information.

If you are submitting a comment on the collection of information, you should submit it to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

No one is required to respond to a collection of information unless it displays a currently valid OMB control number. The Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The Unfunded Mandates Reform Act requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A

''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and proposed Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.**

The Coast Guard is establishing voluntary guidelines for all vessels equipped with ballast tanks that operate in waters of the United States. The Coast Guard is also establishing additional voluntary ballast water management guidelines and mandatory reporting requirements for all vessels carrying ballast water into the waters of the United States after operating beyond the exclusive economic zone. These reporting requirements are intended to monitor the level of participation by vessels in the voluntary national guidelines program. If participation levels in this program are inadequate, the Act requires the Secretary of Transportation to mandate the ballast water management guidelines. Once reported, the information will be used to develop and maintain a ballast water information clearinghouse, which will monitor the effectiveness of the program and identify future needs for better protecting domestic waters from the introduction of invasive species.

Therefore, the regulations to implement provisions of the Act concerning ballast water control, when using voluntary guidelines for ballast water management and mandatory reporting requirements, will not have a significant impact on the environment.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903; E.O. 12777, 3 CFR, 1991 Comp. p.351; 49 CFR 1.46.

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

2. The authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

3. Revise the subpart heading to read as shown above.

4. In § 151.1504, revise the definition of ''ballast water'' and add definitions in alphabetical order to read as follows:

§ 151.1504 Definitions.

* * * * *

Ballast water means any water and suspended matter taken on board a vessel to control or maintain, trim, draught, stability, or stresses of the vessel, regardless of how it is carried.

Ballast tank means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

* * * * *

Sediments means any matter settled out of ballast water within a vessel.

* * * * *

5. Add subpart D, consisting of §§ 151.2000 through 151.2065, to read as follows:

Subpart D—Ballast Water Management for Control of Nonindigenous Species in waters of the United States.

Sec.
151.2000 What is the purpose of this subpart?
151.2005 To which vessels does this subpart apply?
151.2010 Which vessels are exempt from the mandatory requirements?
151.2015 Is a vessel in innocent passage exempt from the mandatory requirements?
151.2020 To what ballast water does this subpart apply?
151.2025 What definitions apply to this subpart?
151.2030 Who is responsible for determining when to use the safety exemption?
151.2035 What are the voluntary ballast water management guidelines?
151.2040 What are the mandatory requirements for vessels carrying ballast water into the waters of the United States after operating beyond the exclusive economic zone (EEZ)?
151.2045 What are the mandatory recordkeeping requirements?
151.2050 What methods are used to monitor compliance with this subpart?
151.2055 Where are the alternate exchange zones located? (Reserved)
151.2060 What must each application for approval of an alternative compliance technology contain? (Reserved)
151.2065 What is the standard of adequate compliance determined by the ANSTF for this subpart? (Reserved)
Appendix to Subpart D of Part —Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

§ 151.2000 What is the purpose of this subpart?

This subpart implements the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) (16 U.S.C. 4701–4751), as amended by the National Invasive Species Act of 1996 (NISA).

§ 151.2005 To which vessels does this subpart apply?

(a) Sections 151.2000 through 151.2035(a) of this subpart apply to all vessels, U.S. and foreign, equipped with ballast tanks that operate in the waters of the United States.

(b) Sections 151.2035(b) through 151.2065 apply to all vessels, U.S. and foreign, carrying ballast water into the waters of the United States after operating beyond the exclusive economic zone, except those vessels exempted in §§ 151.2010 and 151.2015.

§ 151.2010 Which vessels are exempt from the mandatory requirements?

Four types of vessels are exempt from the requirements in §§ 151.2040 and 151.2045:

(a) A crude oil tanker engaged in the coastwise trade.

(b) A passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water. The treatment system must operate as designed.

(c) A Department of Defense or Coast Guard vessel subject to the requirements of section 1103 of the Act, or any vessel of the Armed Forces, as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' (33 U.S.C. 1322(n)).

(d) A vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated. The ballast water or sediments must not mix with ballast water or sediments from areas other than the high seas.

§ 151.2015 Is a vessel in innocent passage exempt from the mandatory requirements?

A foreign vessel merely traversing the territorial sea of the United States (i.e., not entering or departing a U.S. port, or not navigating the internal waters of the U.S.) is exempt from the requirements of §§ 151.2040 and 151.2045, however such vessels are requested not to discharge ballast water into the waters of the United States unless they have followed the voluntary guidelines of § 151.2035.

§ 151.2020 To what ballast water does this subpart apply?

This subpart applies to all ballast water and associated sediments taken on a vessel in areas—

(a) Less than 200 nautical miles from any shore, or

(b) With water that is less than 2,000 meters (6,560 feet,1,093 fathoms) deep.

§ 151.2025 What definitions apply to this subpart?

(a) Unless otherwise stated in this section, the definitions in 33 CFR 151.1504, 33 CFR 160.203, and the United Nations Convention on the Law of the Sea apply to this part.

(b) As used in this part—

ANSTF means the Aquatic Nuisance Species Task Force mandated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA).

Captain of the Port (COTP) means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP zone covering the first U.S. port of destination. These COTP zones are listed in 33 CFR part 3.

Exchange means to replace the water in a ballast tank using one of the following methods:

(a) *Flow through exchange* means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water has been changed—to minimize the number of original organisms remaining in the tank.

(2) *Empty/refill exchange* means to pump out the ballast water taken on in ports, estuarine, or territorial waters until the tank is empty, then refilling it with mid-ocean water; masters/operators should pump out as close to 100 percent of the ballast water as is safe to do so.

IMO guidelines mean the Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens (IMO Resolution A.868 (20), adopted November 1997).

NANCPA means the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

NBIC means the National Ballast Water Information Clearinghouse operated by the Coast Guard and the Smithsonian Environmental Research Center as mandated under NISA.

NISA means the National Invasive Species Act of 1996, which reauthorized and amended NANCPA.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Voyage means any transit by a vessel destined for any United States port from a port or place outside of the EEZ, including intermediate stops at a port or place within the EEZ. For the purpose of this rule, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also considered a voyage.

Waters of the United States means waters subject to the jurisdiction of the United States as defined in 33 CFR § 2.05–30, including the navigable waters of the United States. For this regulation, the navigable waters include the territorial sea as extended to 12 nautical miles from the baseline, pursuant to Presidential Proclamation No. 5928 of December 27, 1988.

§ 151.2030 Who is responsible for determining when to use the safety exemption?

(a) The master, operator, or person-in-charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) The master, operator, or person-in-charge of a vessel is not required to conduct a ballast water management practice (including exchange), if the master decides that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. If the master uses this section, and the—

(1) Vessel is on a voyage to the Great Lakes or Hudson River, the vessel must comply with the requirements of § 151.1514 of subpart C of this part (Ballast water management alternatives under extraordinary conditions); or

(2) Vessel is on a voyage to any port other than the Great Lakes or Hudson River, the vessel shall not be required to perform a ballast water management practice which the master has found to threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(c) Nothing in this subpart relieves the master, operator, or person-in-charge of a vessel, of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

§ 151.2035 What are the voluntary ballast water management guidelines?

(a) Masters, owners, operators, or persons-in-charge of all vessels equipped with ballast water tanks that operate in the waters of the United States are requested to take the following voluntary precautions to minimize the uptake and the release of harmful aquatic organisms, pathogens, and sediments:

(1) Avoid the discharge or uptake of ballast water in areas within or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(2) Minimize or avoid uptake of ballast water in the following areas and situations:

(i) Areas known to have infestations or populations of harmful organisms and pathogens (e.g., toxic algal blooms).

(ii) Areas near sewage outfalls.

(iii) Areas near dredging operations.

(iv) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be more turbid.

(v) In darkness when bottom-dwelling organisms may rise up in the water column.

(vi) Where propellers may stir up the sediment.

(3) Clean the ballast tanks regularly to remove sediments. Clean the tanks in mid-ocean or under controlled arrangements in port, or at dry dock. Dispose of your sediments in accordance with local, State, and Federal regulations.

(4) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the United States.

(5) Rinse anchors and anchor chains when you retrieve the anchor to remove organisms and sediments at their place of origin.

(6) Remove fouling organisms from hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, State and Federal regulations.

(7) Maintain a ballast water management plan that was developed specifically for the vessel.

(8) Train the master, operator, person-in-charge, and crew, on the application of ballast water and sediment management and treatment procedures.

(b) In addition to the provisions of § 151.2035(a), you (the master, operator, or person-in-charge of a vessel) are requested to employ at least one of the following ballast water management practices, if you carry ballast water into the waters of the United States after operating beyond the EEZ:

(1) Exchange ballast water beyond the EEZ, from an area no less than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering waters of the United States.

(2) Retain the ballast water on board the vessel.

(3) Use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard before the vessel begins the voyage. Submit the requests for approval of alternative ballast water management methods to the Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The phone number is 202–267–0500.

(4) Discharge ballast water to an approved reception facility.

(5) Under extraordinary conditions, conduct a ballast water exchange within an area agreed to by the COTP at the time of the request.

§ 151.2040 What are the mandatory requirements for vessels carrying ballast water into the waters of the United States after operating beyond the Exclusive Economic Zone (EEZ)?

(a) The master, owner, operator, person-in-charge of a vessel bound for the Great Lakes or Hudson River, which has operated beyond the EEZ during any part of its voyage, regardless of intermediate ports of calls within the waters of the United States or Canada, must comply with paragraphs (c) through (f) of this section, all of § 151.2045, and with the provisions of this part 151 subpart C.

(b) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with paragraphs (c) through (f) of this section, all of § 151.2045, and with the provisions of 15 CFR 754.2(j)(1)(iii). That section (15 CFR 754.2(j)(iii)) requires a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth and recordkeeping), unless doing so would endanger the safety of the vessel or crew.

(c) The master, owner, operator, agent, or person-in-charge of a vessel carrying ballast water into the waters of the United States after operating beyond the EEZ, unless specifically exempted by § 151.2010 or § 151.2015, must provide the information required by § 151.2045 in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) *For a United States or Canadian Flag vessel bound for the Great Lakes.* You must fax the required information to the COTP Buffalo 315–764–3283 at least 24 hours before the vessel arrives in Montreal, Quebec.

(2) *For a foreign flagged vessel bound for the Great Lakes.* You must—

(i) Fax the required information to the COTP Buffalo 315–764–3283 at least 24 hours before the vessel arrives in Montreal, Quebec; or

(ii) Complete the ballast water information section of the St. Lawrence Seaway required ''Pre-entry Information from Foreign Flagged Vessels Form'' and submit it in accordance with the applicable Seaway notice.

(3) *For a vessel bound for the Hudson River north of the George Washington Bridge.* You must telefax the information to the COTP New York at 718–354–4249 before the vessel enters the waters of the United States (12 miles from the baseline).

(4) *For a vessel not addressed in paragraphs (c)(1), (c)(2), and (c)(3) of this section.* Before the vessel departs from the first port of call in the waters of the United States, you must—

(i) Mail the information to U.S. Coast Guard, c/o Smithsonian Environmental Research Center (SERC), P.O. Box 28, Edgewater, MD 21037–0028; or

(ii) Transmit the information electronically to the NBIC at www.serc.si.edu/invasions/ballast.htm; or

(iii) Fax the information to the Commandant, U.S. Coast Guard, c/o the NBIC at 301–261–4319.

(d) If the information submitted in accordance with paragraph (c) of this section changes, you must submit an amended form before the vessel departs the waters of the United States.

(e) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with the applicable regulations.

(f) This subpart does not affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

§ 151.2045 What are the mandatory recordkeeping requirements?

(a) The master, owner, operator, or person in charge of a vessel carrying ballast water into the waters of the United States after operating beyond the EEZ, unless specifically exempted by § 151.2010 or § 151.2015 shall keep in written form, records that include the following information (Note: Ballast tank is any tank or hold that carries ballast water regardless of design):

(1) *Vessel information.* Include the—

(i) Name;

(ii) International Maritime Organization (IMO) Number (official number if IMO number not issued);

(iii) Vessel type;

(iv) Owner or operator;

(v) Gross tonnage;

(vi) Call sign; and

(vii) Port of Registry (Flag).

(2) *Voyage information.* Include the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(3) *Total ballast water information.* Include the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, and total number of ballast water tanks in ballast. Use units of measurements such as metric tons (MT), cubic meters (m3), long tons (LT), and short tons (ST).

(4) *Ballast Water Management.* Include the total number of ballast

tanks/holds that are to be discharged into the waters of the United States or to a reception facility. If an alternative ballast water management method is used, please note the number of tanks that were managed using an alternative method, as well as the type of method used. Indicate whether the vessel has a ballast water management plan and IMO guidelines on board, and whether the ballast water management plan is used.

(5) *Information on ballast water tanks that are to be discharged into the waters of the United States or to a reception facility.* Include the following:

(i) The origin of ballast water. This includes date(s), location(s), volume(s) and temperature(s) (If a tank has been exchanged, list the loading port of the ballast water that was discharged during the exchange.).

(ii) The date(s), location(s), volume(s), method, thoroughness (percentage exchanged if exchange conducted), sea height at time of exchange if exchange conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or a reception facility.

(6) *Discharge of sediment.* If sediment is to be discharged within the jurisdiction of the United States include the location of the facility where the disposal will take place.

(7) *Certification of accurate information.* Include the master, owner, operator, person in charge, or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and certifying compliance with the requirements of this subpart.

(8) *Change to previously submitted information.*

(i) Indicate whether the information is a change to information previously submitted for this voyage.

(ii) The master, owner, operator, or person in charge of a vessel subject to this section, must retain a signed copy of this information on board the vessel for 2 years.

(iii) The information required of this subpart may be used to satisfy the ballast water recordkeeping requirements for vessels subject to § 151.2040(a) and (b).

(iv) A sample form and the instructions for completing the form are in the appendix to this subpart. If you complete the ''Ballast Water Reporting Form'' contained in the IMO Guidelines or complete the ballast water information section of the St. Lawrence Seaway required ''Pre-entry Information Flagged Vessels Form,'' then you have met the requirements of this section.

§ 151.2050 What methods are used to monitor compliance with this subpart?

(a) The COTP may take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this subpart.

(b) The master, owner, operator, or person in charge of a vessel subject to this section, shall make available to the COTP the records required by § 151.2045 upon request.

(c) The NBIC will compile the data obtained from submitted reports. This data will be used, in conjunction with existing databases on the number of vessel arrivals, to assess vessel reporting rates.

§ 151.2055 Where are the alternate exchange zones located? [Reserved]

§ 151.2060 What must each application for approval of an alternative compliance technology contain? [Reserved]

§ 151.2065 What is the standard of adequate compliance determined by the ANSTF for this subpart? [Reserved]

Appendix to Subpart D of Part 151—Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form

BILLING CODE 4910–15–P

INSTRUCTIONS FOR BALLAST WATER REPORTING FORM

(Please write in English and PRINT legibly.)

Is this an Amended Ballast Reporting Form?: Check Yes or No. Amendments should be submitted if there are any differences between actual ballast discharges and discharge information reported in a prior form. Please mark "Yes" if this form amends a previously submitted ballast reporting form.

SECTION 1. VESSEL INFORMATION

Vessel Name: Print the name of the vessel clearly.

IMO Number: Fill in identification number of the vessel used by the International Maritime Organization.

Owner: Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name.

Type: List specific vessel type. Use the following abbreviations: bulk (**bc**), roro (**rr**), container (**cs**), tanker (**ts**), passenger (**pa**), oil/bulk ore (**ob**), general cargo (**gc**), reefer (**rf**). Write out any additional vessel types.

GT: What is the Gross Tonnage of the vessel?

Call Sign: Write in the official call sign.

Flag: Fill in the full name of the country under whose authority the ship is operating. No abbreviations please.

SECTION 2. VOYAGE INFORMATION

Arrival Port: Write in the name of your first port of call after entering the U.S. EEZ or St. Lawrence Seaway. No abbreviations.
Arrival Date: Fill in the arrival date to the above port. Please use European date format (DDMMYY).

Agent: List agent used for current port.

Last Port: Fill in the last port at which the vessel called immediately before entering the U.S. EEZ. No abbreviations please.

Country of Last Port: Fill in the last country at which the vessel called immediately before entering the U.S. EEZ. No abbreviations please.

Next Port: Fill in the port at which the vessel will call immediately after departing the current port ("Current Port"="Arrival Port" above). No abbreviations please.

Country of Next Port: Fill in the country of "Next Port" at which the vessel will call immediately after current port. No abbreviations please.

SECTION 3. BALLAST WATER

Total Ballast Water on Board:
Volume: What was the total volume of ballast water on board upon arrival into the waters of U.S. EEZ? Do not count potable water.

Units: Please include volume units (m^3, MT, LT, ST).
Number of Tanks in Ballast: Count the number of ballast tanks and holds with ballast as vessel enters waters inside the United States EEZ.

Total Ballast Water Capacity:
Volume: What is the maximum volume of ballast water used when no cargo is on board?
Units: Please include volume units (m^3, MT, LT, ST).
Total Number of Tanks on Ship: Count all tanks and holds that can carry ballast water (do not include tanks that carry potable water).

SECTION 4. BALLAST WATER MANAGEMENT

Total No. of tanks to be discharged: Count only tanks and holds with ballast to be discharged into waters inside the United States EEZ or into an approved reception facility. Count all tanks and holds separately (e.g., port and starboard tanks should be counted separately).

Of tanks to be discharged, how many Underwent Exchange: Count all tanks that are to be discharged into waters of the United States or into an approved reception facility.

Of tanks to be discharged, how many Underwent Alternative Management: Count all tanks that are to be discharged into waters of the United States or an approved reception facility.

Please specify alternative method(s) used, if any: Specifically, describe methods used for ballast management.

If no ballast treatment conducted, state reason why not: This applies to all tanks and holds being discharged into waters of the

United States or into an approved reception facility.

Ballast Management Plan on board?: Is there a written document on board, specific to your vessel, describing the procedure for ballast management? This should include safety and exchange procedures (usually provided by vessel's owner or operator). Check Yes or No.

Management Plan implemented?: Do you follow the above management plan? Check Yes or No.

IMO Ballast Water Guidelines on board?: Is there a copy of the International Maritime Organization (IMO) Ballast Water Guidelines on board this vessel (i.e. "Guidelines for the Control and Management of Ship's Ballast Water to Minimize the Transfer Aquatic Organisms and Pathogens", [Res. A.868(20)])? Check Yes or No.

SECTION 5. BALLAST WATER HISTORY

(Record all tanks to be deballasted in port state of arrival: If none, go to #6)

Tanks/Holds: Please list all tanks and holds that you have discharged or plan to discharge into waters of the United States or

into an approved reception facility (write out, or use codes listed below table). Follow each tank across the page listing all source(s), exchange events, and/or discharge events separately. List each tank on a separate line. Port and starboard tanks with identical ballast water histories may be included on same line. Please use an additional page if necessary, being careful to include ship name, date, and IMO number at the top of each. For tanks with multiple sources: list 3 largest sources from last 30 days on separate lines. If more than 3 sources, include a 4th line for the respective tank(s) that indicated "Multiple" in port column and list the remaining tank volume not included in the 3 largest sources (i.e., total tank volume minus volume of the 3 largest sources). See example #1 on sample ballast reporting form.

-BW SOURCES

Date: Record date of ballast water uptake. Use European format (DDMMYY).

Port or latitude/longitude: Record location of ballast water uptake, no abbreviations for ports.

Volume: Record total volume of ballast water uptake, with volume units.

Temp: Record water temperature at time of ballast water uptake, in degrees Celsius (include units).

-BW MANAGEMENT PRACTICES-

Date: Date of ballast water management practice. If exchanges occurred over multiple days, list the day when exchanges were completed. Use European format (DDMMYY).

Endpoint or latitude/longitude: Report location of ballast water management practice. If an exchange occurred over an extended distance, list the end point latitude and longitude.

Volume: Report total volume of ballast water moved (i.e., gravitated and pumped into tanks, discharged to reception facility) during management practice , with units.

% Exch.: (Note: for effective flow through exchange, this value should be at least 300%).

$$\%\ Exchange = \frac{\text{Total Volume added by Refill or Flow Through}}{\text{Capacity of Ballast Tank or Hold}} \times (100\%)$$

Method: Indicate management method using code (ER = empty/refill, FT = flow through, ALT = alternative method).

Sea Ht . (m): Estimate the sea height in meters at the time of the ballast water exchange if this method was used. (Note: this is the combined height of the wind-seas and swell, and does not refer to water depth).

-BW DISCHARGES-

Date: Date of ballast water discharge. Use European format (DDMMYY).

Port or latitude/longitude: Report location of ballast water discharge, no abbreviations for ports.

Volume: Report volume of ballast water discharged, with units.

Salinity: Document salinity of ballast water at the time of discharge, with units (i.e., specific gravity (sg) or parts per thousand (ppt)).

SECTION 6. TITLE AND SIGNATURE

Responsible officer's name and title (printed) and signature: Print name and title, include signature.

BALLAST WATER REPORTING FORM

IS THIS AN AMENDED BALLAST REPORTING FORM? YES ☐ NO ☐

1. VESSEL INFORMATION	2. VOYAGE INFORMATION		3. BALLAST WATER USAGE AND CAPACITY
Vessel Name:	Arrival Port:		*Specify Units Below (m^3, MT, LT, ST)*
IMO Number:	Arrival Date:		Total Ballast Water on Board: Volume / Units / No. of Tanks in Ballast
Owner:	Agent:		
Type:	Last Port:	Country of Last Port:	
GT:			Total Ballast Water Capacity: Volume / Units / Total No. of Tanks on Ship
Call Sign:	Next Port:	Country of Next Port:	
Flag:			

4. BALLAST WATER MANAGEMENT Total No. Ballast Water Tanks to be discharged: ☐

Of tanks to be discharged, how many: Underwent Exchange: ☐ Underwent Alternative Management: ☐

Please specify alternative method(s) used, if any: _____

If no ballast treatment conducted, state reason why not: _____

Ballast management plan on board? YES ☐ NO ☐ Management plan implemented? YES ☐ NO ☐

IMO ballast water guidelines on board [res. A.868(20)]? YES ☐ NO ☐

5. BALLAST WATER HISTORY: Record all tanks to be deballasted in port state of arrival; IF NONE, GO TO #6 ***(Use additional sheets as needed)***

Tanks/ Holds List multiple sources/tanks separately	BW SOURCES				BW MANAGEMENT PRACTICES						BW DISCHARGES			
	DATE DD/MM/YY	PORT or LAT. LONG.	VOLUME (units)	TEMP (units)	DATE DD/MM/YY	ENDPOINT LAT. LONG.	VOLUME (units)	% Exch	METHOD (ER/FT/ ALT)	SEA HT. (m)	DATE DD/MM/YY	PORT or LAT. LONG.	VOLUME (units)	SALINITY (units)

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing = WT, Topside = TS, Cargo Hold = CH, Other = O

6. RESPONSIBLE OFFICER'S NAME AND TITLE, PRINTED AND SIGNATURE:

Where to send this form.

Vessels bound for Great Lakes:

United States or Canadian Flag vessel bound for the Great Lakes

Fax the form to the COTP Buffalo **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec.

Any other Flag vessel bound for the Great Lakes

Fax the form to the COTP Buffalo **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec, or;

Complete the ballast water information section of the St. Lawrence Seaway required "Pre-entry Information from Foreign Flagged Vessels Form" and submit it in accordance with the applicable Seaway notice.

Vessels bound for the Hudson River North Of George Washington Bridge

Vessel bound for the Hudson River north of the George Washington Bridge

Fax the form to the COTP New York at **718-354-4249** before the vessel enters the waters of the United States (12 miles from the baseline).

Vessels bound for all other United States Ports

Vessel bound for all ports within the waters of the United States other than the Great Lakes or Hudson River north of the George Washington Bridge

Before the vessel departs from the first port of call in the waters of the United States send the form by one of the three following methods:

- Mail the form to the **U.S. Coast Guard, c/o Smithsonian Environmental Research Center (SERC), P.O. Box 28, Edgewater, MD 21037-0028**;
- Transmit the form electronically to the National Ballast Information Clearinghouse (NBIC) at **www.serc.si.edu\invasions\ballast.htm**); or
- Fax the form to the Commandant, U.S. Coast Guard, c/o the NBIC at **301-261-4319.**

If any information changes, send an amended form before the vessel departs the waters of the United States.

Dated: May 11, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–12266 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–15–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7284]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

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

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

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Unorganized Borough.	Municipality of Anchorage.	March 24, 1999, March 31, 1999.	The Honorable Rick Mystrom, Mayor, Municipality of P.O. Box 196650, Anchorage, Alaska 99519–6650.	February 19, 1999	020005
California:.					
Placer	City of Rocklin	March 24, 1999, March 31, 1999, *The Placer Herald.*	The Honorable Connie Cullivan, Mayor, City of Rocklin, 3980 Rocklin Road, Rocklin, California 95677.	February 22, 1999	060242

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside	City of San Diego	April 7, 1999, April 14, 1999, *San Diego Union-Tribune*.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor (MS 11A), San Diego, California 92101.	March 16, 1999	060295
Colorado:					
Denver	City and County	March 17, 1999, March 24, 1999, *The Denver Post*.	The Honorable Wellington Webb, Mayor, City and County of Denver, 1437 Bannock Street, Denver, Colorado 80202.	February 12, 1999	080046
Lincoln	Town of Limon	March 11, 1999, March 18, 1999, *Limon Leader*.	The Honorable Ted Bandy, Mayor, Town of Limon, P.O. Box 9, Limon, Colorado 80282–0009.	February 23, 1999	080109
Hawaii: Hawaii	Unincorporated Areas.	March 11, 1999, March 18, 1999, *Hawaii-Tribune Herald*.	The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	February 5, 1999	155166
Nevada:					
Clark	Unincorporated Areas.	March 18, 1999, March 25, 1999, *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Supervisors, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	June 23, 1999	320003
Washoe	City of Reno	March 24, 1999, March 31, 1999, *Reno Gazette-Journal*.	The Honorable Jeff Griffin, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505.	March 1, 1999	320020
Washoe	Unincorporated Areas.	March 24, 1999,March 31, 1999, *Reno Gazette-Journal*.	The Honorable Joanne Bond, Chairperson, Washoe County, Board of Supervisors, P.O. Box 11130, Reno, Nevada 89520.	March 1, 1999	320019
Clark	City of Las Vegas	March 18, 1999,March 25, 1999, *Las Vegas Review-Journal*.	The Honorable Jan Laverty Jones, Mayor, City of Las Vegas, 400 East Stewart Avenue, North Las Vegas, Nevada 89101–2986.	June 23, 1999	325276
Clark	City of North Las Vegas.	March 18, 1999,March 25, 1999, *Las Vegas Review-Journal*.	The Honorable Michael Montandor, Mayor, City of North Las Vegas, P.O. Box 4086, North Las Vegas, Nevada 89036.	June 23, 1999	320007
New Mexico: Santa Fe.	City of Santa Fe	March 9, 1999, March 16, 1999, *The Santa Fe New Mexican*.	The Honorable Larry Delgado, Mayor, City of Santa Fe, P.O. Box 909, 200 Lincoln Avenue, Santa Fe, New Mexico 87504.	June 14, 1999	350070
Oklahoma:					
Garfield	City of Enid	April 23, 1999, April 30, 1999, *Enid News and Eagle*.	The Honorable Mike Cooper, Mayor, City of Enid, P.O. Box 1768, Enid, Oklahoma 73702.	March 26, 1999	400062
Oklahoma	City of Oklahoma City.	March 18, 1999, March 25, 1999, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	February 12, 1999	405378
Oregon: Multnomah	City of Portland	March 19, 1999, March 26, 1999, *The Oregonian*.	The Honorable Vera Katz, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Room 340, Portland, Oregon 97204.	March 1, 1999	410183
Texas:					
Bexar	City of Converse	March 11, 1999, March 18, 1999, *Herald Newspaper*.	The Honorable John Steinberg, Mayor, City of Converse, P.O. Box 36, Converse, Texas 78109.	February 12, 1999	480038
Dallas, Denton, Collin, Rockwall, and Kaufman.	City of Dallas	March 19, 1999, March 26, 1999, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	Feburary 26, 1999	480171
Tarrant	City of Fort Worth	March 18, 1999, March 25, 1999, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	December 14, 1999.	480596
Dallas	City of Garland	March 25, 1999, April 1, 1999, *The Garland News*.	The Honorable Jim Stence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	February 26, 1999	485471
Dallas	City of Irving	March 4, 1999, March 11, 1999, *Irving News*.	The Honorable Morris H. Parrish, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	February 1, 1999	480180

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant	City of North Richland Hills.	April 8, 1999, April 15, 1999, *Fort Worth Star-Telegram*.	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	March 16, 1999	480607
Lamar	City of Paris	March 23, 1999, March 30, 1999, *Paris News*.	The Honorable Eric Clifford, Mayor, City of Paris, P.O. Box 9037, Paris, Texas 75461–9037.	June 28, 1999	480427
Wichita	City of Wichita Falls.	March 19, 1999, March 26, 1999, *Wichita Falls Times/Record News*.	The Honorable Kay Yeager, Mayor, City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	February 26, 1999	480662
Washington:					
Grays Harbor	City of Aberdeen	February 26, 1999, March 5, 1999, *The Daily World*.	The Honorable Chuck Gurrad, Mayor, City of Aberdeen, 200 East Market Street, Aberdeen, Washington 98520.	September 3, 1999.	530058
Spokane	Unincorporated Areas.	March 24, 1999, March 31, 1999, *Spokesman-Review*.	The Honorable Kate McCaslin, Chairman, Board of Commissioners, Spokane County, 1116 West Broadway Avenue, Spokane, Washington 99260–0100.	February 24, 1999	530174
Wyoming: Carbon	Town of Baggs	March 16, 1999, March 23, 1999, *Rawling Daily Times*.	The Honorable Donald R. Bain, Mayor, Town of Baggs, P.O. Box 300, Baggs, Wyoming 82321.	February 19, 1999	560009

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–12347 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

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

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

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

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

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

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

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

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

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the

NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 7272).	City of Phoenix	December 22, 1998, December 29, 1998 *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	November 19, 1998.	040051
Pima, (FEMA Docket No. 7272).	Unincorporated Areas.	December 15, 1998, December 22, 1998 *Arizona Daily Star*.	The Honorable Mike Boyd, Pima County Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	November 20, 1998.	040073
Pima, (FEMA Docket No. 7268).	City of Tucson	December 2, 1998, December 9, 1998 *Arizona Daily Star*.	The Honorable George Miller, Mayor, City of Tucson P.O. Box 27210, Tucson, Arizona 85726.	November 3, 1998	040076
California:					
Santa Clara (FEMA Docket No. 7272).	City of Gilroy	December 11, 1998, December 18, 1998 *Gilroy Dispatch*.	The Honorable K. A. Mike Gilroy, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	November 10, 1998.	060340
Orange, (FEMA Docket No. 7268).	City of Lake Forest.	December 1, 1998, December 8, 1998 *Orange County Register*.	The Honorable Peter Herzog, Mayor, City of Lake Forest, 23161 Lake Center Drive, Suite 100, Lake Forest, California 92630.	March 8, 1999	060759
Sacramento (FEMA Docket No. 7264).	Unincorporated Areas.	November 23, 1998, November 30, 1998 *Sacramento Bee*.	The Honorable Illa Collin, Chairperson, Sacramento County, Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	October 23, 1998	060262
Colorado					
Gilpin, (FEMA Docket No. 7272).	City of Black Hawk.	December 11, 1998, December 18, 1998 *Weekly Register Call*.	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	November 9, 1998	080076
El Paso, (FEMA Docket No. 7272).	Unincorporated Areas.	December 10, 1998, December 17, 1998, *The Tribune*.	The Honorable Charles C. Brown, Chairman, El Paso County, Board of Commissioners, 27 East Vermijo Avenue, Third Floor, Colorado Springs, Colorado 80903–2208.	November 9, 1998	080059
Jefferson, (FEMA Docket No. 7272).	Unincorporated Areas.	December 16, 1998, December 23, 1998 *Columbine County Courier*.	The Honorable Michelle, Chairperson, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	December 3, 1998	080087
Ouray, (FEMA Docket No. 7268).	City of Ouray	December 3, 1998, December 10, 1998, *Ouray County Plaindealer*.	The Honorable Jim Miller, Mayor, City of Ouray, P.O. Box 468, Ouray, Colorado 81427.	November 9, 1998	080137
Ouray, (FEMA Docket No. 7268).	Unincorporated Areas.	December 3, 1998, December 10, 1998, *Ouray County Plaindealer*.	The Honorable Alan Staehle, Chairman, Ouray County, Board of Commissioners, P.O. Box C, Ouray, Colorado 81427.	November 9, 1998	080136
Kansas: McPherson (FEMA Docket No. 7268).	City of McPherson	December 3, 1998, December 10, 1998, *McPherson Sentinel*.	The Honorable Vernon L. Dossett, Mayor, City of McPherson, P.O. Box 1008, McPherson, Kansas 67460.	November 4, 1998	200217

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Dona Ana, (FEMA Docket No. 7264).	City of Las Cruces	November 18, 1998, November 25, 1998, *The Sun News*.	The Honorable Rubin A. Smith, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, New Mexico 88004.	October 23, 1998	355332
Oklahoma:					
Oklahoma, (FEMA Docket No. 7268).	City of Oklahoma City.	November 18, 1998, November 25, 1998 *Daily Oklahoman*.	The Honorable Ronald Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 2, 1998	405378
Oklahoma, (FEMA Docket No. 7268).	City of Oklahoma City.	December 2, 1998, December 9, 1998, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 6, 1998	405378
Texas:					
Bexar, (FEMA Docket No. 7272).	City of Alamo Heights.	December 10, 1998, December 17, 1998, *North San Antonio Times*.	The Honorable Robert Biechlin, Mayor, City of Alamo Heights, 6116 Broadway, San Antonio, Texas 78209.	March 17, 1999 ...	480036
Tarrant, (FEMA Docket No. 7268).	City of Fort Worth	December 1, 1998, December 8, 1998, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	November 5, 1998	480596
Hays, (FEMA Docket No. 7268).	Unincorporated Areas.	December 2, 1998, December 9, 1998, *San Marcos Daily Record*.	The Honorable Eddy Etheredge, Hays County Judge, Hays County Courthouse, 111 East San Antonio Street, San Marcos, Texas 78666.	November 6, 1998	480321
Dallas, (FEMA Docket No. 7272).	City of Irving	December 17, 1998, December 24, 1998, *Irving News*.	The Honorable Morris H. Parrish, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	November 20, 1998.	480180
Bell, (FEMA Docket No. 7272).	City of Killeen	December 22, 1998, December 29, 1998, *Killeen Daily Herald*.	The Honorable Fred Latham, Mayor, City of Killeen, P.O. Box 1329, Killeen, Texas 76540.	November 20, 1998.	480031
Dallas, (FEMA Docket No. 7268).	City of Mesquite ..	November 20, 1998, November 27, 1998, *Dallas Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850131, Mesquite, Texas 75185–0137.	November 2, 1998	485490
Bexar, (FEMA Docket No. 7272).	City of San Antonio.	December 10, 1998, December 17, 1998, *North San Antonio Times*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	March 17, 1999 ...	480045
Travis, (FEMA Docket No. 7264).	Unincorporated Areas.	November 18, 1998, November 25, 1998, *Austin American Statesman*.	The Honorable Bill Aleshire, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.	October 26, 1998	481026

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–12349 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified

base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	
Hillsborough (Town), San Mateo County (FEMA Docket No. 7270)	
San Mateo Creek:	
Approximately 415 feet downstream of Baywood Avenue	*32
Approximately 515 feet upstream of El Cerrito Avenue	*74
Maps are available for inspection at the Town Engineer's Office, 1600 Floribunda Avenue, Hillsborough, California.	
Colorado	
Alamosa (City), Alamosa County (FEMA Docket No. 7270)	
Rio Grande:	
Approximately 800 feet downstream of Broadway/Fourth Street	*7,539
Approximately 10,100 feet upstream of State Avenue	*7,545
Maps are available for inspection at the City of Alamosa Public Works Department, 314 Hunt, Alamosa, Colorado.	
———	
Alamosa County (Unincorporated Areas) (FEMA Docket No. 7270)	
Rio Grande:	
Approximately 10,800 feet downstream of Denver and Rio Grande Western Railroad	*7,534
Approximately 17,500 feet upstream of State Avenue	*7,548
Maps are available for inspection at Land Use and Administration, 402 Edison Avenue, Alamosa, Colorado.	
———	
Severance (Town), Weld County (FEMA Docket No. 7270)	
The Slough:	
Approximately 1,000 feet downstream of Great Western Railroad	*4,864
Approximately 3,400 feet upstream of County Road 74	*4,878
Maps are available for inspection at the Town of Severance Town Hall, 336 South First Street, Severance, Colorado.	
———	
Weld County (Unincorporated Areas) (FEMA Docket No. 7270)	
The Slough:	
Approximately 1,050 feet downstream of Great Western Railroad	*4,864
Approximately 6,500 feet upstream of County Road 74½	*4,889
Maps are available for inspection at the Weld County Planning and Zoning Office, 1400 North 17th Avenue, Greeley, Colorado.	
Montana	
Yellowstone County (Unincorporated Areas) (FEMA Docket No. 7270)	
Alkali Creek:	
Downstream of Alkali Creek Road	*3,247
Upstream of Alkali Creek Road	*3,250
Approximately 850 feet upstream of Alkali Creek Road	*3,382
Maps are available for inspection at the Yellowstone County Emergency and General Services Department, 217 North 27th, Room 309, Billings, Montana.	
Nebraska	
O'Neill (City), Holt County (FEMA Docket No. 7270)	
Elkhorn River:	
Approximately 800 feet downstream of County Bridge 4536520	[1]*1,956
Approximately 750 feet upstream of County Bridge 4525920	[1]*1,976
O'Neill Tributary:	
Approximately 400 feet downstream of Fulton Street	[1]*1,968
Approximately 350 feet upstream of Bogue Avenue	[1]*1,999

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the City of O'Neill City Hall, 401 East Fremont Street, O'Neill, Nebraska.	
Oklahoma	
Bixby (City), Tulsa County (FEMA Docket No. 7254)	
Posey Creek:	
At confluence of Posey Creek Tributary	*611
Little Haikey Creek:	
Just upstream of Garnett Road	*624
Just downstream of 111th Street South	*630
Maps are available for inspection at the City of Bixby City Hall, 116 West Needles Street, Bixby Oklahoma.	
Broken Arrow (City), Tulsa County (FEMA Docket No. 7254)	
Adams Creek:	
At the centerline of 5lst Street South	*588
100 feet upstream of 193rd East Avenue	*664
Broken Arrow Creek:	
Just upstream of 101st Street South	*651
500 feet upstream of 101st Street South	*652
Covington Creek (Adams Creek Tributary B):	
At confluence with Adams Creek	*598
200 feet upstream of East 81st Street South	*627
Covington Creek Tributary (Adams Creek Tributary B–1):	
1,200 feet upstream of confluence with Covington Creek (Adams Creek Tributary B)	*617
Lone Star Creek (Adams Creek Tributary D):	
7,260 feet upstream of confluence with Adams Creek	*698
School Creek (Adams Creek Tributary C):	
2,300 feet downstream of 236th East Avenue	*605
150 feet downstream of 236th East Avenue	*608
Timber Creek (Adams Creek Tributary A):	
700 feet upstream of East 71st Street South	*619
4,800 feet upstream of South 257th East Avenue	*662
Maps are available for inspection at the City of Broken Arrow City Hall, 115 East Commercial Street, Broken Arrow, Oklahoma.	
Sand Springs (City), Tulsa County (FEMA Docket No. 7254)	
Anderson Creek:	
Just upstream of 56th Street South	*736
At Creek County boundary	*744
Maps are available for inspection at the City of Sand Springs Public Works Building, 216 North Lincoln, Sand Springs, Oklahoma.	
Skiatook (Town), Tulsa County (FEMA Docket No. 7254)	
Bird Creek:	
At intersection of 186th Street and Cincinnati Avenue	*650
1,000 feet west along 116th Street North from its intersection with Peoria Avenue	*618
Hominy Creek:	
At North 25th West Avenue (Extended)	*626
Rock Creek:	
At the County Road, approximately 5,000 feet upstream of confluence with Hominy Creek	*625
South Fork Horse Creek:	
At confluence with Bird Creek	*633
At Maple Street	*634
At the downstream side of Southern Pacific Railroad	*644
Maps are available for inspection at the Town of Skiatook Municipal Building, 100 North Broadway, Skiatook, Oklahoma.	
Tulsa (City), Tulsa County (FEMA Docket No. 7254)	
Mingo Creek:	
100 feet upstream of 56th Street North	*589
Bird Creek:	
At 46th Street North (State Highway 266)	*584
Spunky Creek:	
2,150 feet downstream of 21st Street South	*631
100 feet upstream of 193rd East Avenue	*665
3,800 feet upstream of 193rd East Avenue	*668
Harlow Creek:	
3,450 feet upstream of Edison Street	*663
5,850 feet upstream of Edison Street	*669
Harlow Creek Tributary:	
4,825 feet upstream of Edison Street	*688
6,750 feet upstream of Edison Street	*699
Maps are available for inspection at the Stormwater Design Office, 2317 South Jackson, Suite No. 302, Tulsa, Oklahoma.	
Tulsa County (Unincorporated Areas) (FEMA Docket No. 7254)	
Anderson Creek:	
700 feet upstream of confluence with Fisher Creek	*660
Approximately 3,700 feet upstream of 56th Street (at Creek County boundary)	*744
Hominy Creek:	
400 feet downstream of Texas and Pacific Railroad	*624
Euchee Creek:	
350 feet upstream of U.S. Highway 64	*654
Just upstream of Willow Street	*680
11,500 feet upstream of mouth (at Tulsa-Osage County boundary)	*690
Maps are available for inspection at the Tulsa County Annex Building, 633 West Third, Room 140, Tulsa, Oklahoma.	
Oregon	
Athena (City), Umatilla County (FEMA Docket No. 7270)	
Wildhorse Creek:	
Approximately 1,970 feet downstream of Labor Camp Road	*1,679
Approximately at Fifth Street	*1,719
Maps are available for inspection at the City of Athena, 215 South Third Street, Athena, Oregon.	
Umatilla County (Unincorporated Areas) (FEMA Docket No. 7270)	
Wildhorse Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2,600 feet downstream of Damburn Road	*1,671
Approximately at Fifth Street	*1,719
Mill Creek:	
Approximately 80 feet downstream of Henry Canyon Bridge	*2,199
Approximately 720 feet upstream of Forest Service #65 Bridge	*2,348
Maps are available for inspection at the Umatilla County Department of Resource Services and Development, 216 Southeast Fourth Street, Pendleton, Oregon.	
Texas	
Montgomery County (and Incorporated Areas) (FEMA Docket No. 7270)	
Bens Branch:	
Approximately 2,900 feet downstream of confluence with Bens Branch Tributary 1	*74
Just downstream of Southern Pacific Railroad	*80
Approximately 150 feet upstream of U.S. Route 59 South	*81
Maps are available for inspection at 301 North Thompson Street, Suite 208, Conroe, Texas.	

[1] Value rounded to nearest whole foot.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–12350 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–185; RM–9355]

Radio Broadcasting Services; Ely and Carlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of L. Topaz Enterprises, Inc., substitutes Channel 244C for Channel 244C1, reallots Channel 244C from Ely, NV, to Carlin, NV, as the community's first local aural service, and modifies Station KHIX's construction permit to specify operation on Channel 244C1 and Carlin as its community of license. *See* 63 FR 55831, October 19, 1998. Channel 244C can be allotted to Carlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 1 kilometer (0.6 mile) west, at coordinates 40–42–47 NL; 116–07–18 WL, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

DATES: Effective June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–185, adopted April 21, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 244C1 at Ely and by adding Carlin, Channel 244C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12308 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 94
Monday, May 17, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1933–98; AG Order No. 2223–99]

RIN 1115–AE42

Adjustment of Small Volume Application Fees of the Immigration Examinations Fee Account

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the Immigration and Naturalization Service's (Service) fee schedule of the Immigration Examinations Fee Account (IEFA) for certain small volume immigration adjudication and naturalization applications and petitions (Forms I–360, N–300, N–336, and N–470). Fees collected from persons filing these applications and petitions are deposited into the IEFA and used to fund the cost of processing immigration adjudication and naturalization applications and petitions and associated support services. The Service has determined that the current fees for these four small volume applications and petitions need to be adjusted. Of the four small volume applications and petitions, the fees for two are being increased and two are being decreased. This rule is necessary to ensure that the fees charged accurately reflect the cost of processing immigration adjudication and naturalization applications and petitions.

DATES: Written comments must be submitted on or before July 16, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS Number 1933–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Charles J. Yaple, Senior Staff Accountant, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, on (202) 616–2754, or in writing at 425 I Street, NW., Room 6240, Washington, DC 20536.

Detailed documentation of the rate-setting process is available upon request by calling (202) 616–2754.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does the Service Have To Charge Fees?

1. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

The Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989 (Public Law 100–459) authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration adjudication and naturalization services. Public Law 100–459 also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for the provision of immigration adjudication and naturalization services are deposited in the IEFA and ''remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees * * *.'' 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts, 1991, (Public Law 101–515), Congress further provided that ''fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' 8 U.S.C. 1356(m).

2. The Independent Offices Appropriation Act, 1952

The Service also employs the authority granted through the Independent Offices Appropriation Act, 1952, Pub. L. 82–137 (IOAA) 31 U.S.C. 9701, commonly referred to as the ''user fee statute,'' to develop its fees. The user fee statute directs Federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''[i]t is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a). The IOAA further provides that charges for such services or things of value should be based on ''the costs to the Government; the value of the service or thing to the recipient; the public policy or interest served; and other relevant facts.'' 31 U.S.C. 9701(b).

3. The Chief Financial Officers Act of 1990

The Service must also conform to the requirements of the Chief Financial Officers Act of 1990 (''CFO Act''), Public Law 101–576. Section 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fee, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' 31 U.S.C. 902(a)(8).

What Federal Cost Accounting and Fee Setting Standards and Guidelines Are Being Used?

1. Office of Management and Budget (OMB) Circular No. A–25, User Charges

When developing fees for services, the Service adheres to the principles contained in OMB Circular Number A–25, User Charges. OMB Circular A–25 states that, as a general policy, a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.''

The guidance contained in OMB Circular A–25 is applicable to the extent that it is not inconsistent with any

Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A–25 when the statute expressly designates ''who pays the charge; how much is the charge; [or] where collections are deposited.'' When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A–25 to the fullest extent allowable. The guidance directs Federal agencies to charge the ''full cost'' of providing services when calculating fees that provide a specific benefit to recipients. The OMB Circular A–25 defines full cost as ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel and rents or inputed rents on land, buildings, and equipment;
- The management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

2. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government

When developing fees for services, the Service also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. In developing its recommendations, the FASAB considers the financial and budgetary information requirements of the Congress, executive agencies, and other users of Federal financial information.

How Did the Service Determine the Full Cost of Processing Immigration Adjudication and Naturalization Applications?

1. Phase I—Large Volume Applications/Petitions

The Service conducted a review of the IEFA in two phases to determine the full cost of processing immigration adjudication and naturalization applications. Phase I sought to develop a more consistent and reliable cost accounting methodology focusing on 30 large volume applications and petitions (volumes in excess of 10,000 per year). This resulted in a proposed rule, which detailed the Activity Based Costing (ABC) approach and methodology used, and proposed adjusted fees for 30 immigration adjudication and naturalization petitions based on the determination of the full cost to the Service to perform the required activities. The proposed rule was published in the **Federal Register** on January 12, 1998, at 63 FR 1775. The final rule was published in the **Federal Register** on August 14, 1998, at 63 FR 43604.

2. Phase II—Small Volume Applications/Petitions

In a continuing effort to refine and build upon the methodology and results of the first study, the Service implemented Phase II of the IEFA fee study. The primary objective was to add more precision to the cost model for certain small volume applications. For the purposes of the IEFA studies, small volume applications were defined as those applications and petitions that have annual volumes of less than 10,000 application and petition receipts. The Service selected the ABC approach because it is an operationally-based technique that focuses on work activities performed that produce an output and consumes resources. Table 1 provides the small volume applications that are the subject of this proposed rule.

TABLE 1.—SMALL VOLUME APPLICATIONS

Form	Description
I–360	Petition for Amerasian, Widow(er), or Special Immigrant.
N–300	Application to File Declaration of Intention.
N–336	Request for Hearing on a Decision in Naturalization Procedures.
N–470	Application to Preserve Residence for Naturalization Purposes.

What Processes Were Used To Determine the Adjustment of Fees?

1. Scope of Small Volume Application Review

One of the primary objectives of the IEFA Study was to evaluate the small volume applications and include the applications in the IEFA cost model. The small volume application evaluation and analysis included: (1) incorporating small volume application expenses deducted from the IEFA budget base; and (2) assigning activity processing model activities to the small volume applications.

2. Small Volume Applications Resources

Since small volume applications were not included in the Phase I IEFA Study, amounts representing the imputed cost of the small volume applications were deducted from the budget base. For the purposes of the Phase I IEFA Study, it was assumed that the cost of processing a small volume application was equal to the fee in effect at the time. As a result, the small volume application fees were multiplied by the projected FY 1998 small volume application workload volume to identify the projected revenue to deduct from the budget base. Table 2 provides the small volume application resources deducted from the Phase I IEFA Study cost model.

TABLE 2.—SMALL VOLUME APPLICATION RESOURCES DEDUCTED FROM THE PHASE I IEFA COST MODEL

Form No.	Phase I projected FY 1998 volume	Current fee	Projected resources
I–360	8,196	$80.00	$655,680
N–300	991	75.00	74,325
N–336	3,956	110.00	435,160
N–470	423	115.00	48,645
Total of small volume applications			1,213,810

The $1.2 million in projected resources for processing small volume applications was deducted from the budget base of each IEFA funded program involved in processing these applications. The amount deducted from each program was based on the percentage of full time equivalents (FTEs) represented by the program in proportion to the total FTEs of the programs combined. The inclusion of small volume applications in the Phase II IEFA Study required incorporating the $1.2 million small volume application resources deducted during the Phase I IEFA Study.

The small volume application resources were assigned to the program areas from which the resources were deducted in the Phase I IEFA Study. After the small volume application resources were assigned to the respective program areas, the resources were assigned to the Application Processing Model (APM) activities based on the results of the Phase I IEFA Study FTE surveys for each program area. The APM is a narrative and graphical representation (i.e., a map or flowchart of the activities, worksteps, or tasks) of an application process. The APM was developed to show the activities involved in processing applications and to serve as the primary basis for associating resources with cost objects (applications). The APM enabled the study team to link the resources required by the Service to perform its processing activities with the applications.

3. Assigning Activities to Small Volume Applications

With the small volume expenses included in the Phase II cost model, the next step was to assign the activities to these applications. Small volume applications are processed in the same manner as other IEFA funded applications. Therefore, the activities identified in the Phase I IEFA Study APM were used to evaluate the small volume applications. To ensure consistency with the Phase I study, the same methodology and approach was used to assign activities to applications.

In the Phase I study, the nine primary activities were assigned to the immigration adjudication and naturalization applications and petitions based on the percentage of projected workload volume for the application or petition. These assignments were then weighted by the time required to perform each activity (cycle time) for each application or petition. The percentage of weighted volume represented by an application determines the percentage of activity cost assigned to the application. Including the small volume applications in the Phase II IEFA cost model required identifying the FY 1998 workload projections, and determining the time required to perform each small volume application activity. Once these data elements were identified, the percentage of activity costs applicable to the small volume applications was calculated.

4. Small Volume Application Volumes

The first step in assigning the APM activities to small volume applications was to identify the projected FY 1998 workload volumes for the applications. The volumes in Table 3 represent the most recent workload projections developed by the Service and used in the fee study.

TABLE 3.—PROJECTED ANNUAL APPLICATION WORKLOAD VOLUMES

Small volume form	Description	Phase II projected annual volume
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	8,919
N–300	Application to File Declaration of Intention	1,015
N–336	Request for Hearing on a Decision in Naturalization Procedures	4,500
N–470	Application to Preserve Residence for Naturalization Purpose	382

5. Small Volume Application Data Gathering Approach

Once the small volume application business volumes were identified, the next step was to determine the activity cycle times for each application. In the Phase I IEFA Study, applications and petitions activity cycle times were identified by performing statistical sampling and observation at various service centers and district offices. The Phase I study cycle time collection relied on observing enough application activity combinations to ensure statistical validity.

Small volume applications by definition are not processed in the same volume as other IEFA applications. The service centers and district offices do not process enough small volume applications to ensure that personal observations could be performed during site visits. As a result, the Phase II study determined that observing enough small volume application and activity combinations to ensure statistical validity could not be performed in a timely or cost effective manner.

The study determined that the best approach to identify small volume application activity cycle times would be to conduct telephone interviews with highly experienced Service personnel involved in processing small volume applications. The highly experienced Service personnel identified were from different geographical locations. The objective of each telephone interview was to identify the activities and tasks required to process each small volume application and to identify the estimated time required to perform the activity or task.

6. Telephone Interview Preparation

Prior to conducting each telephone interview, procedures were developed for conducting the interview. The following steps were performed prior to the interview:

Step 1. In this step, the contact person was provided with a description of the fee study and the APM definitions, and asked to review the APM, identifying the areas of the APM that applied to their application. The contact person was requested to identify any questions they had on the activities and tasks listed on the APM.

Step 2. This step consisted of a discussion, after the initial review by the contact person, of any questions that he/she had on the APM. It was important that the contact person and the interviewer have the same understanding of the APM prior to asking timing questions. The contact person was asked to determine if there were any activities or tasks for the application not listed in the APM.

Step 3. Preparation for this step involved a discussion of the application processing activities, including the ''unique'' and ''common'' activities. A determination was made on whether the small volume application was processed the same as other applications for ''common'' activities. It was made clear that the interviewee had to understand the terms ''unique'' and ''common''

before discussing application cycle times.

Step 4. This phase involved determining whether an activity was ''unique,'' and making a listing of all tasks the contact person completes in the processing of the application. If the contact person does not list a particular task under an activity, the person must ascertain whether the task is either not done for that activity, or processed by another person. If processed by another person, obtain a contact person for that particular activity.

Step 5. This step was performed after the first four initial steps and involved the timing interview, which consisted of the following steps:

(1) For each task listed, ask the contact person how long it takes on average to complete the task;

(2) Ask the contact person how long they have worked for the Service, and how much experience the contact person has with their application;

(3) Determine when the contact person last worked on adjudicating the application;

(4) Ask the contact person if there are any circumstances that would make processing of the application different at other Service offices;

(5) Determine the volume of applications processed at the contact person's location; and

(6) Determine if the contact person is aware of any changes to the form that may affect its processing time.

7. Cycle Time Collection

After the telephone interview procedures were conducted, the Service collected cycle time estimates from the small volume application interviewees. Cycle time estimates were provided by the interviewee for each ''unique'' task performed in processing the small volume application. The interviewee also identified each ''common'' task performed in processing the small volume application. Common activity and task cycle times were collected in the Phase I IEFA Study, and represent the time required to perform an activity or task regardless of the type of application. For example, opening the mail is one of the tasks performed within the common activity ''Receive Application or Petition.'' The activity and task are common because they require the same amount of time to perform regardless of the type of application in the envelope.

The results of the telephone interviews were compiled to determine the cycle time required to perform each activity and task for an application. Each small volume application cycle time estimate identified in the telephone interview was weighted by the volume of the application processed at the location of the interviewee. As a result, the response of interviewees at locations processing higher quantities of an application were weighted more than the results from locations that process fewer volumes. The weighted cycle times for each location were then summed and divided by the total applications processed at all locations. The result was the normalized cycle time to perform each small volume activity.

In addition to performing interviews, the study team collected Form I–360 adjudication cycle times at the Nebraska Service Center (NSC). The study team collected cycle times by making personal observations of the time required to adjudicate the Form I–360. These procedures consisted of the following data collection assumptions:

(1) Selection of persons to be observed would be on a random basis;

(2) All applications received by the Service are in random order, therefore, the observation of applications processing on a first-in, first-out basis would maintain this randomness;

(3) Site visit team members would not be restricted in their observations by site personnel; and

(4) All site visit team members would have similar equipment and training.

The Form I–360 adjudication cycle times were weighted by the volume of the applications processed at the NSC. These results were combined with the Vermont Service Center Form I–360 telephone interview estimates to determine the cycle time to process each activity and task for the Form I–360. The cycle time estimates to perform each small volume application activity in minutes and fractions are provided in Table 4.

TABLE 4.—SMALL VOLUME APPLICATION CYCLE TIMES (MINUTES)

Activity	I–360	N–300	N–336	N–470
Receive	4.71	2.24	.89	.89
Record Fee	1.40	1.40	1.40	1.40
Input Application Data	4.68	.95	N/A	N/A
Manage Records	5.65	13.93	6.02	5.57
Adjudicate Applications	49.06	7.90	77.48	26.16
Prepare Outgoing	1.67	.65	1.83	3.35
Issue End Product	N/A	9.25	7.42	N/A
Respond to Inquiry	7.68	N/A	2.73	9.87
Total	74.85	36.32	97.77	47.24

8. Small Volume Application Costs

The final step in performing the small volume application analysis was to calculate the cost to process each application. With the APM activities assigned to small volume applications based on projected FY 1998 workload volumes weighted by application activity cycle times, the study team determined the total annual cost to process each small volume application. The total small volume application activity costs were divided by the projected FY 1998 workload volumes to determine a unit cost for each small volume application activity. The sum of the small volume application activity costs is the total unit cost to process the small volume application. (The unit cost per application identifies the cost required to produce one unit, e.g., one application, based on the activities consumed in producing that unit/application.) Table 5 provides the FY 1998 activity unit cost and total unit cost to process each small volume application.

TABLE 5.—SMALL VOLUME APPLICATION FY 1998 UNIT COSTS

Activity	I–360	N–300	N–336	N–470
Receive	$3.78	$1.10	$.44	$.44
Record Fee	1.69	1.66	1.66	1.66
Input Application Data	7.00	1.02	.00	.00
Manage Records	6.75	20.42	8.83	8.17
Adjudicate Application	75.34	14.02	137.50	46.42
Prepare Outgoing	4.35	1.61	4.54	8.31
Issue End Product	.00	10.94	12.40	.00
Respond to Inquiry	10.95	.00	3.89	14.07
Total FY 1998 Unit Cost	109.86	50.77	169.26	79.07

The Service is authorized to set the immigration and naturalization fees at a level that will recover the costs of providing all immigration adjudication and naturalization services ''including the costs of similar services provided without charge to asylum applicants or other immigrants.'' 8 U.S.C. 1356(m). In addition, the fees must be set sufficiently high enough to recover the costs of fee waivers that are granted. However, because of the small volumes associated with these applications, the amount derived from the calculation to determine waiver/exempt costs and the asylum and refugee surcharge was so insignificant that it has not been included as part of the costs for these applications.

What Are Our Conclusions and Proposed Fee Adjustments?

The objectives of the small volume application analysis were to determine the full cost of processing the applications and to include the applications in the IEFA cost model. The small volume application analysis was performed in accordance with the methodology implemented in the Phase I IEFA Study. The analysis required incorporating small volume application revenues into the IEFA cost model that were deducted during the Phase I IEFA Study, and identifying and quantifying drivers to assign the APM activities to the small volume applications. The unit costs identified in Table 5 represent the Service's cost to process each small volume application.

The Service is proposing to increase two and decrease two of the small volume fees associated with this study. Table 6 identifies the proposed fees to be increased as well as the fees to be decreased. The proposed fee has been rounded to the nearest whole $5 amount.

TABLE 6.—SMALL VOLUME APPLICATION PROPOSED FEE SCHEDULE ADJUSTMENTS

Form	Description	Total cost	Current fee	Proposed fee
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	$109.86	$80.00	$110.00
N–300	Application to File Declaration of Intention	50.77	75.00	50.00
N–336	Request for Hearing on a Decision in Naturalization Procedures	169.26	110.00	170.00
N–470	Application to Preserve Residence for Naturalization Purposes	79.07	115.00	80.00

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Of the four applications or petitions covered under this proposed rule, only two of the fees are being increased and the other two fees are being decreased. In addition, small volume applications refer to fewer than 10,000 applications per year. Total projected revenues for all four applications or petitions for FY 1998 amounts to $1,827,400. Normally, these applications and petitions would generally be filed by individuals as opposed to small businesses.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. This rule will only affect persons who file certain applications or petitions for immigration benefits. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, because it will have an annual effect on the economy of less than $100 million. Without the proposed increases/decreases, the Service estimates that it will collect $1.3 million in fees for immigration and adjudication services for these four small volume applications in FY 1998. With the proposed fee adjustments, the Service will collect approximately $1.8 million. The implementation of this proposed rule will provide the Service with an additional $.5 million in revenue over the revenue that would be collected under the current fee structure. This revenue increase is a recovery of costs based on workload volumes required to process these applications.

Executive Order 12612

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

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping, requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entries for the following forms listed, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$110.00, except there is no fee for a petition seeking classification as an Amerasian.

* * * * *

Form N–300. For filing an application for declaration of intention—$50.00.

Form N–336. For filing request for hearing on a decision in naturalization proceedings under section 336 of the Act—$170.00.

* * * * *

Form N–470. For filing an application for section 316(b) or 317 of the Act benefits—$80.00.

* * * * *

Dated: May 11, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–12375 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–372–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 25, 28, 29, 31, 55, and 60 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 Learjet Model 23, 24, 25, 28, 29, 31, 55, and 60 series airplanes. This proposal would require a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring; installation of a wire ID strap on the left- and right-hand sides of each terminal block; and installation of a warning placard. This proposal is prompted by a report of severe flight control buffeting of a Learjet Model 55 series airplane due to a malfunction of the horizontal stabilizer anti-ice system. The actions specified by the proposed AD are intended to prevent undetected accretion of ice on the leading edge of the horizontal stabilizer, which could result in the loss of pitch control and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–372–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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Jose Flores, Senior Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4133; fax (316) 946–4407.

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–372–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–372–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a Learjet Model 55 series airplane declared an emergency during flight due to severe flight control buffeting; the airplane landed safely. Following a detailed visual inspection of the horizontal stabilizer anti-ice system, it was determined that the wiring on two terminal strips was incorrectly connected, which caused electrical heating elements of the anti-ice system to operate out of sequence and allowed ice to build up on the horizontal stabilizer. When operating correctly, the center electrical heating element is provided with continuous electrical power. Incorrect wiring can cause the center element to cycle on and off and, subsequently, the anti-ice system will not function properly, which can cause the ice to build up on the leading edge of the horizontal stabilizer. Further investigation revealed that during routine maintenance of the airplane's anti-ice system, the wire numbers connecting the airplane wiring through two terminal strips were incorrectly matched to the electrical heating elements in the leading edge, which led to miswiring of the connection. This condition, if not corrected, could result in undetected accretion of ice on the leading edge of the horizontal stabilizer, and consequent loss of pitch control and reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Learjet Service Bulletins SB 23/24/25–30–3, (for Model 23, 24, and 25 series airplanes), SB 28/29–30–3 (for Model 28 and 29 series airplanes), SB 31–30–05 (for Model 31 series airplanes), SB 55–30–3 (for Model 55 series airplanes), and SB 60–30–4 (for Model 60 series airplanes); all dated October 27, 1998; which describe procedures for a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring; installation of a wire ID strap on the left- and right-hand sides of each terminal block; and installation of a warning placard. The new placard will provide clear and visible warning that reads: ''WARNING—PROPER CONNECTION OF BOOT WIRING IS CRITICAL, REFER TO WIRING/SERVICE MANUAL.'' 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 require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins recommend accomplishing the detailed visual inspection and installations within 300 flight hours (after the release of the service bulletin), the FAA has determined that a compliance time of 300 flight hours would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection and installations (one work hour). In light of all of these factors, the FAA finds a 100-flight-hour compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 1,010 airplanes of the affected design in the worldwide fleet. The FAA estimates that 806 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection and installations, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,360, or $60 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:

Learjet: Docket 98–NM–372–AD.

Applicability: Model 23, 24, 25, 28, 29, 31, 55, and 60 series airplanes; as listed in Learjet Service Bulletins SB 23/24/25–30–3, SB 28/29–30–3, SB 31–30–05, SB 55–30–3, and SB 60–30–4, all dated October 27, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected accretion of ice on the leading edge of the horizontal stabilizer, which could result in the loss of pitch control and consequent reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Within 100 flight hours after the effective date of this AD: Perform a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring, in accordance with Learjet Service Bulletins SB 23/24/25–30–3, (for Model 23, 24, and 25 series airplanes), SB 28/29–30–3 (for Model 28 and 29 series airplanes), SB 31–30–05 (for Model 31 series airplanes), SB 55–30–3 (for Model 55 series airplanes), or SB 60–30–4 (for Model 60 series airplanes); all dated October 27, 1998; as applicable.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Action

(1) If no discrepancy is detected during the inspection required by paragraph (a) of this AD: Concurrent with the inspection, install a wire ID strap on the left- and right-hand sides of each terminal block, and install a warning placard on each terminal block, in accordance with the applicable service bulletin.

(2) If any discrepancy is detected during the inspection required by paragraph (a) of this AD: Prior to further flight, repair the discrepancy in accordance with the procedures specified in Chapter 30 of the Learjet Airplane Wiring Manual. Concurrent with the repair, install a wire ID strap on the left- and right-hand sides of each terminal block, and install a warning placard on each terminal block; in accordance with the applicable service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

(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.

Issued in Renton, Washington, on May 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12298 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

Proposed Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the Orlando Class B airspace area, Orlando, FL; and the Orlando Sanford Airport Class D airspace area, Sanford, FL. Specifically, this action proposes to modify several subareas within the lateral boundaries of the existing Orlando Class B airspace area; and lower the vertical limits of the Orlando Sanford Airport Class D airspace area. The FAA is proposing this action to enhance safety, reduce the potential for midair collision, and improve the management of air traffic operations into, out of, and through the Orlando terminal area while accommodating the concerns of airspace users.

DATES: Comments must be received on or before June 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 95–AWA–4, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and should be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWA–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

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/nara 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 Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

The coordinates for this airspace docket are based on North American Datum 83. Class B and Class D airspace areas are published, respectively, in paragraphs 3000 and 5000 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B and Class D airspace areas listed in this document would be subsequently published in this Order.

Related Rulemaking Actions

On May 21, 1970, the FAA published, in the **Federal Register**, the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published, in the **Federal Register**, the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule, in part, requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated TCA (now known as Class B airspace area) primary airport from the surface up to 10,000 feet MSL. This rule also provides an exclusion for those aircraft not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system) balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published, in the **Federal Register**, the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a TCA (now known as Class B airspace area) to hold at least a private pilot certificate. Excepted from this requirement are student pilots who have received certain documented training.

On December 17, 1991, the FAA published, in the **Federal Register**, the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term ''Terminal Control Area'' (TCA) and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in the remainder of this NPRM.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding these major terminal areas increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating in accordance with visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to manage the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people, by giving air traffic control (ATC) the increased capability to provide aircraft separation service.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL) with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Pre-NPRM Public Input

As announced in the **Federal Register** on July 23, 1992 (57 FR 32834) an informal airspace meeting was held on September 23, 1992, at the Orlando Executive Airport. The purpose of this meeting was to provide local airspace users an opportunity to present input on the planned modifications to the Orlando Class B airspace area.

Additional informal airspace meetings were held on January 27 and January 28, 1998 (63 FR 71043) at the Orlando Sanford Airport, and the Kissimmee Municipal Airport respectively, to discuss planned changes, in addition to those presented in 1992. These additional changes are necessitated in part by the growth of airport operations at the Orlando Sanford Airport, FL. All comments received in response to the initial and subsequent informal airspace meetings, and the ensuing comment periods, were considered and/or incorporated into this notice of proposed rulemaking.

In response to initial and subsequent informal airspace meetings, the FAA received eleven written comments. These comments centered around the following: airspace configuration; equipment requirements; geographical landmarks; and flyways/corridors. An analysis of the comments and the Agency's response follows.

Analysis of Comments

Airspace Configuration

Several commenters recommended that the ceiling of the Orlando Class B airspace area be lowered from the existing 10,000-foot ceiling to 7,000 feet.

The FAA does not agree with these commenters. A ceiling at 10,000 feet supports IFR approach and departure procedures for the Orlando terminal area, and provides optimum use of the airspace to contain aircraft operations, and enhance aviation safety. The current ceiling of 10,000 feet is required for the separation, segregation, and control of aircraft operations, creating a safer environment in this congested terminal area.

The Air Line Pilots Association (ALPA) opposed raising the floors to the north in Area D from 1,600 to 2,100 feet MSL, and to the south of Orlando International Airport in Area C, from the current designated altitudes of 1,500 to 1,600 feet MSL. ALPA believes that raising the floors to the north and south of the Class B airspace area would reduce separation standards between IFR and VFR aircraft, and increase traffic conflicts and pilot deviations at critical phases of flight.

The FAA does not agree with these comments. In order to effectively design a safe and efficient airspace area, the FAA examined several factors, including the required climb gradients for departing aircraft, the standard rate

of descent for landing aircraft, and the requirement for operations to be contained within the Class B airspace area. Based on this examination, the FAA believes that the floor in Area D could be raised from 1,600 to a newly proposed 2,000 feet MSL, and Area C from 1,500 to 1,600 feet MSL without compromising safety.

Several recommendations were received to raise the floor of Area E north and south of Orlando International Airport from 3,000 to 6,000 feet MSL.

The FAA does not agree with this recommendation. Currently the floor of the Class B airspace area is designated at 3,000 feet MSL between a 10- to 25-mile radius of the Orlando International Airport. The designated floor of Area E, north and south of the Orlando International Airport, is required to allow sufficient airspace for sequencing arriving and departing aircraft into and out of the Orlando terminal area.

One commenter suggested eliminating the extensions to the Class B airspace area, in the vicinity of the LAMMA and LEESE intersections, and in the vicinity of the Lakeland Airport.

The FAA agrees with this suggestion. Based on current arrival routes and altitudes, the FAA is proposing to reduce the current Class B airspace area by removing the extensions northeast, northwest, and southwest of the Orlando International Airport.

Several pilots recommended removing the Mid-Florida Airport from the Class B airspace area, or raising the floor of the airspace between 20–30 NM northwest of Orlando International Airport.

The FAA agrees with this recommendation, and proposes to raise the floor in Area F over the Mid-Florida Airport from 3,000 to 6,000 feet MSL.

Two commenters recommended a higher ceiling for the Class B airspace area south of the Orlando Executive Airport. These commenters are of the opinion that a higher ceiling would provide additional airspace for aircraft operating on Runways 13/31 when the Orlando Executive Airport tower is closed.

The FAA agrees, in part, with this recommendation. The area south of the Orlando Executive Airport has been raised to 900 feet MSL, and the proposed boundary of the 1,600 feet MSL floor relocated to the Lake Underhill Road. These proposed changes will allow improved access for operations to and from Runway 13/31, and will allow Law Enforcement and Lifeguard helicopter operations below the floor of the Class B airspace area.

One commenter stated that Area E, located east of Orlando International Airport, should be eliminated because it appears to have little significance. This commenter also suggested that the northwest edge of the inner core, Area A, would have a negative impact on the approaches to Runway 07/25 at Orlando Executive Airport.

The FAA disagrees with this comment. Area E, east of Orlando International Airport, is required to contain approach procedures, and to ensure that aircraft remain in the Class B airspace area. Area A has been modified since the 1992 proposal and the proposed rule only encompass a 5-NM circle around the Orlando International Airport.

Equipment Requirements

One commenter recommended eliminating the area commonly known as the Mode C veil area.

The FAA does not agree with this comment. In response to the Department of Transportation and Related Agencies Appropriation Bill, 1988 (Pub. L. 100–202) and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) the FAA published, in the **Federal Register**, the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356; June 21, 1988). This rule, commonly referred to as the ''Mode C rule,'' requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule also provides an exclusion for those aircraft not originally certificated with an engine-driven electrical system, (or those that have not subsequently been certified with such a system) balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

The commenter is correct that the proposed airspace area will have a veil area wherein a transponder with altitude encoding capability will be required. Section 91.215 of Title 14 of the Code of Federal Regulations (CFR) sets out requirements for ATC transponder and altitude reporting equipment and use; however, this regulation also includes procedures whereby aircraft not equipped with the required transponder equipment may get relief from the stipulated requirements.

Landmarks/Fixes

Several commenters recommended using additional geographical landmarks to define the boundaries or subareas of the proposed Class B airspace area, and the establishment of VFR corridors or VFR flyways for the Orlando terminal area.

The FAA agrees with the concept of these comments. Identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR, providing assistance with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design, consideration was given to utilizing Global Positioning System coordinates, Very High Frequency Omnidirectional Radio Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks wherever possible. The FAA will continue to work with airspace users to determine the feasibility of VFR flyways, and to further identify any additional landmarks to assist GA operators with identifying the Class B airspace area.

Corridors/Flyways

Several pilots recommended the establishment of an uncontrolled east-west VFR corridor over Orlando International Airport. The Experimental Aircraft Association also supported this recommendation, and suggested that an east-west special flight rules area be established.

The FAA does not agree with these recommendations, and believes that the establishment of an east-west special flight rules area, or an uncontrolled VFR corridor would restrict the flow of air traffic, and impede operations in the Orlando terminal area. Current approach procedures place a large volume of the aircraft arriving at the Orlando International Airport on the east downwind leg of flight while descending to 3,000 feet. The purpose of a Class B airspace area is to provide optimum use of the airspace to contain aircraft operations and enhance aviation safety, creating a safer environment in congested terminal areas. Establishing a VFR corridor in close proximity to aircraft operating in the Orlando Class B airspace area raises the potential for conflict.

The Proposal

The FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Orlando Class B airspace area, Orlando, FL; and the Orlando Sanford Airport Class D airspace area, Sanford, FL. This proposal (as depicted on the attached chart) would modify several subareas within the lateral boundaries of the existing Class B airspace area; and modify the vertical limits of the Orlando Sanford Airport Class D airspace area.

The FAA is proposing this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the Orlando terminal area. Specifically, the FAA proposes the following:

Orlando Class B Airspace Area

Area A. In the reconfiguration of Area A (that area beginning at the surface up to 10,000 feet MSL), the FAA proposes to reduce the size of Area A to a 5-mile radius of the primary airport, Orlando International Airport. This proposed airspace modification would contain large turbojet aircraft within the limits of the Class B airspace area while operating to and from the primary airport. In addition, a portion of Area A beyond 5 NM would be removed from the surface area and reconfigured as Area B.

Area B. The FAA proposes to reconfigure Area B from a section of the current surface area, between the 5-mile radius of the primary airport, extending west to the John Young Parkway, north to Lake Underhill Road, east to the Stanton Power Plant, and south to the Orlando VORTAC 14 Distance Measuring Equipment (DME), extending upward from 900 feet MSL. This proposed modification would support approach and departure procedures for aircraft transitioning to and from the Orlando International Airport. Also, this proposed airspace modification would allow Law Enforcement and Lifeguard helicopter operations below the floor of the Class B airspace area.

Area C. The floor of Area C would remain at 1,600 feet MSL north of the Orlando Executive Airport; however, the FAA proposes to modify the lateral limits of Area C to extend north of Lake Underhill Road, south of S.R. 436, east of S.R. 423 and S.R. 434, and extending 8 miles east of the Orlando Executive Airport. This proposed airspace modification would support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport.

The FAA also proposes to lower the floor of Area C from 3,000 to 1,600 feet MSL, extending 3 miles to the north and south of the Orlando Sanford Airport, east of the Wekiva River, and west of Lake Harney's eastern shore. This proposed airspace modification would support approach procedures for large turbojet aircraft operations transitioning to and from the Orlando Sanford Airport.

In addition, the FAA proposes to raise the floor of Area C from 1,500 to 1,600 feet MSL, extending south of the Orlando VORTAC 14 DME arc, north of the Orlando VORTAC 20 DME arc, and between 2 and 13 miles east of the Kissimmee Airport. This proposed airspace modification would support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport. This modification would also allow nonparticipating aircraft sufficient airspace to conduct VFR operations below the vertical limits of the Class B airspace area while transitioning to/from secondary satellite airports.

Area D. The FAA is proposing to modify Area D by raising the floor of the area 10 miles north of the Orlando International Airport from 1,600 to 2,000 feet MSL, and the area southwest of the Orlando International Airport from 1,500 to 2,000 feet MSL. This proposed area extends between S.R. 423 and Kirkman Road, 6 to 9 miles west of the primary airport, between 2 miles north and 5 miles south of the Kissimmee Airport, and between 7 miles and 11 miles north of the Orlando VORTAC. This proposed airspace modification would provide sufficient airspace for sequencing and vectoring arriving and departing aircraft in close proximity to the primary airport. It would also increase the navigable airspace below the Class B airspace area in the vicinity of Kissimmee Municipal Airport.

Area E. The floor of Area E would remain at 3,000 feet MSL; however, the FAA is proposing to expand the lateral limits of Area E to the north and south. The FAA proposes to extend Area E 3 miles west of the Wekiva River, and between 3 to 6 miles north of the Orlando Sanford Airport. This proposed airspace modification would provide sufficient airspace for sequencing and vectoring aircraft, and ensure that operations are contained within the Class B airspace area.

The FAA also proposes to extend Area E between the 20-mile and 30-mile arcs south of the primary airport, and between 7 miles and 15 miles east of the primary airport. This proposed airspace modification would provide sufficient airspace for sequencing and vectoring aircraft, and would provide a controlled environment for aircraft arriving and departing the Class B airspace area.

Area F. The FAA proposes to reconfigure the subareas of the existing Class B airspace areas as Area F, from 6,000 up to and including 10,000 feet MSL, extending from 8 miles west of the primary airport to Highway 27. This proposed airspace modification would provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

The FAA also proposes to modify Area F from the power line located approximately 15 miles east of the primary airport, eastward, to the power line located approximately 22 miles east of the primary airport. This proposed airspace modification would provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

Orlando Sanford Airport Class D Airspace Area

The FAA proposes to lower the Orlando Sanford Airport Class D airspace area from 3,000 to 1,600 feet MSL. The Orlando Sanford Airport Class D airspace area would include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MSL. This proposed airspace modification coincides with the FAA's proposal to lower the floor of the Class B airspace area in the vicinity of the Orlando Sanford Airport.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA proposes to modify the Orlando Class B and the Orlando Sanford Airport Class D airspace areas. The Orlando Class B airspace area modification would maintain the 10,000 feet mean sea level (MSL) airspace ceiling and redefine the lateral limits of several of the existing subareas to

improve the management of air traffic operations in the Orlando terminal area. The Orlando Sanford Airport Class D airspace area modification would lower the airspace area from 3,000 to 1,600 feet MSL and would include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MSL.

The FAA has determined that the modification of the Orlando Class B and the Orlando Sanford Airport Class D airspace areas would improve the operational efficiency while maintaining aviation safety in the terminal area. Also, clearer boundary definition and changes to lateral and vertical limits of the subareas would leave additional noncontrolled airspace for VFR aircraft transitioning to and from satellite airports. This proposal would impose only negligible costs on airspace users and could potentially reduce circumnavigation costs to some operators.

The proposed rule would result in negligible additional administrative costs to the FAA and no additional operational costs for personnel or equipment to the agency. Notices would be sent to pilots within a 100-mile radius of the Orlando International Airport at an estimated cost of $2,931.00 for postage. Printing of aeronautical charts which reflect the changes to the Class B and Class D airspace areas would be accomplished during a scheduled chart printing, and would result in no additional costs for plate modification and updating of charts. Furthermore, no staffing changes would be required to maintain the modified Class B and Class D airspace areas. Potential increase in FAA operations workload could be absorbed by current personnel and equipment.

In view of the negligible cost of compliance, enhanced aviation safety, and improved operational efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would have a de minimus impact on small entities. All commercial and general aviation operators who presently use the Orlando International Airport are equipped to operate within the modified Class B airspace area. As for aircraft that regularly fly through the Orlando Sanford Airport Class D airspace area, since the airport is situated within the established Orlando Mode C Veil, all aircraft should already have the necessary equipment to transition the modified Class B airspace area. Therefore, there would be no additional equipment cost to these entities.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

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 of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. 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 would 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, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) there are no requirements for information collection associated with this notice.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 3000—Subpart B—Class B Airspace

* * * * *

ASO FL B Orlando, FL [Revised]

Orlando International Airport (Primary Airport)
(Lat. 28°25′44″ N., long. 81°18′58″ W.)
Orlando VORTAC
(Lat. 28°32′34″ N., long. 81°20′06″ W.)

Boundaries

Area A—That airspace extending upward from the surface to and including 10,000 feet MSL within a radius of 5 NM from the Orlando International Airport.

Area B—That airspace extending upward from 900 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of State Road (S.R.) 423 (John Young Parkway) and Interstate 4, thence northeast along Interstate 4 to the intersection of Interstate 4 and S.R. 441 (Orange Blossom Trail), thence direct to the intersection of Lake Underhill Road and Palmer Street, thence east along Lake Underhill Road to the intersection of Lake Underhill Road and the Central Florida Greenway, thence direct to lat. 28°30′00″ N., long. 8°11′00″ W., (one mile northwest of the Stanton Power Plant), thence south to the intersection of the ORL VORTAC 14-mile radius arc, thence clockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of S.R. 423, thence north along S.R. 423 to the point of beginning.

Area C—That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of the Wekiva River at lat. 28°44′00″ N., long. 81°25′30″ W., thence north along the Wekiva River to the intersection of lat. 28°50′00″ N. Thence east to lat. 28°50′00″ N., long. 81°02″30″ W., thence south to the intersection of lat. 28°44′00″ N., long. 81°02′30″ W., thence west to the point of beginning.

Also that airspace north of the Orlando Executive Airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and S.R. 423. Thence north along S.R. 423 to the intersection of S.R. 423 and S.R. 441 (Orange Blossom Trail). Thence direct to the intersection of S.R. 434 (Forest City Road) and S.R. 424 (Edgewater Drive), thence north along S.R. 434 to the intersection of S.R. 436 (Altamonte Drive.), thence east along S.R. 436 to the intersection of Hwy 17–92, thence east along lat. 28°39′20″ N., to long. 81°11′00″ W. Thence south to the intersection of lat. 28°30′00″ N., thence northwest direct to the intersection of Lake Underhill Road and S.R. 417 (Central Florida Greenway), thence west along Lake Underhill Road to the intersection of Palmer Street. Thence southwest direct to the intersection of Interstate 4 and the S.R. 441, thence southwest along Interstate 4 to the point of beginning.

Also that airspace south of the primary airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of long. 81°24′06″ W. and the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise along the ORL VORTAC 20-mile radius arc to long. 81°24′06″ W., thence north to the point of beginning.

Area D—That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and long. 81°27′30″ W., thence north to lat. 28°44′00″ N., thence east to long. 81°11′00″ W., thence south to lat. 28°39′20″ N., thence west to the intersection of S.R. 436 and Hwy 17–92, thence west along S.R. 436 to the intersection of S.R. 436 and S.R. 434, thence south along S.R. 434 to the intersection of S.R. 434 and S.R. 424, thence direct to the intersection of S.R. 423 and S.R. 441, thence south along S.R. 423 to the intersection of the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to long. 81°24′06″ W. thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise to the intersection of long. 81°27′30″ W., thence north to the point of beginning.

Area E—That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of lat. 28°44′00″ N., long. 81°27′30″ W., thence north to the intersection of lat. 28°53′00″ N., thence east to the intersection of the MCO Mode C Veil 30-NM radius arc, thence southeast along this arc to the intersection of the power lines at lat. 28°50′20″ N., thence southeast along these power lines to lat. 28°44′00″ N., thence west to long. 81°02′30″ W., thence north to lat. 28°50′00″ N., thence west to the intersection of the Wekiva River, thence south along the Wekiva River to lat. 28°44′00″ N., thence west to the point of beginning.

Also that airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at a point of the intersection of long. 81°27′30″ W. and the ORL 20-mile radius arc, thence counterclockwise along the 20-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″ W., thence north to the intersection of lat. 28°44′00″ N., thence east to the intersection of the Florida Power transmission lines at lat. 28°44′00″ N., long. 81°05′20″ W., (one half mile west of Southerland Airport), thence south along this power line to the intersection of Highway 50 at lat. 28°32′10″ N., long. 81°03′45″ W., thence south to the Bee Line Expressway, at lat. 28°27′05″ N., long. 81°03′45″ W., thence west along the Bee Line Expressway to the intersection of lat. 28°27′00″ N., long. 81°04′40″ W., thence south to the intersection of the ORL VORTAC 30-mile radius arc, thence clockwise along the 30-mile radius arc of the ORL VORTAC to long. 81°27′30″ W., thence north to the point of beginning.

Area F—That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at the intersection of the ORL VORTAC 30-mile radius arc and long. 81°27′30″ W., thence clockwise to the intersection of Highway 27, thence north along Highway 27 to the intersection of Highway 27 and long. 81°45′00″ W., thence north along long. 81°45′00″ W. to the intersection of the ORL VORTAC 24-mile radius arc, thence clockwise along the 24-mile radius arc to the intersection of lat. 28°53′00″ N., thence east to lat. 28°53′00″ N., long. 81°27′30″ W., thence south to the point of beginning.

Also that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Florida Power transmission lines at lat. 28°44′00″ N., long. 81°05′20″ W., thence east along lat. 28°44′00″ N. to the Florida Power transmission lines at lat. 28°44′00″ N., long. 81°55′40″ W., thence southeast and south along these power lines to the intersection of Highway 50, thence south to the power lines at lat. 28°22′14″ N., long. 80°52′30″ W., thence southwest along these power lines to the intersection of long. 81°04′40′° W., thence north along long. 81°04′40″ W., to the intersection of the Bee Line Expressway at lat. 28°27′05″ N., long. 81°04′40″ W., thence east along the Bee Line Expressway to lat. 28°27′00″ N., long. 81°03′45″ W., thence north to the intersection of Highway 50 and the Florida Power transmission lines at lat. 28°32′10″ N., long. 81°03′45″ W., thence north along these power lines to the point of beginning.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ASO FL D Sanford, FL [Revised]

Orlando Sanford Airport, FL [formerly known as the Central Florida Regional Airport]
(Lat. 28°46′44″ N., long. 81°14′18″ W.)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.4-mile radius of the Orlando Sanford Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

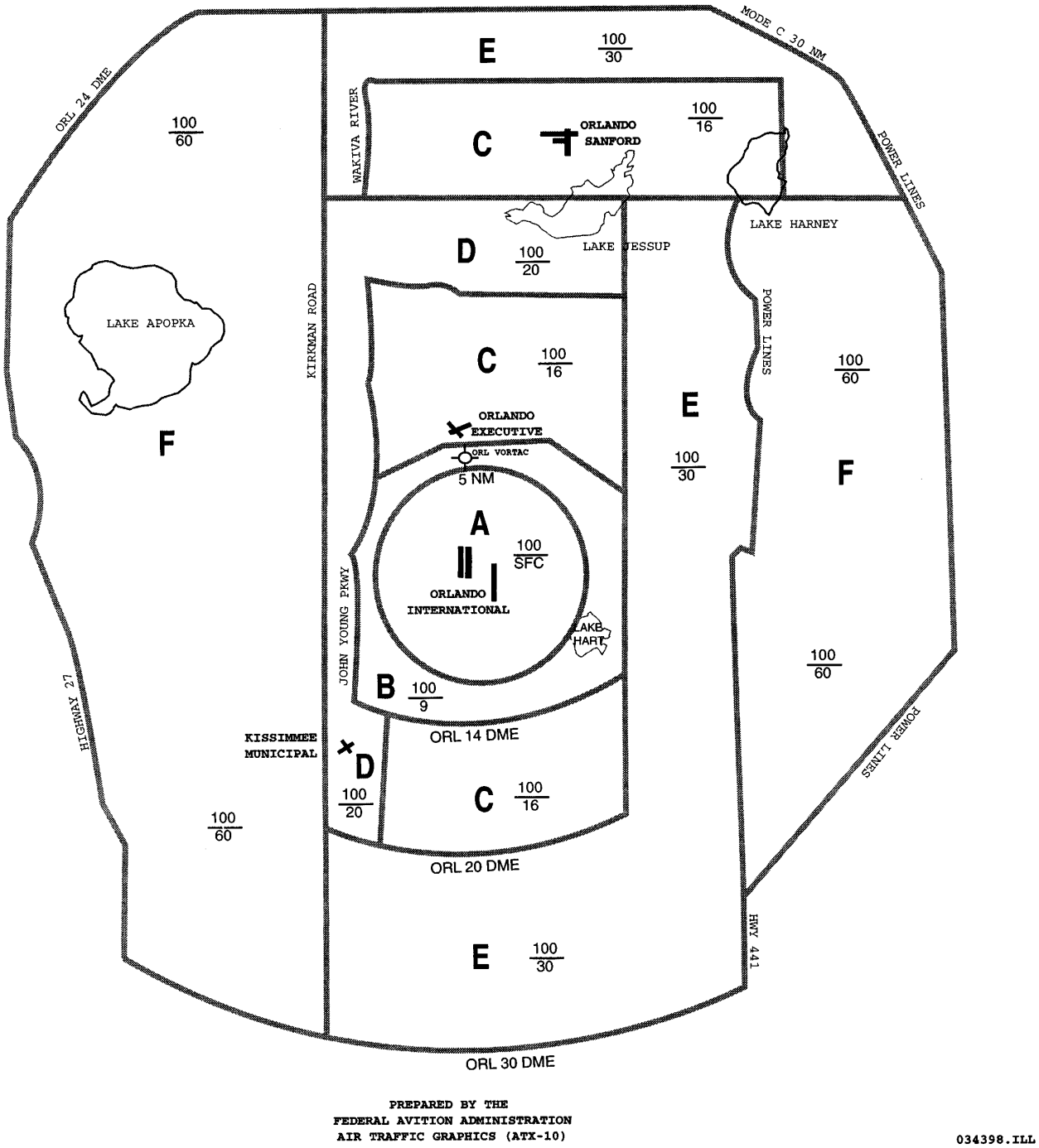
Issued in Washington, DC, on May 11, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

Appendix—Proposed Orlando Class B Airspace



[FR Doc. 99–12360 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–31]

Proposed Modification of Class E Airspace; Sheridan, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Sheridan, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 05, and a GPS SIAP to Rwy 23, have been developed for Sheridan Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before June 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–31.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Sheridan, IN, to accommodate aircraft executing the proposed GPS Rwy 05 SIAP, and the GPS Rwy 23 SIAP, at Sheridan Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * &

AGL IN E5 Sheridan, IN [Revised]

Sheridan Airport, IN
(Lat. 40°10′41″ N., long. 86°13′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Sheridan Airport, excluding

that airspace within the Indianapolis Terry Airport, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 27, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–12276 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–775]

RIN 1218–AA65

Steel Erection Negotiated Rulemaking Committee; Re-establishment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Re-establishment of the Steel Erection Negotiated Rulemaking Advisory Committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to re-establish the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) so that the Committee can complete its charge to make recommendations to OSHA on a proposed rule for steel erection activities in construction. The re-establishment of the charter will allow SENRAC to continue its work for a period of two years or until the promulgation of the final standard, whichever occurs first.

DATES: The Charter will be filed on June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. I) and the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.*, the Secretary of Labor has determined that the re-establishment of SENRAC is in the public interest, to assist in the development of workplace standards under the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*).

SENRAC is composed of 20 members including representatives from labor, industry, small business, public interests and government agencies appointed by the Secretary of Labor.

The Committee is still considering an issue that was a part of its original mandate involving the standards governing slippery metal deck surfaces. The Committee will seek information, data, studies, and views from the public to assist in developing a recommendation on this issue.

Meetings of this committee will be announced in the **Federal Register** and are open to the public.

Interested parties are invited to submit comments, in quadruplicate, regarding the re-establishment of the committee to the Docket Officer, Docket S–775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2624, 200 Constitution Avenue, NW, Washington, DC 20210; (202) 219–7894.

Signed at Washington, DC this 29th day of April, 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–12293 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6344–8]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste at the Los Alamos National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: ''Los Alamos National Laboratory Transuranic Waste Quality Assurance Project Plan, Revision 2, April 26, 1999'' and ''Los Alamos National Laboratory Transuranic Waste Certification Plan, Revision 2, April 26, 1999''. These documents are available for review in the public dockets listed in **ADDRESSES.** The EPA will use these documents to evaluate waste characterization systems and processes at LANL that primarily utilize a High Efficiency Neutron Counter (HENC) and other methods of solid coring and sampling to measure important waste characteristics. In accordance with EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes at LANL the week of June 14, 1999, to verify that the proposed systems and processes at LANL can characterize transuranic waste at issue properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on these documents as they apply to the scope of the inspection announced in this notice. Comments must be received by EPA's official Air Docket on or before June 16, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents ''Los Alamos National Laboratory Transuranic Waste Quality Assurance Project Plan, Revision 2, April 26, 1999'' and ''Los Alamos National Laboratory Transuranic Waste Certification Plan, Revision 2, April 26, 1999'' are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday–Thursday, 8 am–9 pm, Friday, 8 am–5 pm, Saturday–Sunday, 1 pm–5 pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday–Thursday, 8 am–12 pm, Friday, 8 am–5 pm, Saturday, 9 am–5 pm, and Sunday, 1 pm–9 pm.

Copies of items in the docket may be requested by writing Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jim Oliver, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line,

1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: General background for this document is identical to that provided in previous **Federal Register** documents. (See 64 FR 18870, 64 FR 14418)

EPA inspected certain waste characterization processes at LANL prior to certification of the WIPP. DOE is proposing to use processes that EPA did not previously inspect at LANL that use the High Efficiency Neutron Counter (HENC) or solid coring and sampling as primary methods for measuring important waste characteristics.

The LANL documents submitted to EPA are: ''Los Alamos National Laboratory Transuranic Waste Quality Assurance Project Plan, Revision 2, April 26, 1999'' and ''Los Alamos National Laboratory Transuranic Waste Certification Plan, Revision 2, April 26, 1999''. The ''Los Alamos National Laboratory Transuranic Waste Quality Assurance Project Plan, Revision 2, April 26, 1999 '' sets forth the quality assurance program applied to TRU waste characterization at LANL. The ''Los Alamos National Laboratory Transuranic Waste Certification Plan, Revision 2, April 26, 1999'' sets forth the waste characterization procedures for TRU wastes at LANL. After EPA reviews these documents, EPA will conduct an inspection of LANL the week of June 14, 1999, to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Condition 3 of the EPA's WIPP certification decision (Appendix A to 40 CFR part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship additional TRU waste from LANL. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: May 12, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–12459 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 444

[FRL–6343–5]

Notice of Availability; Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Waste Combustors Subcategory of the Waste Combustors Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Data availability related to proposed rule.

SUMMARY: On February 6, 1998 EPA proposed effluent limitations guidelines and pretreatment standards for the Industrial Waste Combustor (IWC) Subcategory of the Waste Combustors Point Source Category to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (63 FR 6391). The comment period for the proposal closed on May 7, 1998.

Today, EPA is making available for public review and comment new data on wastewater treatment system performance at IWC facilities. EPA is considering using these data to derive final effluent limitations and pretreatment standards for the IWC Subcategory.

EPA is soliciting comments only on the new information and data being made available today.

DATES: Submit an original and three copies of your comments on or before June 16, 1999.

ADDRESSES: Submit comments to Ms. Samantha Hopkins at the following address: US EPA, Engineering and Analysis Division (4303), 401 M. St. SW, Washington, DC 20460.

The data being made available today may be found in the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB–57, 401 M. St. SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Samantha Hopkins at (202) 260–7149 or at the following e-mail address: Hopkins.Samantha@epa.gov.

SUPPLEMENTARY INFORMATION: On February 6, 1998 EPA proposed effluent limitations guidelines and pretreatment standards (63 FR 6391) for the Industrial Waste Combustor (IWC) Subcategory. The comment period closed on May 7, 1998. These comments may be reviewed in the Water Docket at EPA Headquarters (see address above).

In early 1999, subsequent to the close of the comment period, EPA received wastewater treatment performance data from three IWC facilities. The new data are now available for review in the Water Docket in Section 16.4 of the record for this rulemaking. EPA is evaluating the new data for its usefulness in establishing final effluent limitations and standards. The Agency invites comment on the new data, which are summarized below.

The three facilities provided data to EPA for their wastewater treatment system performance. How EPA used such performance data when it developed the proposed effluent limitations guidelines and standards is described in Section 8 of the Development Document for Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors (EPA 821–B–97–011) and in Section 7 of the record for this rulemaking.

Each of the three IWCs submitted influent and effluent wastewater treatment system performance data and related information on the operation of the treatment systems. Each facility submitted daily measurements for chlorides, total dissolved solids, total suspended solids, sulfate, pH, and 15 metals (aluminum, antimony, arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, selenium, silver, tin, titanium and zinc).

One facility provided 11 days of influent and effluent sampling data from its wastewater treatment system. Its system consists of two stages of chemical precipitation (with each stage followed by solid-liquid separation) followed by sand filtration as the final treatment step. This facility also provided six days of influent and effluent sampling data with ''spiked'' influent levels of cadmium, chromium,

copper, lead, and zinc. The facility artificially increased the influent concentrations of these five metals to simulate periodic peak raw waste conditions.

The second facility provided 30 days of influent and effluent sampling data from its wastewater treatment system. This system consists of two stages of chemical precipitation (with each stage followed by solid-liquid separation).

The third facility provided 30 days of influent and effluent sampling data from its wastewater treatment system. Its system consists of two stages of chemical precipitation (with each stage followed by solid-liquid separation).

Dated: May 7, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–12368 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7286]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller @ fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Colorado	El Paso County and Incorporated Areas.	Calhan Main Channel	Approximately 40 feet downstream of McClasky Road.	None	*6,485
			Approximately 3,740 feet upstream of Eighth Street.	None	*6,548
		Calhan East Tributary	At confluence of Calhan Main Channel	None	*6,525
			Approximately 3,140 feet upstream of confluence of Calhan Main Channel.	None	*6,565

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Calhan Fairground Tributary	Approximately 550 feet downstream of Denver Street.	None	*6,533
			Approximately 810 feet upstream of Boulder Street.	None	*6,561

Maps are available for inspection at the Regional Building, 101 West Costilla Avenue, Colorado Springs, Colorado.

Send comments to The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903.

Maps are available for inspection at the Town of Calhan Town Hall, 556 Colorado Avenue, Calhan, Colorado.

Send comments to The Honorable Albert Kobilan, Mayor, Town of Calhan, P.O. Box 236, Calhan, Colorado 80808–0236.

Missouri	Bull Creek (Village) Taney County.	Bull Creek	Approximately 4,100 feet downstream of State Highway F.	None	*725
			Approximately 450 feet downstream of State Highway F.	None	*728

Maps are available for inspection at the Village of Bull Creek Village Hall, 1886 State Highway F, Bull Creek, Missouri.

Send comments to The Honorable Al Skeen, Mayor, Village of Bull Creek, 1886 State Highway F, Bull Creek, Missouri 65616.

Missouri	Clark County (Unincorporated Areas).	Mississippi River	At County boundary 13,000 feet downstream of confluence of Fox River.	None	*496
			At confluence of Des Moines River and County boundary.	None	*500

Maps are available for inspection at the Clark County Courthouse, 111 East Cort Street, Kohoka, Missouri.

Send comments to The Honorable Eddie Brewer, Presiding Commissioner, Clark County, County Courthouse, 111 East Cort Street, Kohoka, Missouri 63445.

Missouri	Hollister (City) Taney County.	Turkey Creek	At confluence with White River	*716	*716
			Approximately 2,200 feet upstream of the Wastewater Treatment Plant Road, at corporate limits.	None	*748
		White River	At confluence of Coon Creek	*715	*715
			Approximately 1,050 feet (0.2 mile) upstream of U.S. Highway 65.	None	*718

Maps are available for inspection at the City of Hollister City Hall, 294 Esplanade Street, Hollister, Missouri.

Send comments to The Honorable David Tate, Mayor, City of Hollister, P.O. Box 638, Hollister, Missouri 65673.

North Dakota	McHenry County and Incorporated Areas.	Mouse River	Approximately 530 feet downstream from Dam 326.	None	*1,426
			Approximately 260 feet downstream from Schilling Bridge.	None	*1,520

Maps are available for inspection at the McHenry County Auditor's Office, 407 South Main, Towner, North Dakota.

Send comments to The Honorable Scott Mueller, Chairman, Board of McHenry County Commissioners, P.O. Box 147, Towner, North Dakota 58788.

Maps are available for inspection at 101 First Street West, Velva, North Dakota.

Send comments to The Honorable Loren Hammer, President, P.O. Box 475, Velva, North Dakota 58790.

Maps are available for inspection at 4725 19th Avenue North, Velva, North Dakota.

Send comments to The Honorable John Thomas, Chairman, Township of Velva, 4725 19th Avenue North, Velva, North Dakota 58790.

Maps are available for inspection at 570 82nd Street Northeast, Willow City, North Dakota.

Send comments to The Honorable Kenneth Klebe, Chairman, Township of Willow Creek, 570 82nd Street Northeast, Willow City, North Dakota 58384.

Maps are available for inspection at 750 61st Street Northeast, Towner, North Dakota.

Send comments to The Honorable David Haman, Chairman, Township of Newport, 750 61st Street Northeast, Towner, North Dakota 58788.

Maps are available for inspection at 5045 First Avenue Northwest, Karlsruhe, North Dakota.

Send comments to The Honorable Leo Heilman, Chairman, Township of Villard, 225 50th Street Northeast, Karlsruhe, North Dakota 58744.

Maps are available for inspection at 1326 47th Street North, Velva, North Dakota.

Send comments to The Honorable Donald Howe, Chairman, Township of Lebanon, 1326 47th Street North, Velva, North Dakota 58790.

North Dakota	McKinney (Township) Renville County.	Mouse River	Approximately 3,375 feet (.64 mile) downstream of Dam 41.	None	*1,601
			Approximately 1,265 feet (.24 mile) upstream of Swenson Bridge.	None	*1,607

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps are available for inspection at City Hall, Main Street, Tolley, North Dakota.

Send comments to The Honorable Kenneth Johnson, Chairman, Township of McKinney, P.O. Box 97, Tolley, North Dakota 58787.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–12348 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–147; RM–9555]

Radio Broadcasting Services; Congress, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 242A to Congress, Arizona, as a first local aural transmission service. As Congress is not incorporated or listed in the U.S. Census, information is requested regarding the attributes of that locality to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 34–09–24 NL and 112–50–30 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–147, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12300 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–152; RM–9560]

Radio Broadcasting Services; Captain Cook, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 226C1 to Captain Cook, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 19–29–49 NL and 155–55–18 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–152, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12301 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–149; RM–9557]

Radio Broadcasting Services; Dinosaur, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 247C1 to Dinosaur, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 40–14–42 NL and 109–00–30 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–149, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12302 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–148; RM–9556]

Radio Broadcasting Services; Del Norte, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 242A to Del Norte, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 37–40–36 NL and 106–21–12 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–148, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12303 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–150; RM–9558]

Radio Broadcasting Services; Poncha Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 248A to Poncha Springs, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 38–30–42 NL and 106–04–42 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–150, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12304 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–151; RM–9559]

Radio Broadcasting Services; Rangely, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 279C1 to Rangely, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are 40–05–06 NL and 108–48–18 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–151, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12305 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–146; RM–9490]

Radio Broadcasting Services; North Tunica, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 254A to North Tunica, Mississippi, as that community's first local aural transmission service. Coordinates used for this proposal are 34–39–50 NL; 90–28–13 WL.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–146, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12306 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–145, RM–9336]

Radio Broadcasting Services; Mishicot, WI & Gulliver, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bay-Lakes-Valley Broadcasting, Inc. proposing the substitution of Channel 234C3 for Channel 234A at Mishicot, Wisconsin, and modification of the license for Station WGGM to specify operation on Channel 234C3. The coordinates for Channel 234C3 at Mishicot are 44–22–48 and 87–36–58. To accommodate the allotment at Mishicot, we shall propose the substitution of Channel 273C1 for Channel 234C1 at Gulliver, Michigan, and modification of the license for Station WCMM to specify operation on Channel 273C1. The coordinates for Channel 273C1 are 45–58–01 and 86–29–18. Canadian concurrence will be requested for the allotment at Gulliver. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 234C3 at Mishicot or Channel 273C1 at Gulliver, or require petitioner to demonstrate the availability of additional equivalent class channels for use by such parties.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, L.L.P., 1776 K Street, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–145, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12307 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–144, RM–9538]

Radio Broadcasting Services; Arcadia, LA and Wake Village, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Houston Christian Broadcasters, Inc. proposing the substitution of Channel 223C3 for Channel 223A and modification of the construction permit for Station KBHA, Wake Village, Texas. The coordinates for Channel 223C3 at Wake Village are 33–20–00 and 93–58–00. (Section 73.202(b) of the Commission's Rules shows the allotment of Channel 233A at Wake Village instead of Channel 223A. Upon termination of this proceeding, we will correct the FM Table of Allotments to show the correct channel at Wake Village.) To accommodate the substitution at Wake Village, petitioner has requested the substitution of Channel 231C3 for Channel 223A at Arcadia, Louisiana, and modification of the construction permit for Channel 223A to specify operation on Channel 231C3. The coordinates for Channel 231C3 are 32–26–45 and 92–56–49. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 223C3 at Wake Village or require petitioner to demonstrate the availability of additional equivalent class channels for use by such parties.

DATES: Comments must be filed on or before June 28, 1999, and reply comments on or before July 13, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 19th Street, NW, Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–144, adopted April 28, 1999, and released May 7, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–12309 Filed 5–14–99; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

Revisions to the NASA FAR Supplement on Property Reporting Requirements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) to comply with OMB Bulletin 97–01 and make other changes to NASA property reporting requirements. Specific changes include: raising the reporting threshold for certain property categories from $5,000 to $100,000; adding a requirement to include Federal Supply Classification group codes for equipment, unit acquisition costs, and acquisition dates on shipping documents; and adding a statement that contractors are required to furnish, in addition to the information required by the Form 1018, any information specified in supplemental instructions issued by NASA for the current reporting period.

DATES: Comments should be submitted on or before July 16, 1999.

ADDRESSES: Interested parties should submit written comments to James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to jdolvin1@mail.hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358–1279.

SUPPLEMENTARY INFORMATION:

Background

Federal Financial Accounting Standards Number 6, as implemented by OMB Bulletin 97–01, provides for new financial accounting requirements involving depreciation of Government property. New material is being added to NFS Section 1845.7101, Instructions for preparing NASA Form 1018, to explain this change and to say that contractors will now be required to submit supplemental information with the form, and that this information may change from year to year, depending on OMB requirements.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Less than three per cent of NASA contracts with small businesses have property reporting requirements.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, applies to this proposed rule because it contains information collection requirements. However, approval for the additional requirements has already been obtained under OMB Control No. 2700–0017, approving an increase in burden hours from 5,700 to 8,144.

List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1845 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1845 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1845—GOVERNMENT PROPERTY

2. Subpart 1845.71 is revised to read as follows:

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA Form 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy and timeliness of the report are very important. NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal accounting standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain annual data from those records to meet these requirements. Changes in Federal accounting standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NF 1018. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart.

1845.7101–1 Property Classification.

(a) *General.* Contractors shall report costs in the classifications on the NF 1018, as described in this section. For Land, Buildings, Other Structures and Facilities, and Leasehold Improvements, contractors shall report the amount for all items with a unit acquisition cost of $100,000 or more and a useful life of 2 years or more. For Plant Equipment, Special Tooling, Special Test Equipment and Agency-Peculiar Property, contractors shall separately report—

(1) The amount for all items with a unit acquisition cost of $100,000 or more and a useful life of 2 years or more; and

(2) All items under $100,000, regardless of useful life.

(b) *Materials.* Contractors shall report the amount for all *Materials, regardless of unit acquisition cost.*

(c) *Land.* Includes costs of land and improvements to land.

(d) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(e) *Other structures and facilities.* Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences.

(f) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract.

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, and test equipment, including their accessory or auxiliary items).

(h) *Construction in Progress.* Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title.

(i) *Special Tooling.* Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges.

(j) *Special Test Equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment.

(k) *Material.* Includes costs of NASA-owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included.

(l) *Agency-Peculiar Property.* Includes costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include research aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

(m) *Contract Work-in-Process.* Includes costs of all work-in-process; excludes costs of completed items reported in other categories.

1845.7101–2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, centers, and other Government agencies (e.g., between contracts of the same center, contracts of different centers, a contract of one center to that of another center, a center to a contract of another center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245–72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and notification.* The contractor must obtain approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for all types of equipment), unit acquisition costs, original acquisition dates and any other appropriate identifying or descriptive data. Where the DD 250, Material Inspection and Receiving Report, is used as the shipping document, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original acquisition date shall be shown in Block 23, by item. Other formats should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR part 45 and this part 1845 or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA center responsible for their respective contracts when accountability for Government property is transferred to, or received from, other contracts, contractors, NASA centers, or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment when incorporated into that item. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, FSC, unit acquisition cost, acquisition date, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505–2.

1845.7101–3 Unit acquisition cost.

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. For example, the cost may include the following, as appropriate, for the type of property:

(1) Amounts paid to vendors or other contractors;

(2) Transportation charges to the point of initial use;

(3) Handling and storage charges;

(4) Labor and other direct or indirect production costs (for assets produced or constructed);

(5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys;

(6) Acquisition and preparation costs of buildings and other facilities;

(7) An appropriate share of the cost of the equipment and facilities used in construction work;

(8) Fixed equipment and related installation costs required for activities in a building or facility;

(9) Direct costs of inspection, supervision, and administration of construction contracts and construction work;

(10) Legal and recording fees and damage claims;

(11) Fair values of facilities and equipment donated to the Government;

(12) Material amounts of interest costs paid; and

(13) Where appropriate, for Special Test Equipment, Special Tooling, Agency-Peculiar and Contract Work-in-process, related fees, or a prorata

portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(b) The use of weighted average methodologies is acceptable for valuation of Material.

(c) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(d) The contractor shall redetermine unit acquisition costs of items returned for modification or rehabilitation. If an item's original acquisition cost is $100,000 or more, only modifications that improve that item's capacity or extend its useful life two years or more and that cost $100,000 or more shall be added to the original acquisition cost reported on the NF 1018. The costs of any other modifications will be considered to be expensed. If an item's original unit acquisition cost is less than $100,000, but a single subsequent modification costs $100,000 or more, that modification *only* will be reported as an item $100,000 or more on subsequent NF 1018s. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under $100,000, it shall be reported as under $100,000.

(e) The computation of work in process shall include costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory.

1845.7101–4 Types of deletions from contractor property records.

Contractors shall report the types of deletions from the property reportable under a given contract as described in this section.

(a) *Adjusted*. Changes in the deletion amounts that result from mathematical errors in the previous report.

(b) *Lost, Damaged or Destroyed*. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(c) *Transferred in Place*. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(d) *Transferred to Center Accountability*. Deletion amounts that result from transfer of accountability to the center responsible for the contract, whether or not items are physically moved.

(e) *Transferred to Another NASA Center*. Deletion amounts that result from transfer of accountability to a center other than the one responsible for the contract, whether or not items are physically moved.

(f) *Transferred to Another Government Agency*. Deletion amounts that result from transfer of property for reutilization to another Government agency, as a part of the plant clearance process.

(g) *Purchased at Cost/Returned for Credit*. Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605–1, or from contractor returns to suppliers under FAR 45.605–2.

(h) *Disposal Through Plant Clearance Process*. Deletions other than transfers, within the Federal Government e.g., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

1845.7101–5 Contractor's privileged financial and business information.

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA centers. Transfer of the property to the receiving contractor shall be on a no-cost basis.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.245–73 is revised to read as follows:

1852.245–73 Financial Reporting of NASA Property in the Custody of Contractors.

As prescribed in 1845.106–70(d), insert the following clause:

Financial Reporting of NASA Property in the Custody of Contractors (XXX)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505–14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA. Subcontractor use of NF 1018 is not required by this clause; however, the contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(b) The contractor shall submit the original of the NF 1018 to the Center Deputy Chief Financial Officer, Finance, and three copies (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate Center office .]

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by the Government. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report is required within 30 days after disposition of all property subject to reporting when the contract performance period is complete.

(End of clause)

[FR Doc. 99–12372 Filed 5–14–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub–No. 4)]

Modification of the Carload Waybill Sample and Public Use File Regulations

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) solicits comments on modifications to the existing regulations at 49 CFR Part 1244 to require identification of contract movements in the annual Carload Waybill Sample (Waybill Sample), to establish procedures to ensure the confidentiality of contract revenue information in the Waybill Sample, and to limit the period during which the Waybill Sample will remain confidential.

DATES: Comments are due on July 1, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 385 (Sub-No. 4) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, D.C. 20423–0001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533 or James A. Nash, (202) 525–1542. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Railroads that annually terminate 4,500 or more carloads (or 5 percent of the carloads in any state) are required to report data, including revenues, on individual movements contained in a sampling of their traffic. This Waybill Sample is used for a variety of purposes by the Board, parties appearing before the agency and the public in general. Because of the widespread use of confidential transportation contracts in the railroad industry, [1] the Waybill Sample reporting requirements must be tailored to ensure that the Board receives accurate data on contract movements for all carriers and, at the same time, that confidential information regarding those contracts is protected from public disclosure. In addition, the National Archives and Records Administration (Archives) recently indicated that it is interested in maintaining historic Waybill Sample records for future studies. To do so, the confidentiality of these records must expire at some time to allow for future public release.

Proposed Procedures

To enhance the usefulness of the Waybill Sample, both for ourselves and for other parties, and to facilitate the ability of the Archives to maintain historical records, we are considering several changes to our rules and procedures. First, all railroads would be required to identify (flag) those shipments in the Waybill Sample that are governed by transportation contracts. Second, railroads would be required to report the actual revenues for each such contract shipment, although an average revenue value would be substituted for the actual revenues to maintain the confidentiality of the contract rate information. These two changes would fulfill our need for more complete contract data, protect sensitive commercial contract rate information, and allow others to conduct accurate, broad-based economic studies. Third, the confidentiality of such Waybill Sample records would be limited to 20 years.

1. Identification of Contract Shipments

The majority of railroads already identify contract movements in the Waybill Sample and simply ''mask'' the contract revenue information using varying procedures to conceal the actual revenues earned on contract traffic. However, because some carriers do not flag contract movements, we are unable to develop complete information on contract traffic. The Board needs more accurate data to carry out statutorily mandated functions, to provide reports to Congress, and to perform internal studies of the rail industry. Thus, we need to revise our regulations to ensure that all carriers flag contract movements.

There will be no impact on those carriers already flagging contract movements from the new proposed requirement, and these procedures may help safeguard commercially sensitive contract rate information for those carriers that do not now flag contract shipments and whose actual contract revenues may appear in the Waybill Sample. While we may be unaware that a particular movement is a contract shipment, competitors of the shipper or railroad might know that it is a contract movement. In such circumstances, disclosure of the actual unflagged contract rate may be at risk when Waybill Sample data is released to parties for use in individual proceedings before the Board. Thus, while some carriers may have to begin flagging contract shipments, the confidentiality of the contract rate should be better protected under our proposal to mask contract revenue information in a uniform manner.

2. Use of Average Revenue Figures

The masking procedures currently used by some carriers make it impossible for outside parties to conduct accurate revenue based studies from the Waybill Sample data regardless of the level of aggregation. To provide a more useful method of masking all revenue information in the Waybill Sample, we suggest aggregating actual contract and non-contract revenue data, after which we would calculate an average revenue per ton-mile by Standard Transportation Commodity Code (STCC) class within broad geographic areas, such as the nine census regions. We would then use this average value to develop a revenue figure for each waybill by multiplying the average revenue per ton-mile by each movement's shipment tons and miles. The reported actual revenue in each Waybill Sample record would then be replaced by the average revenue number. Sensitive commercial contract information would be protected because we would not identify contract shipment and because actual revenue data would not be released. Nevertheless, the public could conduct accurate, broad-based economic studies because the average revenues would be accurate when aggregated to the appropriate level.

Parties are asked to comment on our suggested masking methodology or to suggest other procedures that could be applied by us or the railroads to meet the same objectives. Comments should address the appropriate level of geographic aggregation and the appropriate level of STCC aggregation (two digit, four digit, etc.) to be used.

3. Waybill Confidentiality Time Limit

Finally, we believe that it should be possible to limit confidential treatment of contract revenue information contained in the Waybill Sample to a 20-year period. The Archives is interested in maintaining the Waybill Sample records for future studies, much as the U.S. Census is maintained. However, in order for historic Waybill Sample records to be useful, a time period must be specified after which confidential data can be made public. It could be as little as ten years, or as much as one hundred years. (Census data is now made public after seventy years.) Because most rail contracts do not exceed a 20-year term, a 20-year confidentiality period may be adequate to protect commercially sensitive shipper and railroad data.

Scope of This Proceeding

While we encourage all parties to comment on the areas we have discussed above, we are not soliciting comments in this proceeding on any other aspects of the collection, design, or release of the Waybill Sample or its associated Public Use Waybill file. Moreover, because no analysis of the Waybill Sample should be needed to comment on this Advance Notice of Proposed Rulemaking, we do not plan to release Waybill Sample data in connection with this proceeding.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude preliminarily that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: May 10, 1999

[1] The Association of American Railroads recently advised the General Accounting Office that 70% of rail traffic moves under contract.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–12334 Filed 5–14–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 12-month Finding on Petitions To Change the Status of Grizzly Bear Populations in the Selkirk Area in Idaho and Washington and the Cabinet-Yaak Area of Montana and Idaho From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We find that reclassification of grizzly bears (*Ursus arctos horribilis*) in the combined Cabinet-Yaak/Selkirk recovery zones of Idaho, Montana, and Washington from threatened to endangered status is warranted but precluded by work on other higher priority species.

DATES: The finding announced in this document was approved on April 20, 1999.

ADDRESSES: You may send questions or comments concerning this finding to U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall 309, University of Montana, Missoula, Montana 59812. You may inspect the petition, finding, and supporting data by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** section) at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, we make a finding within 12 months of the receipt of the petition on whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. When a petition to list a species is found to be warranted but precluded, the species is designated a candidate species. A candidate species is a taxon for which we have on file sufficient information to support issuance of a proposed listing rule. Section 4(b)(3)(C) requires that a petition for which we find the requested action to be warranted but precluded be treated as though it has been resubmitted on the date of such finding; a subsequent finding is to be made on such a petition within 12 months of the initial or previous finding. Notices of such 12-month findings are to be published promptly in the **Federal Register**. The finding reported here is a finding on a petitioned action for which we have made previous 12-month findings.

On February 4, 1991, the Fund for Animals, Inc., petitioned us to reclassify the grizzly bear from threatened to endangered in the Selkirk ecosystem of Idaho and Washington; the Cabinet-Yaak ecosystem of Montana and Idaho; the Yellowstone ecosystem of Montana, Wyoming, and Idaho; and the Northern Continental Divide ecosystem of Montana. We received a second petition dated January 16, 1991, from Mr. D.C. Carlton on January 28, 1991, that requested us to reclassify the grizzly bear from threatened to endangered in the Selkirk ecosystem of Idaho and Washington; the Cabinet-Yaak ecosystem of Montana and Idaho; and the North Cascades ecosystem of Washington. We issued a finding of not warranted for reclassification in the Yellowstone and Northern Continental Divide ecosystems on April 20, 1992 (57 FR 14372–14374). We made a positive 90-day finding for the Selkirk and Cabinet-Yaak ecosystems and initiated a status review in the same notice. We issued a 12-month finding of warranted but precluded for the Cabinet-Yaak ecosystem on February 12, 1993 (58 FR 8250), and again on June 4, 1998 (63 FR 30453). We issued a not warranted finding for the Selkirk ecosystem on February 12, 1993 (58 FR 8250). A lawsuit was subsequently filed challenging our not warranted finding for the Selkirk ecosystem. In 1995, the court remanded the case so that we could provide additional information and analysis regarding the finding (*Carlton* v. *Babbitt*, 900 F. Supp. 526, 531–34, 537–38 (District Court of Washington, DC 1995)).

The court found that we had adequately addressed issues relating to any ''present or threatened destruction, modification, or curtailment of habitat or range.'' However, additional information was requested on overutilization, particularly trends of human-caused mortality. The court requested more information on the relationship between regulatory mechanisms and human-caused mortality, and additional analysis of survivorship and reproductive rates. The court also expressed concerns about the discussion of population connectivity between bears in Canada and the United States. We responded to the court with Supplementary Information for the Court regarding the Not Warranted Petition Finding for the Selkirk Grizzly Bear Population (March 15, 1996).

On October 28, 1998, the court remanded the matter back to us because we had not established that the Selkirk population could sustain the current rate of human-caused mortality, that present regulatory mechanisms were adequate, that the Selkirk population was not endangered simply by virtue of size, and that Canadian habitat would continue to be available to the Selkirk population. On January 21, 1999, we requested additional time to respond to the remand in order to evaluate the Selkirk population in light of our recent policy defining distinct population segments.

We have reviewed our previous findings on the Selkirk population in light of the court's ruling. Based on this reevaluation of the Selkirk population's status, and consideration of our policy on distinct vertebrate population segments, which was adopted after the 1993 petition findings, we believe that it may be appropriate to pursue a change in the listing of the grizzly bear which would recognize the Selkirk recovery zone and the Cabinet-Yaak recovery zone as one distinct population segment. In this finding, we will review the information that has led us to consider such a change because much of this information has direct relevance to the court's concerns about issues not adequately addressed in our previous finding on the Selkirk population. We will consider formally recognizing a distinct population segment that would encompass both the Selkirk and Cabinet-Yaak recovery zones in the near future.

Distinct Population Segments

In conjunction with the National Marine Fisheries Service, we adopted a new policy regarding Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act on February 7, 1996 (61 FR 4722–4725). This policy clarifies 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 Endangered Species Act. This policy has not previously been applied to the Selkirk or Cabinet-Yaak grizzly bear populations.

This policy directs that three elements are to be considered in a decision regarding status of a possible distinct population segment as endangered or threatened. These include:

1. The discreteness of the population segment in relation to the remainder of the species to which it belongs;
2. The significance of the population segment to the species to which it belongs; and
3. The population segment's conservation status in relation to the Endangered Species Act's standards for listing.

Discreteness of the Selkirk and Cabinet-Yaak Grizzly Bear Populations

A population may be considered discrete if it satisfies either of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.
2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Endangered Species Act.

Forty-four grizzly bears were captured and collared from 1983 to 1998 in both the Canadian and United States portions of the Selkirk recovery zone (Wakkinen and Johnson 1997, Wakkinen, pers. comm. 1998). Eighteen of those 44 bears (41 percent) had portions of their home ranges in both the United States and Canada. Four marked bears (9 percent) have made significant moves outside the recovery zone. Two of these bears moved west of the recovery zone. One was an adult male (tag 1049) that denned west of the Salmo River in British Columbia during 1989. In 1995 a subadult male (tag 1023) moved west of the Pend Oreille River in Washington. Three of these bears have moved east of the recovery zone into the Canadian Purcell Mountains just north of the Cabinet-Yaak recovery zone. In 1994 an adult male (tag 13) was captured at a livestock depredation site in the Canadian portion of the Selkirk recovery zone and relocated about 32 kilometers (20 miles) north within the recovery zone. Later in 1994 the same bear was killed east of Kootenay Lake in the Purcell Mountains. In 1996 a subadult male (tag 1022) that was originally captured in the United States portion of the recovery zone was killed east of Kootenay Lake in the Purcell Mountains. In 1998 another subadult male (tag 1023) that was captured in the United States portion of the Selkirk recovery zone was killed on the east side of the Purcell Mountains. This was the same animal that moved west of the recovery zone in 1995. All of these animals were identified by ear tags remaining from original captures inside the recovery zone.

Ten of 20 bears (50 percent) captured south of the international boundary in the Yaak study area of northwest Montana and northern Idaho were monitored crossing into Canada between 1987 and 1998 (Kasworm and Servheen 1995, Kasworm, pers. comm.). No bears were captured during limited trapping efforts in British Columbia. Four of these animals were adult males that spent portions of the spring breeding season in Canada during various years between 1987 and 1998. One of these males, captured in the United States, was observed courting an adult female whose home range occurs largely in Canada. Another adult female whose home range occurs largely in the United States was observed in association with two different adult males in Canada and subsequently produced a litter of cubs. Furthermore, two adult males (tag 134 and 128) originally captured in the United States were monitored up to 32 kilometers (20 miles) north of the border and north of the Moyie River in the Purcell Mountains during breeding season of 1987 and 1992 (10 percent of all captured bears).

Monitoring of grizzly bears in the Selkirk and Cabinet-Yaak recovery zones has shown movement and mingling of approximately 7–10 percent of marked animals from each recovery zone in the Purcell Mountains of southern British Columbia east of Kootenay Lake and northwest of the Moyie River. This area is about 32–80 kilometers (20–50 miles) north of the juncture of the State boundaries of Idaho and Montana and the international border with Canada. Movements were documented on repeated occasions even with small sample sizes. These percentages of marked animals must be viewed as minimum numbers. Knowledge of these movements was obtained because the eartags were recovered at the time of death. Other bears originally tagged in the Selkirk or Yaak study areas may be present in the southern Purcell Mountains, but have not been detected. They must be captured or killed and reported to determine presence of ear tags. Research and associated marking of animals has occurred within the recovery zones and therefore can document movements out of the recovery zones. Documenting movements from the Purcell Mountains into either recovery zone could only be accomplished by marking animals in the former area. However, the fact that movements have been observed out of recovery zones, where bear population densities are likely lower, suggests that movements into the recovery zones are likely. These monitoring results and observations support population connectivity among the Selkirk and Cabinet-Yaak recovery zones and Canadian populations north and west of the Moyie River and east of Kootenay Lake. Habitat in the Purcell Mountains is continuous north from the international boundary for at least 240 kilometers (150 miles) before reaching the Trans-Canada Highway near Revelstoke, British Columbia. The Purcell Mountains are bounded on the west by Kootenay Lake and the community of Nelson and to the east by the Kootenay and Columbia River valleys with the communities of Cranbrook and Kimberly. The west side also is bounded by Highways 95 and 93 and associated developments from the international boundary 240 kilometers (150 miles) north to the junction with Trans-Canada Highway 1 near Golden, British Columbia. Population estimates for this area range from 446–577, depending upon the amount of area included northwest of Kootenay Lake (Simpson *et al.* 1995).

Another potential area of linkage of these two recovery zones exists between the southeastern edge of the Selkirk recovery zone and the western edge of the Cabinet-Yaak recovery zone. Less than 16 airline kilometers (10 airline miles) separate the recovery zones in an area 24 kilometers (15 miles) south of Bonners Ferry, Idaho. This area was identified in the grizzly bear recovery plan as a potential linkage zone and will be evaluated as part of recovery plan linkage zone analysis which is scheduled for completion in late 1999. The area has a mixed ownership consisting of Federal, State, corporate, and other private entities, and includes Highway 95. No grizzly bears have yet been detected crossing this area between recovery zones, but given the low density of grizzly bears in the area, and no radio collared bears in the immediate vicinity, detection is not likely.

Potential connections to other grizzly bear recovery zones from the combined Selkirk/Cabinet-Yaak recovery zones

could include the Northern Continental Divide, North Cascades, Yellowstone, and Bitterroot recovery zones. Since 1975, more than 500 grizzly bears have been radio-collared for monitoring in all ecosystems except the Bitterroot and the North Cascades. Not a single bear has been monitored moving between any of these recovery zones (Servheen 1998). The most likely connection from the combined Selkirk/Cabinet-Yaak area to other recovery zones would be with the Northern Continental Divide because it is the nearest neighbor. Numerous bears have been captured and marked through research efforts in the Northern Continental Divide recovery zone within the United States and directly north in British Columbia. Most notably these efforts have occurred in the North Fork of the Flathead River in the United States and British Columbia, the East Slopes Grizzly Bear study centered around Banff and Jasper National Parks, and the West Slopes study centered around Golden, British Columbia. None of these efforts have documented bears crossing from their study areas into the Purcell Mountains south of Golden, British Columbia, which is about 240 kilometers (150 miles) north of the international boundary (McLellan 1999, Gibeau 1999). Several instances of bears crossing Highway 1 within Canada's Glacier National Park have been documented, but this activity also is about 282 kilometers (175 miles) north of the international boundary in the Purcell Mountain range. These data suggest that Northern Continental Divide grizzly bear populations are likely distinct from the Purcell Mountains for at least 240 kilometers (150 miles) into British Columbia.

A recent assessment of grizzly bear populations in the British Columbia region of the North Cascades indicates that the population is relatively isolated from other populations in British Columbia (Gyug 1998). There were no known populations of grizzly bears immediately to the east and only occasional sightings west and north. The North Cascades appear to be at least 80 kilometers (50 miles) from any relatively continuous grizzly bear population.

The information presented above indicates that movement occurs and a genetic link possibly exists among grizzly bear populations in the Selkirk and Cabinet-Yaak recovery zones. This connection appears to occur within British Columbia and within 32 kilometers (20 miles) of the international boundary. Separately the Selkirk and Cabinet-Yaak grizzly bear recovery zones do not appear to satisfy the first distinct population segment condition for discreteness because they are not markedly separated as evidenced by bear movements. However, the Selkirk and Cabinet-Yaak recovery zones do appear to be markedly separated from Northern Continental Divide, North Cascades, Yellowstone, and Bitterroot recovery zones. Because of the presence of the international boundary, it may be more appropriate in this situation to base discreteness on the second discreteness condition. Reasons are detailed in the analysis of the five listing factors. We find that the Selkirk and Cabinet-Yaak recovery zones are not discrete from one another, but are discrete from the Northern Continental Divide, North Cascades, Yellowstone, and Bitterroot recovery zones.

Significance of the Selkirk and Cabinet-Yaak Grizzly Bear Populations

If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance will be considered in light of congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list distinct populations segments be used ''sparingly'' while encouraging the conservation of genetic diversity. In carrying out this examination, we will consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to the following:

1. Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon,
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or
4. Evidence that the discrete population segment differs markedly from other populations of this species in its genetic characteristics.

Both the Selkirk and Cabinet-Yaak recovery zones could be considered a unique ecological setting, because they contain low elevation inland habitat for grizzly bears. Along the Yaak River and on the east side of the Selkirk Mountains significant portions of the recovery zone occur in areas between 610 meters (2,000 feet) and 1,220 meters (4,000 feet) in elevation. In both the Yellowstone and Northern Continental Divide recovery zones most habitat is well above 1,220 meters (4,000 feet) in elevation. These low elevations and the Pacific maritime climate of the Cabinet-Yaak and Selkirks produce a wet, dense forest dominated largely by cedar and hemlock. These habitat types are either limited or lacking in the Yellowstone and Northern Continental Divide recovery areas and represent an unusual ecological setting for inland grizzly bear populations.

A combined Selkirk/Cabinet-Yaak recovery zone would encompass at least 9,320 square-kilometers (3,600 square-miles) of the 98,420 square-kilometers (38,000 square-miles) of grizzly bear habitat in the United States. This is about 9.5 percent of currently designated habitat, but likely represents a much larger fraction when compared to currently occupied habitat. The North Cascades and Bitterroot recovery zones encompass at least 38,590 square-kilometers (14,900 square-miles), but there appear to be no bears remaining in the Bitterroot and less than 20 animals are believed to exist in the North Cascades. Only the Yellowstone and Northern Continental Divide recovery zones hold populations in excess of 100 animals. In this regard, the combined Selkirk/Cabinet-Yaak becomes one of only three recovery areas that hold a significant populations of bears. Loss of this population would create a significant gap in the range of a species that already exists as only 2 percent of its former numbers and on only 2 percent of its original range in the 48 conterminous States. Based on these factors, we find that these combined recovery zones are significant. Therefore, for the remainder of this notice we will address the combined Selkirk/Cabinet-Yaak recovery zone.

Status of the Selkirk/Cabinet-Yaak Grizzly Bear Recovery Zones

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Endangered Species Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Selkirk and Cabinet-Yaak populations of grizzly bears are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The 1975 listing of the grizzly bear identified a substantial decrease in the range of the species in the conterminous 48 States and stated that timbering and other practices have resulted in an increase in access road and trail construction into formerly inaccessible

areas. Increased access has made bears susceptible to legal hunters, illegal poachers, human-bear conflicts, and livestock-bear conflicts. Since 1975, habitat protection measures have focused on providing secure habitat for bears that lessens opportunity for human-caused mortality.

The United States portion of the Selkirk recovery zone is approximately 80 percent Federal, 15 percent State, and 5 percent private lands. The Cabinet-Yaak recovery zone is approximately 90 percent Federal, 5 percent State, and 5 percent private lands. The Kootenai, Idaho Panhandle, Colville, and Lolo National Forests administer Federal lands within one or both of these recovery zones. However, the Kootenai and Idaho Panhandle National Forests alone administer over 85 percent of these Federal lands. In 1992, 420 square-kilometers (162 square-miles) of habitat was added to the Selkirk recovery zone in the United States. The area was added because of frequent use by radio-collared bears during spring (Wakkinen and Zager 1992). Most of that land is under jurisdiction of the U.S. Forest Service with some State of Idaho land and some private land. In 1997, the Kootenai National Forest completed a land exchange in which 8,670 hectares (21,422 acres) of land owned by Plum Creek Timber Company were placed in public ownership. Almost all of this land was within the Cabinet-Yaak grizzly bear recovery zone. In the British Columbia portion of the Selkirk recovery zone, about 65 percent is crown land (public) and 35 percent is private. The portion of British Columbia directly north of the Cabinet-Yaak is largely crown land with the exception of the Moyie and Kootenay River valleys.

Two large silver and copper mines have been proposed within the Cabinet Mountains. In 1993 the Kootenai National Forest issued an approval to Noranda Minerals Corporation for the Montanore project, but there has been no construction at the site. This mine is projected to operate for 16 years and to extract 18,000 metric tons (20,000 short tons) of ore per day. Asarco's Rock Creek Mine proposal is currently being analyzed with a decision expected in 1999. If approved it would operate for about 30 years, extracting 9,000 metric tons (10,000 short tons) of ore per day. These mine sites are about 10 kilometers (6 miles) apart with one on each side of the Cabinet Mountains Wilderness (Kootenai National Forest 1998).

Access management in the form of restrictions on motorized vehicle use of some roads originated in the late 1970s on the National Forests within the Selkirk and Cabinet-Yaak recovery zones. Most road restrictions have been accomplished with gates or permanent barriers. Gates have been used in cases where restrictions are seasonal to protect specific habitat at critical times of the year or in areas that are scheduled for additional timber management. Recently land managers have begun obliterating some roads and returning the land to its natural contour (Idaho Panhandle National Forest 1998, Kootenai National Forest 1998).

Three ranger districts on the Idaho Panhandle National Forest administer portions of the Selkirk and Cabinet-Yaak recovery zones. Thirty-eight percent of the 4627 kilometers (2,876 miles) of system roads on these districts have some form of restricted access (Idaho Panhandle National Forest 1998). The Kootenai National Forest has 57 percent of its 12,000 kilometers (7,460 miles) of roads under some form of restricted access (Kootenai National Forest 1998). Most of these restrictions occur in grizzly bear habitat. Access management has been monitored through Forest Plan criteria that measure Habitat Effectiveness. These criteria are applied on subunits of the recovery zone known as Bear Management Units (BMUs) which were expected to be about 260 square-kilometers (100 square-miles) and contain all seasonal ranges necessary for an adult female grizzly bear. A criterion defined in the Kootenai Forest Plan is that 70 percent or greater of the BMU will be effective habitat. The criterion defined in the Idaho Panhandle Forest Plan is that 181 square-kilometers (70 square-miles) or greater of the BMU will be effective habitat. Effective habitat is defined as area outside the zone of influence (0.25 mile) of activities on open roads, active timber sales, or active mining operations. In 1990, 9 of 21 BMUs in the Cabinet-Yaak were below standard and 2 of 7 BMUs were below standard in the Selkirk recovery zone. In 1997, 7 of 21 BMUs in the Cabinet-Yaak was below standard and 1 of 8 BMUs was below standard in the Selkirk recovery zone (Kootenai National Forest 1998, Idaho Panhandle National Forest 1998). Cabinet-Yaak BMUs not meeting the criterion varied from 57–68 percent effective habitat. The BMU not meeting the standard in the Selkirks was at 179 square-kilometers (69 square-miles).

Access management also has been addressed by an interagency task force that produced recommendations to standardize definitions and methods (Interagency Grizzly Bear Committee 1994). This report identified three parameters that are recommended as part of access management. These parameters are total motorized route density, open motorized route density, and core area. Total motorized route density includes open and restricted roads and motorized trails. Open motorized route density includes roads and trails open to public motorized use. Both parameters are displayed as a percentage of the analysis area in a defined density category (e.g., 20 percent greater than 3.2 kilometers per square kilometer (2.0 miles per square mile)). Core area is the percentage of the analysis area that contains no motorized travel routes or any restricted roads upon which administrative use may occur. Core areas may contain roads that are impassible due to permanent barriers or vegetation. The report recommended that for each recovery zone specific criteria be developed for route densities and core areas based on female grizzly bears monitored in the recovery zone, other research results, and social or other management considerations.

The interagency group of managers for the Selkirk and Cabinet-Yaak recovery zones are adopting new interim access rules during 1999 (Interagency Grizzly Bear Committee 1998). The interim period will extend for 3 years. Existing Forest Plan standards will remain in place during the interim period, but additional goals will be developed taking into account monitoring results from collared bears (Wakkinen and Kasworm 1997). Additional goals relating to cores were adopted for a subset of BMUs determined by a priority ranking based on sightings of grizzly bears, sightings of female bears with young, and grizzly bear mortality. Priority 1 BMUs would have a goal of 55 percent core area during the interim period. In place of specific goals for open and total motorized route densities in priority 1 BMUs, the committee of managers adopted a policy of no net increase in either of these parameters for the interim period. The policy for BMUs not designated priority 1 includes no net decrease in cores and no net increase in open and total motorized route densities. Seventeen of 32 BMU's were designated priority 1 and will be subject to the new goals. The committee of managers requested additional analysis during the interim period. The report analyzing results from collared bears was not able to integrate habitat quality with road effects because habitat data was not yet available (Wakkinen and Kasworm 1997). Habitat quality data will be developed and integrated into additional analysis of roads on grizzly bears during the interim period.

Forestry, mining, recreation, and road building also affect grizzly bear habitat

in British Columbia. In 1995 the British Columbia provincial government developed a grizzly bear conservation strategy (British Columbia Ministry of Environment, Lands, and Parks 1995). The strategy's mandate is to ensure the continued existence of grizzly bears and their habitats for future generations. The strategy has four goals:

1. To maintain in perpetuity the heterozygosity and abundance of grizzly bears and the ecosystems.
2. To improve the management of grizzly bears and their interactions with humans.
3. To increase public knowledge of grizzly bears and their management.
4. To increase international cooperation in management and research of grizzly bears.

A major goal of the British Columbia Grizzly Bear Conservation Strategy is to ensure effective, enhanced protection and management of habitat through land use planning processes, new protected areas, and the Forest Practices Code. Many of these processes are ongoing, and have not had the opportunity to achieve the stated goals of grizzly bear habitat protection.

Canadian coordination and cooperation have been strengthened through participation in the Interagency Grizzly Bear Committee composed of State and Federal branches of the United States government with jurisdiction over management of grizzly bears and their habitat. We have a scientific representative on the British Columbia Grizzly Bear Scientific Advisory Committee, which makes recommendations directly to the Minister of Environment concerning grizzly bear policy and management. This committee is composed of government and independent grizzly bear scientists from Canada and a scientific representative from the United States (U.S. Fish and Wildlife Service Grizzly Bear Recovery Coordinator) who review all aspects of grizzly bear management and research policy in British Columbia.

The committee was recently critical of the government of British Columbia regarding commitment and timely implementation of the Grizzly Bear Conservation Strategy (British Columbia Grizzly Bear Scientific Advisory Committee 1998). In the 1998 report card issued by the committee, 18 grades were given—1 ''A,'' 2 ''B's,'' 5 ''C's,'' 4 ''D's,'' and 6 ''F's.'' Grades of ''A'' and ''B'' were given for international liaison, bear viewing, and education. Most habitat protection grades were F's, and the key area of funding also received an F. Two major criticisms were that ''no Grizzly Bear Management Areas have been established to ensure benchmark, linkage and core areas are delineated and that the Identified Wildlife Management Strategy has not been implemented to protect critical habitats of grizzly bear under the Forest Practices Code.''

The provincial ministry has responded to these criticisms and recently released the Identified Wildlife Management Strategy as part of the Forest Practices Code (British Columbia Ministry of Environment, Lands, and Parks 1998a).

The Forest Practices Code was recently updated with specific prescriptions for grizzly bear habitat under the Identified Wildlife Management Strategy (Forest Practices Code 1999). It should be noted that these prescriptions have not yet been applied because they are new (February 1999) and will require monitoring to determine their effectiveness in protecting grizzly bear habitat on crown lands. However, it is useful to examine what is proposed to be protected under this body of regulation. Wildlife Habitat Areas (WHAs) will be established based on grizzly bear population and habitat objectives consistent with the Grizzly Bear Conservation Strategy. These WHAs will fall into two categories—security and foraging. Security WHAs are intended to maintain ecological integrity of critical habitat patches and to ensure security of the bears using these patches. Foraging WHAs attempt to compensate for habitat alteration, degradation, or loss of important areas in landscape units by maintaining habitat values in other areas. They also may be established to maintain security, thermal cover, or linkage among important habitats. Priority for WHA establishment will be in districts adjoining United States grizzly bear habitat along the international boundary. These are areas where the British Columbia government has identified the conservation status of these populations as threatened. This designation should not be confused with the United States designation as ''threatened'' under the Endangered Species Act, rather it is a provincial method for identifying populations that may be threatened with decline. Specific objectives for security WHA's include no road or trail building and no forestry practices unless they are designed to restore or enhance degraded habitat. Specific objectives for foraging WHA's include timber harvest without roading, deactivation of nonpermanent roads after harvest, practices other than clearcutting to maintain cover, and practices that stimulate regrowth of forage species for bears.

Other recent additions to the Forest Practices Code include recommendations for higher level planning at the level of grizzly bear population units which are currently being delineated (Forest Practices Code 1999). These recommendations are not mandatory and may be modified based on the capability of the land to support grizzly bears, current condition or effectiveness of the habitat, status of the grizzly bear population, and other resource objectives. Some recommendations made include—minimize open road densities to 0.6 kilometer per square kilometer (0.36 mile per square mile) of habitat, deactivate and revegetate temporary roads, consider closing access in subbasins of important grizzly bear valleys for 50 years after timber management, and schedule forestry activities to avoid displacing bears from preferred habitat during periods of seasonal use. If these recommendations are implemented, they could represent a step toward significant habitat protection measures for grizzly bears in British Columbia.

The British Columbia Protected Area Strategy seeks to enlarge the area of the province set aside in parks and protected areas from 7–12 percent by the year 2000. Protected areas include national parks, provincial parks, and other designations that are quite similar to the United States wilderness designation. British Columbia has increased the amount of area in protected areas from 6.8 percent of the province in 1990 to 10.6 percent of the province in 1997 and appears to be within reach of their goal of 12 percent by the year 2000 (British Columbia Ministry of Environment, Lands, and Parks 1998b). The goal of 12 percent protected areas has been applied to the entire province and there are some regions within the province that may have more or less than the goal. The province was divided into 11 ecoprovinces and 112 subunits known as ecosections. The ecoprovince just north of the Selkirk, Cabinet-Yaak, and Northern Continental Divide recovery zones is referenced as the Southern Interior Mountains. The percentage of protected areas in this region has increased from 11.3 percent in 1990 to 16.1 percent in 1997. The subunit that comprises the Selkirk recovery zone (Southern Columbia Mountains) has increased from 0.3 percent in 1991 to 6.4 percent in 1997 and the subunit directly north of the Cabinet-Yaak recovery zone (McGillivray Range) has increased from 0.1 percent in 1991 to 1.3 percent in 1997.

Habitat protection measures implemented in the United States portion of the Selkirk and Cabinet-Yaak

recovery areas since listing in 1975 have improved and protected grizzly bear habitat. However, several large mines in Montana, if approved, may threaten bears, and access standards established by the U.S. Forest Service and the Service have not been met in their entirety. In British Columbia, habitat protection is not controlled by the Endangered Species Act and Canada has no similar legislation, although the British Columbia Grizzly Bear Conservation Strategy is an important step toward grizzly bear conservation. Habitat modification in Canada, particularly in the linkage zone, could isolate populations. We will begin discussions to reevaluate the existing recovery zone line in Canada and determine if additional linkages may be beneficial to grizzly bear conservation. We will continue to monitor and make recommendations regarding grizzly bear conservation strategies within British Columbia.

At this point in time, we feel that protective measures have not achieved desired goals for habitat protection in either the United States or Canada. Because this may pose a significant threat to the grizzly bear population in the Selkirk/Cabinet-Yaak recovery zone, endangered status for that population is warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

An assessment of overutilization should consider current grizzly bear population size and mortality occurring within the Selkirk/Cabinet-Yaak recovery zone.

Population Size

In the Selkirk recovery zone, Wielgus *et al.* (1994) estimated densities of 3.65 bears per 260 square-kilometers (100 square-miles) of the 873-square kilometer (337-square mile) United States study area and 6.03 bears per 260 square-kilometers (100 square-miles) of the 816-square kilometer (315-square mile) Canadian study area. This results in population estimates of 12 bears in the United States study area and 19 bears in the Canadian study area. The Selkirk recovery zone encompasses 5,069 square-kilometers (1,957 square-miles), of which 2,800 square-kilometers (1,081 square-miles) are in the United States and 2,269 square-kilometers (876 square-miles) are in Canada. These study areas represent only 33 percent of the recovery zone. Application of the study area densities to the entire recovery zone would not be appropriate because the study areas were selected in part because they were believed to hold the highest densities of bears on their respective sides of the border. However, grizzly bears do occur on lands outside the study area. Sightings of grizzly bears have occurred in all 10 subunits of the United States portion of the recovery zone and sightings of females with young have occurred in 8 of 10 of those same subunits from 1994–1997 (Wakkinen and Johnson 1996, Interagency Grizzly Bear Committee 1998). The Wielgus United States study area was the equivalent of only three of those subunits. Over one-half of United States and Canadian mortality has occurred outside the study area boundaries.

These data indicate that there are additional bears living outside the Wielgus *et al.* (1994) study area boundaries. We conservatively estimate that grizzly bear density outside the study area might be much smaller, possibly 25 percent of the study area density estimated by Wielgus *et al.* (1994). Applying 25 percent of these density estimates to their respective portions of the recovery zone outside the study area results in eight additional bears in Canada and seven additional bears in the United States. Combining this estimate of 15 bears outside the study areas with the estimate of 31 within the study areas results in a conservative population estimate of 46 for the entire Selkirk recovery zone.

In the case of the Cabinet-Yaak recovery zone, separate population estimates were made for the Cabinet Mountains and the Yaak River drainage. The Cabinet Mountains lie south of the Yaak River drainage and contain about 60 percent of the recovery zone. In the Cabinet Mountains the population was estimated to be 15 bears or fewer in 1988 (Kasworm and Manley 1988). There is insufficient data to dramatically change that estimate, but since then the population was augmented with four young females, and there have been sightings of individual bears in 6 of 10 BMU's that make up the Cabinet Mountains, with sightings of females with young in 4 BMU's since the completion of transplants (Kasworm *et al.* 1998, Interagency Grizzly Bear Committee 1998). The Yaak River drainage adjoins grizzly bear habitat in British Columbia and contains about 40 percent of the recovery zone. In the Yaak, unduplicated counts of bears over 3-year intervals and total counts for the period of 1989–1998 indicate a minimum population of 21–27 animals (Kasworm 1999a). Based on these data, the population of the Cabinet-Yaak recovery zone can be conservatively estimated at 30–40 grizzly bears.

Mortality

In our 1996 submission to the court, we failed to include three mortalities in 1993 and 1995, and we have received information on additional mortalities from the British Columbia Fish and Wildlife Branch and Idaho Department of Fish and Game from 1982 through 1998. We analyzed mortality summaries from both the Cabinet-Yaak and the Selkirks, including mortalities of bears within the recovery zone, as well as bears captured within the recovery zone that subsequently died outside the recovery zone. We included three mortalities that occurred well outside the recovery zone to provide a conservative estimate of mortality rates. Total known mortality for the Selkirks was 34, and known human-caused mortality was 26 from 1982–1998. Total known mortality for the Cabinet-Yaak was 14 and known human-caused mortality was 10 from 1982–1998. The known human-caused mortality rate was 1.53 deaths per year in the Selkirks and 0.59 deaths per year in the Cabinet-Yaak. The grizzly bear recovery plan (U.S. Fish and Wildlife Service 1993) estimated that known human-caused mortality represented 67 percent of total human-caused mortality. Recent research indicates that known human-caused mortality may represent only 50 percent of total human-caused mortality in the northern grizzly bear recovery zones (McLellan *et al.* in press). However, it should be noted that the authors determined this proportion on the basis of radio-collared bears whose mortality would not have been known without the collars. Therefore, application of this correction factor to known human-caused mortality should recognize that mortality determined because of a radio collar should not have the correction factor included. Five of 26 human-caused mortalities from the Selkirk recovery zone were located on the basis of radio telemetry. Two of the 10 mortalities from the Cabinet-Yaak recovery zone were located on the basis of radio telemetry. Applying the 50 percent correction factor to the remaining known human-caused mortalities results in a total estimate of 47 mortalities for the Selkirks and 18 for the Cabinet-Yaak from 1982–1998. Average annual mortality would be 2.76 for the Selkirks and 1.06 for the Cabinet-Yaak. Based upon a population size of 46 for the Selkirks, the annual known and unknown human-caused mortality rate is 6.0 percent for 1982–1998. Based upon a population size of 30–40 for the Cabinet-Yaak, the annual known and unknown mortality rate would be 2.7–3.5 percent. Combining the human-

caused mortality data from both recovery zones results in average annual mortality of 3.82 bears per year. Based on a combined population of 76–86, the annual known and unknown human-caused mortality rate would be 4.4–5.0 percent. Four mortalities within the British Columbia portion of the Selkirk recovery zone were legal kills during the grizzly bear hunting season. This hunting season was closed in 1995.

The grizzly bear recovery plan cites a modeling procedure by Harris (1986) that estimated grizzly bear populations could sustain a 6 percent rate of human-caused mortality. The use of this model on smaller populations than those modeled by Harris (approximately 450) has been debated. This model considered an isolated population where no ingress or egress is possible. Though populations in the Selkirk/Cabinet-Yaak recovery zone are well below this level even when combined, radio monitoring data indicates there is egress from these populations to a common area and therefore these populations are connected to a much larger population extending north into British Columbia. This population has been estimated to be 446–577 (Simpson *et al.* 1995), not including either of the recovery zones, and may be much larger based upon ingress and egress with other British Columbia grizzly bear populations. Ingress and egress also improve population viability by providing sources of repopulation in the event of stochastic events that might radically depress the population, such as weather patterns dramatically affecting food supplies for several consecutive years. The Harris (1986) model further stated that human-caused mortality of females should not exceed 30 percent of the total. Human-caused female mortality was 26 percent for the Selkirks and 33 percent for the Cabinet-Yaak (see Table 1). Combining data from both recovery zones results in female mortality at 28 percent.

Population Trend

Application of new computer modeling techniques allows calculation of finite rate of increase of the population (lambda λ) with a confidence interval (Hovey and McLellan 1996, Mace and Waller 1998). Though not a specific recovery criterion, this information is available for both recovery zones. Calculation of the rate is based upon survival and reproduction of female radio-collared bears. Specific parameters used include—adult female survival, subadult female survival, yearling survival, cub survival, age at first parturition, reproductive rate, and maximum age of reproduction. Specific methods followed those described by Mace and Waller (1998). The estimated finite rate of increase (λ) from 1983–1998 was 1.023 (95 percent confidence interval = 0.917–1.124) for the Selkirks and 1.100 (0.971–1.177) for the Cabinet-Yaak (Wakkinen and Kasworm 1999). Bear years of monitoring information available for these calculations were 85.3 for the Selkirks and 56.0 for the Cabinet-Yaak. These estimates equate to an annual exponential rate of increase (r) of 2.3 percent for the Selkirks and 9.5 percent for the Cabinet-Yaak. Confidence intervals do encompass 1.0 or a stable population, and we are unable to conclude that these rates statistically reflect an increasing population. Furthermore, sensitivity testing of the modeling results suggests that the addition of one additional subadult female mortality in the Selkirk radio collar sample could push these rates into decline with a projected λ = 0.974 (0.855–1.105). The annual exponential rate of increase (r) in this case would be –2.6 percent. However, the previous calculation of rates with these techniques for the Selkirks from 1983–1994 produced a λ = 0.976 and from 1983 to 1996 produced a λ = 0.994 (Servheen *et al.* 1995 and Wakkinen 1996). Combining the samples from the Cabinet-Yaak and the Selkirks for 1983 to 1998 produced an intermediate λ = 1.059 (0.985–1.126) in which the confidence interval still includes 1.0.

Grizzly bear populations in the Selkirk/Cabinet-Yaak recovery zone appear to be responding to protective measures that reduce mortality. Population trends are inconclusive, but it does not appear that reclassification is warranted because of overutilization alone, as long as habitat connectivity in Canada is maintained. Should populations show decline because of increased mortality we will reconsider our position on this factor.

C. Disease or Predation

This factor was not identified as a threat to grizzly bears in the original listing. The recovery plan indicates that parasites and disease do not appear to be significant causes of natural mortality among bears (Jonkel and Cowan 1971, Kistchinskii 1972, Mundy and Flook 1973, Rogers and Rogers 1976). Research in Alaskan grizzly bears has shown previous exposure by some grizzly bears to rangiferine brucellosis and leptospirosis, though impacts to populations are unknown (Zarnke 1983). The most common internal parasite noted in grizzly bears is *Trichinella* for which 62 percent of grizzly bears tested positive from 1969–1981 (Greer 1982). Effects of these levels of incidence are unknown but monitoring will continue.

Mortality summaries from the Yellowstone Ecosystem for 1959–1987 did not identify disease as a significant factor resulting in mortality (Craighead *et al.* 1988). Only 1 of 477 known mortalities was attributed to disease or parasites. Thirty-eight mortalities could not be identified by cause and some of these may have been related to disease or parasites, but these factors do not appear to be significant causes of mortality affecting Yellowstone grizzly bears. Mortality summaries from the Selkirk/Cabinet-Yaak recovery zone indicate natural mortality accounted for 17 percent of total known mortality.

The Montana Department of Fish, Wildlife, and Parks operates a Wildlife Laboratory at Bozeman. One of the Laboratory's objectives is to necropsy wildlife specimens suspected of being diseased, parasitized, or dying of unknown causes, to identify the cause of death (Aune and Schladweiler 1995). Tissue samples are examined by Veterinary Pathologists at the State Diagnostic Laboratory. Though disease was not considered a threat at the time of listing, we will continue to have dead grizzly bears processed through a laboratory to determine cause of death and to maintain baseline information on diseases and parasites occurring in grizzly bears. This action will serve to continue monitoring of these agents as potential mortality sources. If disease is later determined to be a threat, we will evaluate and adopt specific measures to control the spread of any disease agent and treat infected animals, where such measures are possible. These measures will depend on the disease agent identified.

Mortality of grizzly bears through predation has been mostly attributed to conspecifics (Interagency Grizzly Bear Committee 1987). Predation was commonly associated with adult males killing smaller individuals. Seventeen percent of all known mortality from the Selkirk/Cabinet-Yaak recovery zone was of natural causes, some portion of which may have been related to predation by conspecifics. Monitoring of this factor will continue, but disease and predation do not appear to be limiting the population.

D. The Inadequacy of Existing Regulatory Mechanisms

As a threatened species, the grizzly bear receives protection under the Endangered Species Act from illegal take. All Federal actions in grizzly bear habitat undergo biological evaluations and consultation under section 7 of the Act. The State of Idaho receives section

6 funding under the Act to assist grizzly bear research and management. We have further assisted these research projects by providing personnel to capture and radio-collar bears which have been the source of most information about these animals in the Selkirk recovery zone. We maintain staff located within the Cabinet-Yaak recovery zone to assist with management and conduct research to monitor survivorship, movement patterns, and reproductive success.

The U.S. Forest Service administers public lands that account for 80–90 percent of these recovery zones. We review forest management plans and individual actions on the forest under section 7 of the Act. All plans have habitat protection measures specifically identified for grizzly bears known as the Interagency Grizzly Bear Guidelines (1986). Individual Forest Plan standards most commonly apply to motorized vehicle access management, but also protect movement corridors and cover for bears. New Forest Plans being drafted by the U.S. Forest Service will undergo similar review.

The States of Idaho, Montana, and Washington have maintained closed hunting seasons for grizzly bears since the animal was listed in 1975. British Columbia closed the hunting season in the Selkirk recovery zone in 1995 and the area directly north of the Cabinet-Yaak recovery zone in the 1970s.

Almost half of the existing Selkirk recovery zone and all of the identified linkage with the Cabinet-Yaak recovery zone is in Canada. Legally mandated habitat protection measures such as those described in the United States are absent or only recently being implemented in Canada such that their effectiveness cannot be judged at this time (see discussion under Factor A).

Ursus arctos horribilis is included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. A CITES permit may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Grizzly bears in the combined Selkirk/Cabinet-Yaak recovery zone number less than 100 animals and because of these low numbers are more vulnerable to environmental events such as floods, droughts, or fires. Grizzly bears tend to live at low densities and have large annual ranges that enable them to survive catastrophic events occurring in a portion of their range. Grizzly bears as a species have evolved under these conditions at low densities. The fires within the Yellowstone recovery zone in 1988 burned approximately 485,600 hectares (1.2 million acres). Two of 38 radio-collared grizzly bears were missing after the fires and were initially presumed to have been killed. However, subsequent capture activities in the area produced one of the missing animals (Blanchard and Knight 1990, Haroldson, pers. comm.). The remaining missing animal was a female with cubs of the year.

The large home ranges of grizzly bears, particularly males, enhance genetic diversity in the population by enabling males to mate with numerous females. In the Cabinet-Yaak recovery zone a male bear had a home range of over 2,850 square-kilometers (1,100 square-miles) from 1987–1992 (Kasworm and Servheen 1995). This same animal was seen with a female grizzly bear late in the breeding season of 1992, after having been monitored 64 kilometers (40 miles) northwest in the southern Purcell Mountains of British Columbia for 2 weeks early in the breeding season. Grizzly bears have a promiscuous mating system. A single radio-collared adult female from the Cabinet-Yaak was observed over a period of 8 years with at least four different males prior to producing four litters of cubs, with more than one male present during at least two of those breeding seasons (Kasworm 1999b). Though we do not know that all these males successfully mated with this female, these observations indicate the ability of female bears even in this small population to have several mates. Recent genetic studies have determined that cubs from the same litter may have different fathers (Craighead *et al.* 1998).

These evolutionary strategies allow grizzly bears to exist at low population density and maintain genetic diversity. However, linkage zone loss, as discussed under Factor A, may have a significant impact on bears in the United States by isolating the relatively small population in the Selkirk/Cabinet-Yaak, disrupting gene flow between the two zones and making the bears more vulnerable to random events.

High-speed highways are an important factor in grizzly bear habitat that can affect habitat use and cause direct mortality. Highway reconstruction or expansion can lead to further fragmentation of grizzly bear habitat. These projects also can provide opportunities to improve crossing opportunities for grizzly bears and other forms of wildlife. There are several examples of radio-collared grizzly bears crossing existing major highways in the Selkirk/Cabinet-Yaak recovery zone, specifically Highways 200, 56, and 92 in the United States portion of the recovery zone and Highways 3 and 3A in British Columbia. We do not have similar information for Highway 2 or Highway 95, but bear populations adjacent to those highways are low and there are currently no radio-collared bears in close proximity to those highways. We have begun a study of high-speed highways on the periphery of Glacier National Park. Results from that study may prove useful in identifying impacts related to grizzly bears and making recommendations on future highway design and construction to maintain crossing opportunities. We are specifically concerned about increasing traffic levels and future improvements to the highway system such as creation of additional lanes for traffic. We will have an opportunity to monitor these activities within the United States through section 7 review of all Federal actions while these populations remain listed under the Endangered Species Act.

By virtue of the small population in the Selkirk/Cabinet-Yaak recovery zone and low reproductive rate of bears in general, we find that the Selkirk/Cabinet-Yaak recovery zone warrants endangered status.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this recovery zone. Based on this evaluation, we find that the grizzly bears in the combined Selkirk/Cabinet-Yaak recovery zone are in danger of extinction due to—(1) habitat alteration and human intrusion into grizzly bear habitat, and (2) a small population facing potential isolation by activities across the border in Canada. Cumulative impacts of recreation, timber harvest, mining, and other forest uses with associated road construction have reduced the amount of effective habitat for grizzly bears. Access management plans have the potential to reduce this threat, but have not been fully implemented. New regulatory mechanisms are being proposed in Canada, but we have no basis to judge their likelihood of implementation and effectiveness at this time. We will continue to work with Canada to ensure

that the existing linkage zone in Canada is maintained.

Prior to this notice, we reviewed the status of the finding on the Cabinet-Yaak population in September 1992, March 1996, and June 1998. In these reviews, we determined that the threats to the grizzly bear populations in the Cabinet-Yaak ecosystem remained of high magnitude and of a nonimminent nature and that a listing priority of 6 for the petitioned reclassification remained appropriate.

On December 6, 1996, we adopted a listing priority guidance for Fiscal Year 1997 (61 FR 64475) and this guidance was extended on October 23, 1997. Final listing priority guidance for Fiscal Year 1998 and Fiscal Year 1999 was published in the **Federal Register** on May 8, 1998 (63 FR 25502). Both the Fiscal Year 1997 and 1998/1999 guidance described a multi-tiered listing approach that assigns relative priorities to listing actions to be carried out under section 4 of the Endangered Species Act. This guidance supplements, but does not replace the 1983 listing priority guidelines.

Grizzly bear reclassification from threatened to endangered status in the Selkirk/Cabinet-Yaak recovery zone falls into Tier 2 under Fiscal Year 1998 and 1999 guidance. Determinations and processing of proposed listings to add new species to the lists of threatened and endangered species receives higher priority than reclassifications of already listed species. Because we must devote listing funds to addressing high priority candidate species, preparation of a proposed rule to reclassify the grizzly bear in the Selkirk/Cabinet-Yaak recovery zone is warranted but precluded by higher listing priorities.

The Notice of Review of Plant and Animal Taxa published in the **Federal Register** on September 19, 1997 (62 FR 49397), provided a discussion of the expeditious progress made in the past year on listing decisions and findings on recycled petitions throughout all regions of the Service. In that publication, we provided notice of review of 18 recycled petitions and described our progress in completing final listing actions for 152 taxa, proposed listing actions for 23 taxa, and a proposed delisting action for 1 taxa.

Since publication of the 12-month finding on the Cabinet-Yaak ecosystem in 1993, we have made expeditious progress in making listing decisions on 19 candidate species in the Mountain-Prairie Region (Region 6). At the present time, there are an additional 16 candidate species with listing priority numbers of 1–5 in Region 6. These listing priority numbers are higher than the listing priority number of 6 currently given to reclassification of the grizzly bear in the North Cascades and the Cabinet-Yaak ecosystems.

We affirm that the Selkirk/Cabinet-Yaak recovery zone of grizzly bears continues to face threats of high magnitude that are nonimminent, and, therefore, are assigned a listing priority of 6. Work on species with a listing priority of 6 is precluded by work on species of a higher priority.

References Cited

A complete list of references cited in this notice is available upon request from the Grizzly Bear Recovery Coordinator (see **ADDRESSES** section).

Author: The primary author of this document is Wayne Kasworm (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 6, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–12318 Filed 5–14–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 94
Monday, May 17, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notice on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notice of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia, 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decisions in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notice of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decisions in the principal newspaper.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions

Affecting National Forest Systems lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL
Conecuh Ranger District: *The Andalusia Star News*, published daily (Tuesday through Saturday) in Andalusia, AL
Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL
Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR
San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA
Toccoa Ranger District: *The New Observer* published weekly (Wednesday) in Blue Ridge, GA
Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA
Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, CA.
Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA
White County News Telegraph, published weekly (Thursday) in Cleveland, GA
The Dahlonega Nuggett published weekly (Thursday) in Dahlonega, GA
Cohutta Ranger District: *Chatsworth Times,* published weekly (Wednesday in Chatsworth, GA
Oconee Ranger District: *Monticello News,* published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions

Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico-Hiwassee Ranger District: *Monroe County Advocate,* published weekly (Thursday) in Sweetwater, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Nolichucky-Unaka Ranger District: *Johnson City Press,* published daily in Johnson City, TN
Watauga Ranger District: *Johnson City Press,* published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times,* published weekly (Thursday) in Stanton, KY
London Ranger District: *The Sentinel-Echo,* published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal,* published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreary County Record,* published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise,* published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: *The Liberty Journal,* published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner,* published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter,* published daily (Monday-Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial,* published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat,* published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune,* published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The Augusta Chronicle,* published daily in Augusta, GA
Wambaw Ranger District: *Post and Courier,* published daily in Charleston, SC
Witherbee Ranger District: *Post and Courier,* published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *Roanoke Times,* published daily in Roanoke, VA
James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader,* published daily in Staunton, VA
Dry River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District, *Roanoke Times,* published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West Va—notice will be published in the *Roanoke Times* and *Monroe Watchman.*)
Glenwood Ranger District: *Roanoke Times,* published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times,* published daily in Roanoke, VA
Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News,* published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise,* published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: *Minden Press Herald,* published daily in Minden, LA
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *Alexandria Daily Town Talk,* published daily in Alexandria, LA
Calcasieu Ranger District: *Alexandria Daily Talk,* published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA

National Forest in Mississippi, Mississippi

Forest Supervisor Decisions

Carion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS

Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
De Soto Ranger District: *Clarion Ledger, published daily in Jackson, MS*
Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.
Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Ashe-Erambert Project: *Clarion-Ledger,* published daily in Jackson, MS

National Forest in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal,* published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News,* published daily in Marion, NC
Highlands Ranger District: *The Highlander,* published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press,* Published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World,* published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World,* published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World,* published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: *Stone County Leader,* published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times,* published weekly in Jasper, AR
Bayou Ranger District: *The Courier,* published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World,* published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily Lufkin, TX

District Ranger Decisions

Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sam Houston National Forest: *The Courier,* published daily in Conroe, TX
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX

Dated: May 10, 1999.

David G. Holland,

Deputy Regional Forester for Natural Resources.

[FR Doc. 99–12310 Filed 5–14–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plans, Boise National Forest, Payette National Forest, and Sawtooth National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plans for the Boise and Payette National Forests, and significant amendment to the Land and Resource Management Plan for the Sawtooth National Forest.

SUMMARY: Notice of Intent to Prepare an Environmental Impact Statement in conjunction with revision of the Land and Resource Management Plans for the Boise and Payette National Forests, and significant amendment to the Land and Resource Management Plans for the Sawtooth National Forest was published in the **Federal Register** on April 24, 1998 in Volume 63 Number 79 (pages 20369–20375). This Notice described portions of the Boise and Payette National Forest Plans that would be revised, and portions of the Sawtooth National Forest Plan that would be amended.

In accordance with section 321 of the Appropriations Act of 1999, H.R. 4328 and 36 CFR 219.10(g), the Sawtooth National Forest will initiate revision, rather than significant amendment, of the Sawtooth Forest Land and Resource Management Plan in conjunction with the Boise and Payette National Forests.

This notice also includes a change in address to send comments concerning the planning process for the Southwest Idaho Ecogroup.

DATES: The agency expects to file a Draft Environmental Impact Statement in the Fall of 1999 and a Final Environmental Impact Statement in the Fall of 2000.

ADDRESSES: Send written comments to: Joey Pearson, Administrative Assistant, SW Idaho Ecogroup Planning Team,

Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Pattie Soucek, Planning Team Leader—Payette National Forest (208) 634–0700; Jeff Foss, Planning Team Leader—Boise National Forest (208) 373–4100; or Sharon LaBrecque, Planning Team Leader—Sawtooth National Forest (208) 737–3200.

Responsible Official: Jack Blackwell, Intermountain Regional Forester at 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: As described in the Notice of Intent published on April 24, 1998 (Volume 63, Number 79, pages 20369–20375), the Payette and Boise National Forests would proceed with preparation of an environmental impact statement for revision of their Land and Resources Management Plans (forest plans) and the Sawtooth National Forest would prepare a significant amendment to its forest plan. Through the analysis of the management situation, the Sawtooth Forest did identify several areas where current management direction needs to change. Therefore, analysis efforts on the Sawtooth will continue to parallel analysis efforts on the Boise and Payette, with the intent to revise the Sawtooth Forest Plan in accordance with 36 CFR 219.10(g).

The Appropriations Act of 1999, H.R. 4328, signed into law October 21, 1998, states that national forests within the Interior Columbia Basin Ecosystem study areas may proceed to complete revision in accordance with the current planning regulations. The Sawtooth, Boise and Payette National Forests are all within the Interior Columbia Basin Ecosystem. Notice is hereby given that the Sawtooth National Forest, in conjunction with the Boise and Payette National Forests, has begun an environmental analysis and decision-making process and will prepare an environmental impact statement for the proposed action to revise, rather than amend, the Sawtooth Forest Plan.

Dated: May 5, 1999.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 99–12335 Filed 5–14–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet June 3, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Discussion on Biological Weapons Convention transparency visits.

Executive Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded prior to the meeting to the address below:

Ms. Lee Ann Carpenter, BXA MS: 3876, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: May 12, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–12358 Filed 5–14–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050799E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) and Ad-Hoc Observer Program Implementation Committee (Observer Committee) will hold working meetings which are open to the public.

DATES: The Observer Committee working meeting will be held Monday, June 7, 1999 beginning at 8 a.m. and may go into the evening until the business has been completed. The GMT working meeting will be held on Tuesday through Friday, June 8–11, 1999 from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the NMFS Alaska Fisheries Science Center,7600 Sand Point Way NE, Room 2079, Building 4, Seattle, WA; telephone: 206–526–4250.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the Observer Committee meeting is to design an observer program for the West Coast groundfish fishery and to begin development of the documentation necessary for implementation of an observer program in 2000. The purpose of the GMT meeting is to prepare reports and

technical advice for the upcoming Council meeting and in support of Council decisions throughout the year. The GMT will select a new GMT leader or leaders and review its operating procedures. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session: (1) observer program design and documentation needs; (2) community baseline document; (3) survey of trawl gears; (4) identification of rockfish complexes; (5) recreational data issues; (6) default harvest rate policies; (7) inseason management; (8) preparation for annual management cycle; (9) fixed-gear sablefish issues and analyses;(10) rebuilding plans for lingcod, bocaccio, and Pacific ocean perch, including allocation and bycatch reduction; (11) optimum yield/ management line issues; (12) stock assessment priorities for 2000; and (13) other issues including marine reserves and habitat areas of particular concern.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12363 Filed 5–14–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050799D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Allocation Committee and Strategic Planning Advisory Committee will hold meetings which are open to the public.

DATES: The meetings will begin on Wednesday, June 2 at 8 a.m. and will continue through Wednesday, June 3 as necessary.

ADDRESSES: The meetings will be held at the Doubletree Hotel - Downtown Portland, Astoria Room, 310 SW Lincoln Avenue, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the Ad-Hoc Allocation Committee meeting is to develop preliminary options for allocations involved in rebuilding plans for lingcod and bocaccio rockfish. The Ad-Hoc Allocation Committee will discuss allocations of lingcod and bocaccio rockfish between the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The Ad-Hoc Allocation Committee will begin work on a report to present to the Council at its June meeting. After the allocation work is complete, the Strategic Planning Advisory Committee will review a draft request for proposals for an external facilitator to assist the Council in long-term strategic planning for groundfish management.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal discussion during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12364 Filed 5–14–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1999 Summer Study on Technology Options to Leverage Aerospace Power in Other Than Conventional War Situtations will meet at the Beckman Center in Irvine, CA from June 14–25, 1999 from 7:30 a.m. to 5:00 p.m.

The purpose of the meeting is to produce a draft report highlighting the results of the study.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–12288 Filed 5–14–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the 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 July 16, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland 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 Acting Leader, Information Management Group, Office of the 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: May 11, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Teacher Quality in U.S. Public Schools in 2000.

Frequency: One time.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,300.

Burden Hours: 4,950.

Abstract: The survey, Teacher Quality in U.S. Public Schools in 2000, is designed to provide NCES and the Office of the Secretary with timely data to monitor changes in key indicators of teacher quality. It is the second in a proposed series of biennial reports on the preparation and qualifications of public school teachers. In addition, the survey will provide some early estimates for data that will be provided in the Schools and Staffing Survey (SASS) to be conducted 1999–2000. The issues addressed in the proposed survey have been the focus of a growing concern over the condition of education, challenging U.S. teachers to adequately prepare students for competing in an increasingly complex international marketplace. Thus, the data will provide a national profile of teacher quality, representing an important device for tracking the nation's progress toward the goal of raising educational standards and ensuring high levels of student competence.

[FR Doc. 99–12294 Filed 5–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, May 25, 1999: 10:00 a.m.–2:30 p.m.

ADDRESSES: Amarillo Senior Citizens' Association, 1217 Tyler, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477-3125.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

10:00 a.m. Welcome—Agenda Review—Approval of Minutes
10:15 a.m. Co-Chair Comments
10:30 a.m. Ex-Officio Reports
11:00 a.m. Updates—Occurrence Reports—DOE
11:45 a.m. Lunch
12:30 p.m. Task Force/Subcommittee Minutes
1:30 p.m. Presentation
2:20 p.m. Closing Remarks
2:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5: pm on Friday; 8:30 am to noon on Saturday; and 2: pm to 6: pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9: am to 7: pm on Monday; 9: am to 5: pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on May 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–12324 Filed 5–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 3, 1999. 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will discuss soil remediation and cleanup levels at the Rocky Flats site.

2. RFCAB will receive an initial presentation on public participation and stewardship decision-making.

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on May 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–12326 Filed 5–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

DATES: Wednesday, June 2, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Toxic Release Inventory Geographic Information Survey Data—Dr. Solomon Pollard (EPA Region 4)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing Kevin Rohrer at the address listed above.

Issued at Washington, DC on May 12, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–12327 Filed 5–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 12, 1999; 9:00 a.m. to 6:00 p.m.; and Tuesday, July 13, 1999; 8:30 a.m. to 4:00 p.m.

ADDRESSES: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

FOR FURTHER INFORMATION CONTACT: John E. Metzler, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–2979.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, July 12, 1999, and Tuesday, July 13, 1999

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of the Use of Networks and Computing in High Energy Physics

- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John E. Metzler at 301–903–5079 (fax) or john.e.metzler@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on May 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–12325 Filed 5–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2819–000]

Key-Span-Ravenswood, Inc., Notice of Filing

May 7, 1999.

Take notice that on May 5, 1999, KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood), tendered for filing an Energy Sales Tariff. The Tariff is intended to provide KeySpan-Ravenswood with the ability to engage in transactions for the sale of energy at negotiated rates up to cost-based caps.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 May 17, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12328 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–003]

TransColorado Gas Transmission Company; Notice of Tariff Filing

May 11, 1999.

Take notice that on May 5, 1999, pursuant to 18 CFR 154.7 and 154.203, and in compliance with Commission letter order issued March 20, 1997, in Docket No. RP97–225–000, TransColorado Gas Transmission Company tenders for filing and acceptance, to be effective April 1, 1999, Third Revised Sheet No. 21 to Original Volume No. 1 of its FERC Gas Tariff (TransColorado's tariff).

The tendered tariff sheet revises TransColorado's Tariff to implement a new negotiated-rate transaction between TransColorado and Texaco Natural Gas Inc., to be effective April 1, 1999. TransColorado has sought waiver of 18 CFR 154.207 so that the tendered tariff sheet may become effective April 1, 1999.

TransColorado stated that a copy of this filing has been served upon its customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12331 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–302–000]

Viking Gas Transmission Company; Notice of Tariff Filing

May 11, 1999.

Take notice that on May 4, 1999, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of June 3, 1999:

Fifth Revised Sheet No. 82
Fifth Sheet No. 86
Original Sheet No. 86A
Ninth Revised Sheet No. 87

The purpose of this filing is to remove a reference to defunct Section 284.13 of the Commission's Regulations from Viking's tariff and to clarify and revise Viking's right-of-first-refusal procedures consistent with established precedent.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

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, N.E., Washington, D.C. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12329 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–27–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 11, 1999.

Take notice that on May 3, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 1999:

Second Revised Volume No. 1

Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Third Revised Sheet No. 6A
Second Revised Sheet No. 7
Fourth Revised Sheet No. 8
Fifth Revised Sheet No. 9
Fourth Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

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, N.E., Washington, D.C. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12332 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–12–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 11, 1999.

Take notice that on May 3, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1999:

Second Revised Volume No. 1

Sixth Revised Sheet No.1
Eleventh Revised Sheet No.187
1st Rev Fifth Revised Sheet No.188 (Effective April 1, 1999)
Sub Sixth Revised Sheet No.188 (Effective April 20, 1999)
First Revised Sheet No.232D
Second Revised Sheet No.233
Fifth Revised Sheet No.234
First Revised Sheet No.239
Sheet Nos. 240–242
Third Revised Sheet No.243

First Revised Volume No. 1–A

Title Sheet

Williston Basin states that on April 1, 1999, it transferred all company-owned production reserves, appurtenant production-related facilities and associated services of WBI Production, its merchant division, to WBI Production, Inc., a non-jurisdictional, wholly-owned subsidiary of WBI Holdings, Inc., Williston Basin's parent. As of that date, WBI Production no longer exists as a merchant sales division of Williston Basin. As a result of the transfer of production reserves, related facilities and associated services, WBI Production, Inc., is an affiliate of Williston Basin but not a ''marketing affiliate'', as defined within the context of FERC Order Nos. 566, et seq.

Williston Basin also states that it filed the instant tariff sheets to reflect the cancellation, in its entirety, of its FERC Gas Tariff, First Revised Volume No. 1–A, and associated services of Williston Basin Interstate Pipeline Company, d/b/a WBI Production.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12333 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–271–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1999.

Take notice that on May 5, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1999:

Substitute Seventh Revised Sheet No. 6
Substitute Tenth Revised Sheet No. 6A

Williams states that it submitted its second quarter 1999 report of GSR costs on March 31, 1999, pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. the original tariff sheets filed on March 31, 1999, in this docket contained surcharges which were filed March 1, 1999, in Docket No. RP99–257. The tariff sheets filed in Docket No. RP99–257 were suspended by order issued March 31, 1999. The tendered tariff sheets reflected the omission of the suspended surcharges.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, 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. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–12330 Filed 5–14–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6343–6]

RIN 2060–AI52

National Emission Standards for Hazardous Air Pollutants: Revision of Schedule for Standards Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to promulgation schedule for standards.

SUMMARY: This notice publishes revisions to the schedule for the promulgation of standards for sources of hazardous air pollutants (HAP). Required under section 112(c) and (e) of the Clean Air Act (CAA), the source category list and the schedule for standards constitute a significant part of the EPA's agenda for regulating stationary sources of air toxic emissions.

The schedule for standards, required under CAA section 112(e), organized the source categories into groups of four separate timeframes with promulgation deadlines of November 15, 1992; November 15, 1994; November 15, 1997; and November 15, 2000. The EPA refers to these groups of four separate timeframes as 2-year, 4-year, 7-year, and 10-year bins, respectively. Today's notice announces a scheduling change for two source categories from the 7-year bin to the 10-year bin and two source categories from the 10-year bin to the 7-year bin. In addition, this notice corrects the schedule for a source category recently added to the list.

EFFECTIVE DATE: May 17, 1999.

ADDRESSES: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Maria Noell, Emissions Standards Division (MD–13), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, facsimile number (919) 541–3470, electronic mail address ''noell.maria@epa.gov''.

SUPPLEMENTARY INFORMATION:

I. What Is the History of the Source Category List and Schedule?

The CAA amendments of 1990 (Public Law 101–549) require, under section 112, that the Agency list categories of sources emitting HAP and promulgate national emission standards for HAP (NESHAP) in order to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in section 112(c), we published on July 16, 1992 (57 FR 31576), a list of 174 categories of major and area sources—referred to as the ''initial list''—for which we would develop emission standards. Following this listing, pursuant to requirements in section 112(e), on December 3, 1993 (58 FR 63941), we published a schedule for the promulgation of emission standards for each of the 174 listed source categories.

When we publish notices that affect actions relating to individual source categories, it is important to reflect the resultant changes on the list and schedule. On June 4, 1996 (61 FR 28197), we published a notice that referenced all previous listing and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. We published a subsequent notice on February 12, 1998 (63 FR 7155), which again updated the list and schedule. You should read these previous notices for information relating to development of the initial list and schedule.

II. Why Is EPA Issuing This Notice?

This notice announces scheduling changes for promulgating standards. This action moves two source categories from the 7-year bin to the 10-year bin:

- Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units; and
- Primary Copper Smelting.

Also, to ensure that we still meet the CAA section 112(e)(1) scheduling requirements, we are countering these scheduling changes by moving two source categories forward to the 7-year bin:

- Hydrogen Fluoride Production; and
- Butadiene-Furfural Cotrimer (R–11) Production.

Additionally, this notice announces one other scheduling change. We are correcting the promulgation deadline for the Natural Gas Transmission and Storage source category, which we added to the original source category list, from November 15, 1997 to November 15, 2000.

III. What Revisions Is EPA Making to the Source Category Schedule?

The following sections describe the new revisions to the source category schedule since the February 12, 1998 publication.

A. Corrections to Previous Notice

The Administrator may at any time add categories and subcategories of HAP to the original source category list based on the same criteria used to develop the original list. Section 112(c)(5) states that the Administrator shall promulgate standards to regulate HAP emissions from these added categories and subcategories within 10 years after enactment of the CAA amendments of 1990 (i.e., by November 15, 2000, the 10-year bin date) or within 2 years after the date on which the category or subcategory was listed, whichever is later.

This **Federal Register** notice announces one scheduling change to correct the regulatory promulgation date for the Natural Gas Transmission and Storage source category. In our last notice regarding changes to the source category list, on February 12, 1998, we incorrectly indicated that this category was a subset of the Oil and Natural Gas Production source category. Consequently, we did not consider it to be subject to the scheduling requirements of section 112(c)(5), and we placed it in the same regulatory bin as the Oil and Natural Gas Production source category (i.e., the 7-year bin). However, in a February 6, 1998 **Federal Register** notice of proposed maximum achievable control technology (MACT) standards for the Oil and Natural Gas Production and the Natural Gas Transmission and Storage source categories (63 FR 6287), we had amended the source category list to add Natural Gas Transmission and Storage

as a separate source category, distinct from the originally listed Oil and Natural Gas Production source category. As such, the Natural Gas Transmission and Storage source category is subject to the scheduling requirements of section 112(c)(5). Therefore, in this notice, we are correcting the promulgation deadline for the Natural Gas Transmission and Storage source category from November 15, 1997 to November 15, 2000.

B. Moving Standards Promulgation Deadlines for Source Categories

In the December 3, 1993 notice, we scheduled the initially listed source categories for regulation such that exactly 50 percent (87 out of 174) would be promulgated by November 15, 1997. Consequently, in order to continue to satisfy the numerical and temporal requirements of section 112(e)(1), any change that would delay the deadline for a source category scheduled for regulation by November 15, 1997 must be offset by a corresponding shifting of a source category from the November 15, 2000 regulatory timeframe forward to the November 15, 1997 timeframe.

1. Primary Copper Smelting and Hydrogen Fluoride Production

The schedule for Primary Copper Smelting, which we included in the initial source category schedule in December 1993, is being changed from November 15, 1997 to November 15, 2000. The schedule for Hydrogen Fluoride Production, published in the same notice (58 FR 63941, December 3, 1993), is being changed from November 15, 2000 to November 15, 1997. Moving Primary Copper Smelting to the 10-year bin will allow us additional time to address issues raised by comments received on the April 20, 1998 proposal (63 FR 19581).

Because we included the standard for Hydrogen Fluoride Production as part of the Generic MACT proposal, published October 14, 1998 (63 FR 55177), it will be ahead of its initial regulatory deadline and, therefore, can be used in place of the Primary Copper Smelting source category in order to address the statutory requirement of completion of 50 percent of the initially listed source categories by November 15, 1997.

2. Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units and Butadiene-Furfural Cotrimer (R–11) Production

This notice also announces the change of schedules for the Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units source category and the Butadiene-Furfural Cotrimer (R–11) Production source category. The schedule for Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units, which we included in the initial source category schedule in December 1993, is being changed from November 15, 1997 to November 15, 2000. The schedule for Butadiene-Furfural Cotrimer (R–11) Production, published in the same notice (58 FR 63941, December 3, 1993), is being changed from November 15, 2000 to November 15, 1997.

The Office of Mobile Sources will soon be proposing standards that will limit the amount of sulfur in gasoline. Some petroleum refineries may comply with the gasoline sulfur standards by removing both sulfur and metals from the feed to the Catalytic Cracking Units (CCU), and thereby reduce metallic HAP emissions from the CCU regeneration vent. We have moved the Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units source category to the 10-year bin to gain understanding of the effects of the gasoline sulfur standards on refineries, decide how our final MACT rule should address these effects, and coordinate the implementation and compliance aspects of the MACT rule with the schedule for implementation of the gasoline sulfur program.

Because we addressed the Butadiene-Furfural Cotrimer (R–11) Production source category in the Pesticide Active Ingredient Production proposal (62 FR 60565, November 10, 1997), this source category will be ahead of its initial regulatory deadline of November 15, 2000 and, therefore, can be used in place of the Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, Sulfur Plant Units source category.

IV. Is This Action Subject to Judicial Review?

Section 112(e)(3) states that the determination of priorities for promulgation of standards for the listed source categories is not a rulemaking and is not subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established under section 112(e) shall be subject to review under section 304 of the CAA. Section 112(e)(4) states that, notwithstanding section 307 of the Act, no action of the Administrator listing a source category or subcategory under section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Therefore, today's schedule is not subject to judicial review.

V. Is EPA Asking for Public Comment?

Prior to issuance of the initial source category list, we published a draft initial list for public comment (56 FR 28548, June 21, 1991). Although we were not required to take public comment on the initial source category list, we believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, we solicit public comments on actions we are contemplating. We have decided, however, that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice. Interested parties will have the opportunity to provide comments on individual emissions standards.

VI. Administrative Requirements

A. Docket

The docket for this action is A–90–49. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this revised list of categories of sources and revised schedule for standards. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the initial list and schedule. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

B. Regulatory Requirements

1. General

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 12875 (Enhancing the Intergovernmental Partnership), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not

subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

2. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, today's notice is considered a ''significant regulatory action'' within the meaning of the Executive Order. For this reason, this action underwent review by the OMB.

Dated: May 10, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–12370 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6343–9]

Oxygenate Use in Gasoline Panel Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of oxygenate use in gasoline panel meeting.

SUMMARY: On November 30, 1998, U.S. Environmental Protection Agency Administrator Carol M. Browner announced the creation of a blue-ribbon panel of leading experts from the public health and scientific communities, automotive fuels industry, water utilities, and local and State government to review the important issues posed by the use of MTBE and other oxygenates in gasoline. EPA created the panel to gain a better understanding of the public health concerns raised by the discovery of MTBE in some water supplies. The panel will be chaired by Mr. Daniel Greenbaum, President of the Health Effects Institute (HEI) of Cambridge, Massachusetts.

This notice announces the time and place for the next meeting of the panel.

DATES: The blue-ribbon panel reviewing the use of oxygenates in gasoline will conduct its next meeting on Monday and Tuesday, May 24 and 25, 1999, in Washington, DC beginning at 10 a.m.

ADDRESSES: The meeting will be held from 10 a.m. to 7 p.m. on Monday, May 24th and from 8:30 a.m. until approximately 5:30 p.m. on Tuesday, May 25th at the Wyndham City Center Hotel, 1143 New Hampshire Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564–9674, or John Brophy at (202) 564–9068. Information can also be found at *www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm*.

SUPPLEMENTARY INFORMATION: This is the fifth in a series of meetings at locations around the country to hear from regional and national experts on the facts concerning oxygenate use in fuel. There will be no open public comment period during this meeting. Written comments to the panel can be mailed to U.S. EPA, 401 M Street, SW, Mail Code 6406J (Attn: Blue-Ribbon Panel), Washington, DC 20460. Panel members will be provided with copies of all written submissions.

Dated: May 12, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99–12460 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6343–4]

Evaluation of ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations'' Policy Statement, Proposed Revisions and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement and request for public comment on proposed revisions.

SUMMARY: The Environmental Protection Agency (EPA) announces the preliminary results of its evaluation of the effectiveness of EPA's ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations'' (Audit Policy) and solicits public comment on proposed revisions to the Audit Policy that are based on the evaluation. The proposed revisions include broadening the period for prompt disclosure from 10 to 21 days, clarifying the availability of Policy relief in multi-facility contexts, and providing that entities meeting all of the Policy conditions except for ''systematic discovery'' will not be recommended for criminal prosecution. EPA developed the Audit Policy to enhance protection of human health and the environment by encouraging entities to voluntarily discover, and disclose and correct violations of environmental requirements. EPA published the Audit Policy in the **Federal Register** at 60 FR 66705 on December 22, 1995.

DATES: EPA requests interested parties to comment on this notice in writing. Comments must be received by July 16, 1999.

ADDRESSES: Submit three copies of comments to the EPA Audit Policy Docket, 401 M Street SW, Mail Code 2201A, Room 4033, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Additional documentation relating to the development and evaluation of this Policy are contained in the EPA Audit Policy Docket. Documents from the docket may be requested by calling (202) 564–2614, requesting an index to docket #C–94–01, and faxing document requests to (202) 501–1011. Hours of operation are 8 a.m. to 4 p.m., e.s.t., Monday through Friday, except legal holidays. Additional contact is Catherine Malinin Dunn, at (202) 564–2629.

SUPPLEMENTARY INFORMATION:

I. Explanation of Notice

A. Executive Summary

EPA initiated the Audit Policy Evaluation as part of EPA's commitment set forth in the Policy at 60 FR at 66712. The major preliminary findings of the Audit Policy Evaluation, and the major proposed revisions to the Policy and its implementation, are as follows:

- Discovery and correction of violations under the policy have removed pollutants from the air and water, reduced health and environmental risks and improved public information on potential environmental hazards.
- EPA has consistently applied the policy.

- Use of the policy has made EPA aware of new environmental issues.
- Use of the policy has been widespread (as of March 1, 1999, 455 entities have disclosed violations at approximately 1850 facilities), including significant multi-facility disclosures (16 parent companies disclosed the same types of violations at over 900 facilities).
- Users of the policy report a very high satisfaction rate with 88% of the respondents stating that they would use the Policy again and 84% stating that they would recommend the Policy to clients/counterparts.
- Most disclosures involve monitoring and reporting violations in federally-run programs (i.e., not in programs that states are authorized or approved to administer and enforce).
- The policy encourages specific improvements in auditing programs and environmental management systems.
- The most frequently suggested change to the policy is expansion of 10-day disclosure period.
- The most frequently suggested change to policy implementation is shortening the time to process cases.

Based on these major findings and others, EPA proposes specific improvements to the Policy. One significant proposed revision is to broaden the prompt disclosure period from 10 to 21 days. EPA also proposes to clarify that a facility in many circumstances may satisfy the ''independent discovery'' condition even where inspections or investigations have commenced at, or information requests have been issued to, other facilities owned by the same parent. Another proposed change is to provide that entities that meet all of the Policy conditions except for ''systematic discovery'' would not be recommended for criminal prosecution.

Proposed changes to implementation of the Policy include a commitment to reduce the time to process Audit Policy cases by, for example, encouraging disclosers to use disclosure checklists, so that EPA receives all of the information it needs to determine policy applicability and resolve cases in a timely fashion. The Agency also plans particularly to encourage disclosures at multi-facilities because such disclosures effectively leverage resources of the Agency, allow regulated entities to review their operations holistically, and benefit the environment. For the same reasons, sector-based initiatives involving the Audit Policy also figure prominently in the future of EPA's enforcement and compliance program.

B. Audit Policy, Audit Policy Evaluation and Criteria for Effectiveness

1. Audit Policy

On December 22, 1995, EPA published the ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations' (Audit Policy) in the **Federal Register** at 60 FR 66705. Today's Notice solicits public comment on the preliminary results of the Audit Policy Evaluation and the specific proposed revisions to the Audit Policy and its implementation.

Under the Audit Policy, where violations are found through voluntary environmental audits or efforts that reflect a regulated entity's due diligence, are promptly disclosed and expeditiously corrected and meet certain other conditions designed to protect public health and the environment, EPA will not seek gravity-based (i.e., non-economic benefit) penalties and will recommend against criminal prosecution against the regulated entity. EPA will reduce gravity-based penalties by 75% for violations that are voluntarily discovered, and are promptly disclosed and corrected in accordance with the conditions of the Policy, even if not found through a formal audit or due diligence. Finally, the Policy restates EPA's long-held policy and practice to refrain from routine requests for environmental audit reports.

The Policy includes important safeguards to deter irresponsible behavior and protect the public and environment. For example, in addition to prompt disclosure and expeditious correction, the Policy requires companies to act to prevent recurrence of the violation and to remedy any environmental harm which may have occurred. Repeated violations or those which result in actual harm or may present an imminent and substantial endangerment are not eligible for relief under this Policy, and companies will not be allowed to reap a significant economic benefit by delaying their investment in compliance. Corporations remain criminally liable for violations that demonstrate or involve a prevalent management philosophy that concealed or condoned violations, or high-level corporate officials' or managers' conscious involvement in, or willful blindness to, the violation. Individuals remain liable for their criminal misconduct. The Audit Policy is on the High Priority List of the President's Reinventing Environmental Regulations program. The final Audit Policy became effective on January 22, 1996.

When EPA published the Audit Policy as a **Federal Register** Notice in December of 1995, the Agency stated in the Notice that the Policy was intended as guidance and did not represent final agency action. At the time of publication, some in the regulated community had argued that the Policy be converted into a regulation to ''ensure consistency and predictability.'' EPA promised in the Notice that it would revisit that request ''if it determines that a rulemaking is appropriate.'' EPA believes there is ample evidence, much of it summarized in this **Federal Register** Notice, that the Policy has worked well as guidance and that a rulemaking is therefore unnecessary. Nothing in today's document is intended to change the status of the policy as guidance, as described in paragraph II.G(3) of the 1995 Audit Policy. 60 FR at 66712.

U.S. EPA also issued a policy on Compliance Incentives for Small Businesses in 1996 (Small Business Policy). Under the Policy, the Agency will eliminate the entire civil penalty for certain violations if a small business—defined as an entity employing 100 or fewer individuals—satisfies the policy's conditions. These conditions include a good-faith effort to comply by either receiving on-site compliance assistance or conducting an environmental audit and by disclosing violations promptly, and correcting them within six months of discovery. Violations excluded from the policy's coverage include repeat violations, those involving imminent and substantial endangerment or actual harm, and criminal conduct.[1]

EPA is currently evaluating the effectiveness of the Small Business Policy. The Agency will be publishing a **Federal Register** Notice in approximately 6 weeks asking for comments on the Small Business Policy. As part of the Agency's evaluations of the two policies, EPA asks for comments in this Notice on the advisability of combining the Audit Policy with the Small Business Policy. In particular, the Agency is interested in whether small businesses would be more likely to audit and self-disclose violations (or seek on-site compliance assistance) if the two policies were merged. EPA is particularly interested in hearing the

[1] For federal facilities, EPA has an Incidental Violations Response Policy (IVRP), which allows federal facilities to obtain penalty mitigation for violations disclosed and corrected during an Environmental Management Review pursuant to the IVRP. The IVRP can be found (within the Environmental Management Review Policy) on EPA's World Wide Web site at http://www.epa.gov/oeca/fedfac/policy/policy.html.

comments of small businesses on this point. If the Agency ultimately decides not to merge the two policies, it will insert a reference to the Small Business Policy in the text of the revised Audit Policy. Comments concerning small business issues received in response to today's Notice will be considered when EPA reviews comments to the Small Business Policy Notice.

2. Audit Policy Use and General Results

Use of the Audit Policy has been widespread. As of March 1, 1999, 455 organizations had disclosed potential violations at approximately 1850 facilities. A large proportion of the facilities (at least 900) were the subject of multi-facility disclosures by 16 parent organizations. The rate of disclosure has increased every year the Policy has been in place.

The Audit Policy User's Survey indicates a very high satisfaction rate among the users of the Policy, with 88% of the respondents stating that they would use the Policy again and 84% stating that they would recommend the Policy to clients/counterparts. None stated that they would not use the Policy again or not recommend its use to others. Among the user comments are the following:

- ''Companies can avoid penalties for doing the right thing. And everyone wins.''
- ''It enhances compliance, environmental performance and de-polarization of regulators and the regulated community.''
- ''Very good experience. It allowed the facility to proactively respond to address a compliance issue quickly without delays related to traditional command-and-control enforcement.''
- ''In general, it is a solid program.''
- ''Created a partnership of trust between regulator and reporting regulated entity.''
- ''Ability to find, report, and correct issues in a cooperative or partnering role with EPA.''

Before the effective date of the final Audit Policy (and the April 3, 1995 interim Audit Policy that preceded it), EPA had differing approaches to penalty mitigation for auditing, disclosure and correction of violations, depending upon the specific enforcement policy involved. The EPA Audit Policy provides a common penalty mitigation approach towards systematic discovery, prompt disclosure and expeditious correction of environmental violations across all environmental statutes and media. The Audit Policy states that it ''supersedes any inconsistent provisions in media-specific penalty or enforcement policies * * *.'' II.G.(1).

With respect to consistent application of the Audit Policy to civil violations, EPA established the Audit Policy Quick Response Team (QRT) in June 1995 to ensure that determinations for eligibility under the Audit Policy are consistent, expeditious and fair nationally. In January 1997, the Audit Policy QRT developed the Audit Policy Interpretive Guidance, providing useful guidance to regulated entities, the EPA Regions and Headquarters and other interested parties. The Audit Policy QRT is comprised of senior representatives from EPA Headquarters, Regions and the Department of Justice.

To address criminal violations that are self-disclosed under the Audit Policy, EPA established the Voluntary Disclosure Board (VDB) in October 1997. The VDB serves as a central body for consideration of all voluntary disclosures potentially criminal in nature; its purpose is to ensure consistent application of the Policy nationwide in the nationally-managed criminal enforcement program. The VDB is comprised of members associated with the criminal enforcement program at EPA, and a member from the Department of Justice, Environmental Crimes Section.

EPA has made the Audit Policy and related documents, including Agency guidance interpreting the Policy and general interest newsletters, available on the World Wide Web at *www.epa.gov/oeca/polguid/polguid1.html.* EPA's guidance for implementing the Audit Policy in the context of criminal violations can be found at *http://es.epa.gov/oeca/oceft/audpol2.html.*

3. Audit Policy Evaluation and Criteria for Effectiveness

Under the Public Accountability section of the Audit Policy (Part II.H.), EPA pledged to conduct a ''study of the effectiveness'' of the Audit Policy by January 1999. Pursuant to this pledge, EPA initiated the Audit Policy Evaluation in spring 1998 to review the effectiveness of the Audit Policy and to recommend any appropriate revisions to the Assistant Administrator for Enforcement and Compliance Assurance.

EPA is using the following criteria to evaluate the effectiveness of the Policy:

- Environmental or Human Health Improvements Resulting from the Policy.
- Prompt Disclosure and Correction of Violations.
- Improvements in Corporate Compliance Programs.
- Awareness of New Environmental Issues.[2]

Using an empirical, fact-based approach, EPA developed and utilized the Audit Policy Internal Survey (Internal Survey) and the Audit Policy User's Survey (User's Survey), and will rely upon other information and public comments. Under the Internal Survey, EPA collected information from approximately fifteen Regional and Headquarters offices that process enforcement cases under the Audit Policy. The results of the Internal Survey include information about environmental or health improvements, new environmental issues about which EPA became aware, numbers and types of Audit Policy cases, time-frame for resolving cases, reasons why entities did not qualify for Policy relief, and suggestions for improvements to the Policy and its implementation.

EPA, through its contractor, sent copies of the User's Survey to 252

[2] The Policy sets forth the following evaluation criteria: ''H. Public Accountability

(1) Within 3 years of the effective date of this policy, EPA will complete a study of the effectiveness of the policy in encouraging:

(a) changes in compliance behavior within the regulated community, including improved compliance rates;

(b) prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;

(c) corporate compliance programs that are successful in preventing violations, improving environmental performance and promoting public disclosure;

(d) consistency among state programs that provide incentives for voluntary compliance.

EPA will make the study available to the public.'' 60 FR at 66712.

The Audit Policy Evaluation utilizes criteria (b) and (c) but will not focus on criteria (a) and (d). An effort to measure compliance behavior and compliance rates (criterion (a)) is underway through the National Performance Measures Strategy (Measures Strategy). As performance measures, the Measures Strategy has identified an ''outcome'' of ''self-policing efforts by using compliance incentive policies'' (Set 5), and an ''output'' of the ''number of self-policing settlements concluded'' (Set 9). More information regarding the Measures Strategy may be found at the following website: *es.epa.gov/oeca/perfmeas.*

Consistency among state compliance incentive approaches (criterion (d)) is not an EPA goal per se. Rather, EPA encourages balanced, open and innovative approaches for encouraging protection of human health and the environment. Approximately eleven states have developed audit policies that are designed to encourage self-policing without undermining enforcement or the public's right to access environmental information. Other states have enacted audit privilege and/or immunity laws. EPA believes that such laws are not as protective of human health and the environment as policies because they invite secrecy, complicate investigations and criminal prosecutions, shield evidence of wrongdoing, impede enforcement discretion, breed litigation over the scope of the privilege, and frustrate public access to information about sources of pollution. However, such laws can be narrowly crafted such that they do not conflict with minimum federal requirements.

regulated entities that had disclosed violations under the Policy. The results of the User's Survey are based on responses from 50 respondents whose identities are not known to EPA. The results include information about user satisfaction, the extent to which the Policy encourages improvements in corporate compliance programs, motivations for using the Policy, and suggestions for improvements to the Policy and its implementation. (Copies of the User's Survey results will be available in the Audit Policy Docket, hereinafter, ''Docket''.)

EPA also held several informal meetings and conference calls with industry, environmental groups and State representatives to obtain input on the evaluation. On January 26, 1999, and February 3, 1999, EPA's Office of Enforcement and Compliance Assurance (OECA) and the Vice President's National Partnership for Reinventing Government (NPR) hosted two conferences entitled ''Protecting Public Health and the Environment through Innovative Approaches to Compliance.'' The first was held in Washington D.C., followed by a similar conference in San Francisco, California. Both conferences were held to evaluate the success of EPA's enforcement and compliance assurance programs at protecting public health and the environment since OECA was reorganized five years ago. The purpose of the conferences was to discuss the actions the Agency has taken over the past five years and to solicit ideas from a variety of different stakeholders on how EPA can further improve public health and the environment through compliance efforts. Participants included environmental and community groups, trade associations, small and large business representatives, academics, and state, local and tribal representatives. These stakeholders participated in small group discussions addressing the topics of compliance assistance, compliance incentives, information and accountability, and innovative approaches to enforcement. OECA also published a **Federal Register** Notice soliciting comments on how EPA can further protect and improve public health and the environment through new compliance and enforcement approaches (64 FR 10,144, March 2, 1999). Conference summaries and a copy of the **Federal Register** Notice are available at OECA's website at *http://www.epa.gov/oeca/polguid/oeca5sum.html.*

C. Audit Policy Evaluation

Discussed below are the preliminary results under each of the evaluation criteria, based upon data current through the fall of 1998, followed by analyses and recommendations regarding proposed revisions to the Policy and its implementation.

1. Environmental or Human Health Improvements Resulting From the Policy

Use of the Audit Policy has resulted in overall benefits to human health and the environment. When companies voluntarily detect and correct violations in order to take advantage of the Policy, they remove harmful pollutants from our air, ground and waterways, reduce the likelihood of chemical spills and accidental releases, improve public information regarding potential environmental hazards, and ensure safe management of hazardous chemicals and wastes. In the three years the Policy has been in effect, 73 of the violations disclosed involved the unauthorized release of pollutants, storage or disposal of wastes, failure to remediate or unpermitted activities. Examples of benefits to human health and the environment that have been achieved as a result of these disclosures include:

- A property management company removed doors that were painted with lead-based paint from a Maryland apartment complex (elevated blood lead levels in children have been linked to learning disabilities, growth impairment, permanent visual and hearing impairment and other neurological damage);
- A Minnesota company corrected violations involving the improper storage of polychlorinated biphenyls (PCBs) and subsequently properly disposed of over 195 pounds of PCBs (PCBs cause birth defects, have been linked to hormonal disruptions and are possible carcinogens);
- A manufacturing facility in New York corrected Clean Air Act violations by installing pollution control equipment on two methanol storage tanks (methanol fumes are a hazardous air pollutant, contribute to smog and can cause serious health problems); and
- A natural gas production company installed pollution control equipment at facilities located on an American Indian Reservation in Colorado that will reduce carbon monoxide emissions by 3,700 tons, or 80%, a year (high CO levels pose a health threat, particularly to young children, the elderly, and those with heart or respiratory ailments).

Hundreds of violations have been disclosed and have been or are being corrected involving deficiencies in monitoring/sampling, reporting, labeling, manifesting, recordkeeping, testing, training, and production requirements. Benefits that result from the detection and correction of these types of violations accrue in the form of risk reduction. For example, the development of spill response plans will help prevent spills and minimize risk of associated harm, improved recordkeeping will provide firefighters and other response personnel with more accurate information in the event of an emergency, and improved public reporting of Toxic Release Inventory (TRI) data may encourage companies to reduce pollution at the source. Examples of benefits that have been achieved as a result of disclosures in these areas include:

- An oil company resolved Resource Conservation and Recovery Act violations involving the shipment of benzene-contaminated waste without a transportation manifest and to an unauthorized facility;
- A Michigan manufacturer that had previously failed to file TRI reports corrected its violation and subsequently substituted an environmentally preferable water-based process for the use of 2500 pounds of chemical solvents;
- A manufacturing company provided public notice that it is storing more than 25,000 pounds each of four heavy metals at a Pennsylvania facility;
- A Montana company corrected its failure to file reports under the Toxic Substances Control Act's Inventory Update Rule, which requires manufacturers to report current data on production volume, plant site, and site-limited status for listed chemicals;
- A telecommunication company alerted state agencies and local fire departments to the presence of batteries containing sulfuric acid at hundreds of sites nationwide, and the company developed spill prevention measures required by the Clean Water Act;
- Eleven Texas companies that operate facilities in the Maquiladora (U.S. border) region in Mexico corrected violations involving transportation of hazardous waste; and
- The owners of an Oklahoma facility reported two previously unreported spills of hazardous substances and promptly remediated the spill area.

EPA plans to maintain the ineligibility under the Policy for disclosures of violations that resulted in actual harm or may have presented an imminent and substantial endangerment to human health or the environment.[3] Such violations are ineligible because

[3] See Section II.5, *infra*, for discussion of the availability of enforcement response policies in those instances where the criteria of the Audit Policy are not met.

they should be prevented by the types of auditing and management systems that the Policy is designed to encourage. As the above examples illustrate, this condition does not bar a company from qualifying for relief under the Audit Policy solely because the violation involves release of a pollutant to the environment. Similarly, EPA plans to retain the no-repeat-violation exclusion, because, among other things, the entity should prevent recurrence of noncompliance for which the entity has had clear notice and an opportunity to correct. EPA is interested in comments on possible ways to increase the environmental and public health benefits resulting from the Policy, including greater use of Supplemental Environmental Projects (SEPs).

2. Prompt Disclosure and Correction of Violations

The results to date under the Audit Policy indicate widespread use. As of March 1, 1999, 455 regulated entities had identified and disclosed violations at approximately 1850 facilities. The rates of disclosing entities and disclosed violations have increased every year since the effective date of the Policy. In 1995, the first year of the final Policy, 46 entities disclosed violations at 49 facilities. In 1996, 72 entities disclosed violations at 105 facilities. In 1997, 90 entities disclosed violations at 568 facilities. In 1998, 96 entities disclosed violations at 927 facilities.

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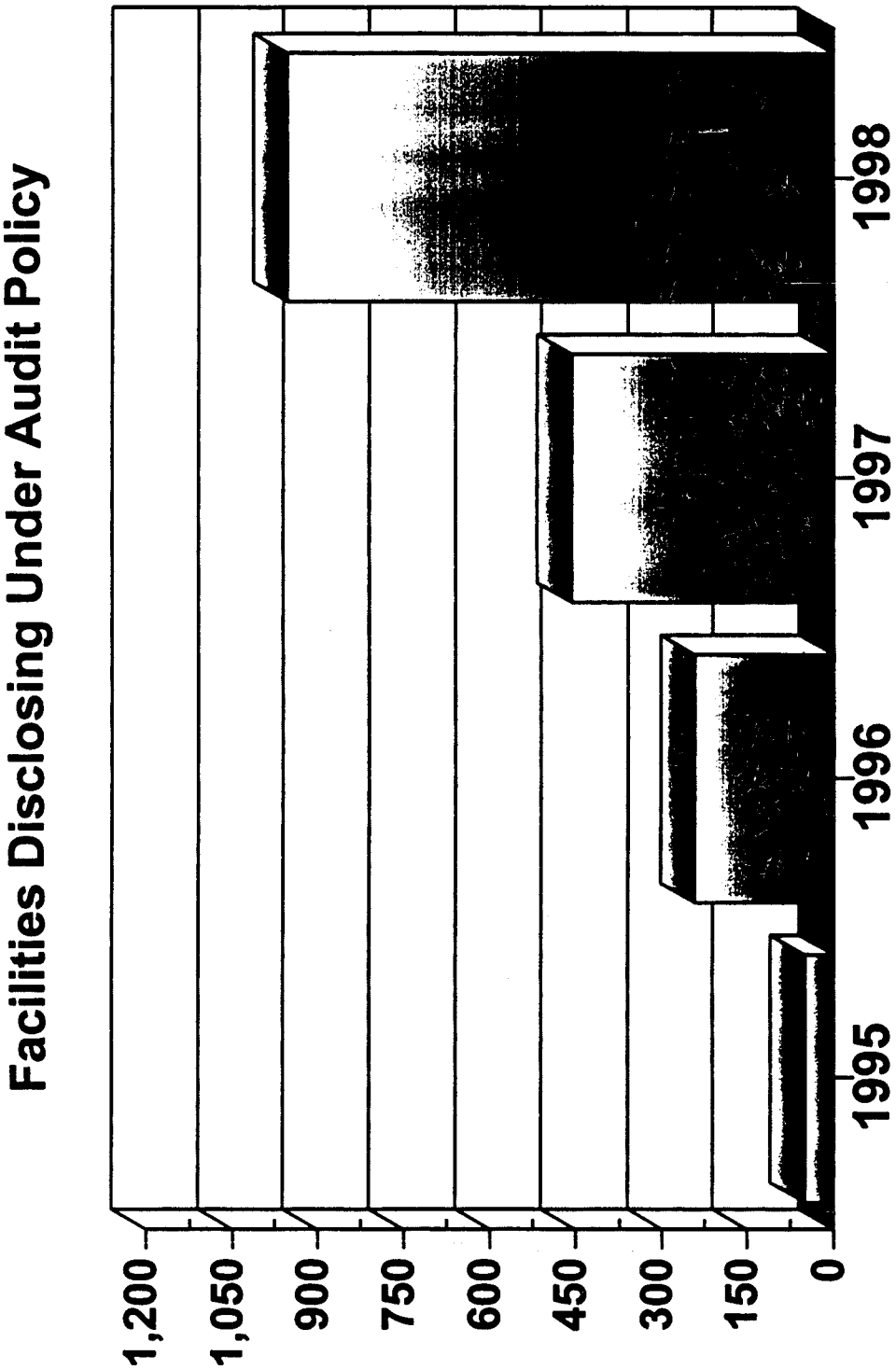

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The Audit Policy's substantial benefits to human health and the environment can be increased significantly through detection and correction of violations on a multi-facility basis. To date, 16 parent organizations have disclosed the same type of violations at over 900 facilities. For example, under the Policy, a gas company conducted a corporate-wide audit and disclosed and subsequently corrected violations discovered at 13 of its facilities. Often multi-facility settlements are preceded by negotiations in which EPA and the company arrive at a mutual understanding of how the Audit Policy is to be applied (for example, the 10-day timely-disclosure condition is adjusted to a reasonable period to allow for completion of a corporate-wide audit). EPA plans to continue to encourage comprehensive detection, disclosure and correction of violations in multiple facilities owned by a common entity.

Many of the multi-facility disclosures that are being made occur after one company acquires another. Typically, the acquiring company discovers the potential violations through an audit of the company to be acquired and discloses them to the EPA. The Agency is interested in receiving comments on how to encourage more companies to disclose and correct violations discovered in the acquisition context.

As of April 30, 1999, EPA had granted penalty relief under the Policy to 166 entities involving approximately 936 facilities, including 131 instances in which no monetary penalty was assessed and 19 instances in which gravity-based penalties were mitigated by 75%. There were 8 instances in which the company's economic benefit was recouped, including 6 instances in which only the economic benefit was paid, with 100% mitigation of the gravity-based penalty.

Most of the disclosures under the Audit Policy involve reporting and monitoring types of violations of federally-run programs. Eighty-four percent of the violations disclosed are reporting, monitoring/sampling, labeling/manifesting, recordkeeping, testing, training and production violations. Sixteen percent of violations disclosed are unauthorized releases and violations of storage/disposal/container management, permit application, and remediation requirements. These percentages appear to reflect the high percentage of regulations for reporting, monitoring and recordkeeping. Ninety-one percent of violations disclosed were violations of programs administered by EPA and not by the states.

To date, there have been 14 disclosures to EPA's criminal enforcement program. Of the 14 disclosures received by the Agency's criminal program, three were denied consideration under the Policy because they were submitted subsequent to a criminal investigation having been opened by EPA's Criminal Investigations Division. Seven remain in open investigation status. In four of the 11 eligible disclosures, the government (either EPA alone or in conjunction with the Department of Justice) determined either that the conduct disclosed was not criminal in nature, and referred the matter to EPA's civil enforcement arm, or closed the matter in consultation with civil enforcement. Violations disclosed involve RCRA, CAA, CWA, TSCA and CERCLA. Due to the relatively small number of cases, however, and the fact that the majority of cases are open investigations, specific violations cannot be discussed.

The User's Survey indicates that while many would have disclosed even in the absence of the Audit Policy, it was a motivator for some. Responses received include the following:

- ''It was only a reporting violation; without the policy we may not have reported it.''
- ''The Audit Policy was a clear motivator to report.''
- ''We probably would have disclosed under the voluntary disclosure policies.''
- ''Violations would always be disclosed, but EPA Audit Policy creates an incentive for comprehensive self-auditing.''

Less directly applicable, the National Conference of State Legislatures (NCSL) recently released a study concluding that there is no statistically significant relationship between the existence of a state environmental Audit Policy or law and the level of environmental disclosures over time.[4] The study also reveals that facilities are not necessarily aware of the existence in their state of an audit policy or privilege/immunity law. Between 40% and 50% of the facilities interviewed did not know whether their state had an audit policy or law.

3. Improvements in Corporate Compliance Programs

Seventy percent of respondents to the User's Survey reported having in place a formal environmental compliance auditing program and 52% reported having either a formal environmental management system (EMS) or a compliance management (''due diligence'') system. Of these, approximately half reported that the Audit Policy encouraged specific improvements in their compliance auditing program (54%) or EMS/compliance management program (50%). Reported improvements include introducing EMSs and auditing to some companies, and motivating others to audit more pervasively throughout the organization. Responses include the following:

- ''Ensured inclusion of internal auditing system into EMS.''
- ''Broadened scope of regulatory efforts at compliance—Increased awareness of various regulatory responsibilities.''
- ''It confirmed the desirability of rigorous effectuation of an EMS.''
- ''Take more diligence on audits and report violations in a timely manner''
- ''Improved audit follow-up of any findings.''
- ''Internal audit system being developed on corporate level for all facilities in division.''
- ''Introducing EMS and audits to company.''
- ''Gave us discipline and focus for auditing.''
- ''Encouraged more complete documentation of the EMS.''

When asked what compliance or environmental improvements were induced at least in part by the incentives offered by the Policy, forty-four percent of respondents offered examples, including increased awareness of compliance issues, enhanced training and review of staff performance, and improved reporting. Responses include the following:

- ''We've embarked on a broad program to update and improve procedures to more plainly address compliance.''
- ''Supports open reporting internally within entity.''
- ''To be more aware of potential problems.''
- ''Stored waste disposed of properly.''
- ''Enhancement of procedures and training.''
- ''Greater awareness on the part of management that compliance activities must become part of business processes.''
- ''Internal audit system being developed on corporate level for all facilities in division.''
- ''Motivator in general to do more frequent audits.''
- ''The facility established a better system to monitor reporting requirements.''

[4] ''State Environmental Audit Laws and Policies: An Evaluation,'' National Conference of State Legislatures (October, 1998).

- ''Improved reporting.''
- ''Enhanced process sampling—operator personnel protective equipment, operator training.''
- ''EPA demonstrated the benefit of maintaining compliance and auditing programs through their willingness to reduce penalty amounts on self-reported violations.''
- ''Completed TRI reports that were not done previously so reporting was brought up to date.''

An additional 22% of respondents indicated that it was too early to tell whether the Policy had induced compliance or environmental benefits, 14% didn't know, and 4% indicated no improvements.

The Internal Survey revealed that entities adopted the following known efforts to prevent recurrence of the violation: 24% of the entities implemented employee training covering compliance requirements, 43% of the entities implemented a management system addressing compliance requirements, and 33% of the entities took other efforts such as developing or formalizing procedures or increasing oversight or review.

As part of several enforcement initiatives involving the Audit Policy, EPA is encouraging environmental auditing by distributing copies of auditing protocols. For example, as part of an initiative to encourage auditing and self-policing, the EPA is developing and plans to distribute 13 audit protocols that will include summaries of the applicable statutes and regulatory requirements, and checklists to help direct environmental auditors through the auditing process.

The Audit Policy has spurred improvements in environmental auditing and compliance management systems. EPA's experience suggests that companies are much more likely to take advantage of incentives to disclose and correct violations when such incentives are offered in the framework of integrated enforcement and compliance assistance strategies, which can include such elements as outreach, identification of compliance assistance tools such as audit protocols, and increased compliance monitoring and enforcement activities. Participation may be further enhanced when the terms for disclosure and correction are standardized, e.g., through pre-established deadlines and penalty amounts. This is consistent with a 1995 Price Waterhouse survey, ''The Voluntary Environmental Audit Survey of U.S. Business,'' which found that inspections and enforcement play a critical role in motivating corporate audit programs. By providing ''early warning,'' EPA can provide industries with an opportunity to come into compliance without facing the risk or expense of an enforcement action. EPA proposes no specific revisions to the Audit Policy in this regard. The Agency plans to focus more carefully on reviewing efforts to prevent recurrence and plans to continue the development and dissemination of auditing protocols and other tools to assist companies in systematically discovering and correcting violations.

4. Awareness of New Environmental Issues

The Internal Survey revealed that in 27 instances EPA became aware of new environmental issues related to compliance as a result of disclosures made under the Audit Policy. In addition to the discovery of specific issues, use of the Policy has heightened awareness by both EPA and the regulated community of otherwise undetected environmental problems prevalent among specific industry sectors. Some disclosures to EPA have assisted the agency in identifying newly emerging environmental problem areas.

For example, a national telecommunications company discovered and disclosed over 600 violations of the Clean Water Act (CWA) and the Emergency Planning and Community Right to Know Act (EPCRA) at over 300 of its facilities. In undertaking the audit that led to this disclosure, the company identified the existence of a previously undetected environmental risk. Through its disclosure under the Audit Policy, the company alerted the EPA to this risk, prompting the Agency in turn to contact other members of the telecommunications industry to call attention to potential problems at their sites. EPA might have remained unaware of the risk were it not for the first company's disclosure and correction of the problem.

Another example of heightened awareness of sector-related environmental issues is disclosures made to EPA by six member companies of the Oilseed Processors Association. Through use of the Audit Policy, EPA became aware of significant violations among food processors who produce products that do not qualify as foods or food additives for purposes of the Federal Food, Drug and Cosmetic Act and, therefore, are subject to regulation as chemical substances under the Toxic Substances Control Act (TSCA). TSCA's Inventory Update Rule requires certain parties to report to EPA chemical information for use in EPA's database of national organic chemical production volume information. Disclosures of violations in nine states brought to EPA's attention prevalent violations of the reporting requirement among this industry sector.

Finally, the 11 eligible disclosures received by EPA's criminal enforcement program so far and accepted for consideration under the Policy involve violations that may well not have been discovered absent the voluntary disclosure.

II. Proposed Revisions and Solicitation for Public Comment

A. Discussion of Specific Proposed Revisions to Policy Text

In the following set of proposed revisions to the Audit Policy, proposed additional text is indicated in *italics*, and proposed deleted text is indicated in [brackets].

1. Broaden Period for ''Prompt Disclosure'' From 10 days to 21 Calendar Days, and Clarify the Time of Discovery

Proposed Revision: II.D.3., Prompt Disclosure, ''The regulated entity fully discloses a specific violation within *21* [10] *calendar* days, [(]or such shorter period provided by law[)], after it has discovered that the violation has occurred, or may have occurred, in writing to EPA;''

Proposed Revision: Explanatory Text, I.E.2 (third column, third full paragraph), delete: ''[Where reporting within ten days is not practical because the violation is complex and compliance cannot be determined within that period, the Agency may accept later disclosures if the circumstances do not present a serious threat and the regulated entity meets its burden of showing that the additional time was needed to determine compliance status.]'' Replace it with: *''EPA may extend the disclosure period to allow reasonable time for completion and review of multi-facility audits where: (a) EPA and the entity agree on the timing and scope of the audit prior to its commencement; and (b) the facilities to be audited are identified in advance.''*

Proposed Revision: Explanatory Text, I.E.2 (66708–66709), ''This condition recognizes that it is critical for EPA to get timely reporting of violations in order that it might have clear notice of the violations and the opportunity to respond if necessary, as well as an accurate picture of a given facility's compliance record. Prompt disclosure is also evidence of the regulated entity's good faith in wanting to achieve or

return to compliance as soon as possible.

''In the final Policy, the Agency has added the words, ''or may have occurred,'' to the sentence, ''The regulated entity fully discloses [that] *within 21 days * * *'' after it has discovered that the violation has occurred,* [a specific violation has occurred,] or may have occurred * * *.'' This change, which was made in response to comments received, clarifies that where an entity has some doubt about the existence of a violation, the recommended course is for it to disclose and allow the regulatory authorities to make a definitive determination. *The time at which a violation may have occurred begins when any officer, director, employee or agent of the facility has an objectively reasonable basis to conclude that a violation may have occurred.*

Rationale: While EPA proposes to broaden the disclosure period from 10 to 21 days, EPA also proposes to clarify when a violation ''may have occurred,'' or when the disclosure period begins to run. Based on results of the User's Survey and other sources, the 10-day disclosure period may be a significant impediment to increased use of the Audit Policy. Expanding the disclosure period is the most frequent suggestion by users, and disclosure beyond the 10-day time-frame is a common reason for ineligibility under the Policy. For these reasons, EPA proposes to broaden the prompt disclosure period from 10 days to 21 days.

The broadening of the disclosure period is in response to EPA's analysis and experience as well as to input from representatives from regulated entities that 10 days is not sufficient time to analyze and decide whether to disclose potential violations, especially for larger corporations with several layers of management. Results of the Internal Survey indicate that approximately 23 of 53 late disclosers reported by survey respondents had disclosed within the 11–21 day time-frame after they ''discovered'' the violation had occurred or may have occurred. The choice of 21 days, a multiple of seven, will make it very likely that the disclosure deadline falls on a business day if ''discovery'' was made on a business day. Finally, the designation of ''calendar'' day as opposed to ''business'' day will clarify EPA's expectations. In practice EPA has used calendar days in applying this condition. Note that entities would still be required to disclose within any legally mandated time frame, e.g., the immediate reporting requirement for unpermitted releases in 42 U.S.C. 9603.

Under the prompt disclosure provision, for purposes of pinpointing the date of discovery and calculating the disclosure period, the time at which a violation may have occurred begins when any officer, director or employee of the facility has an objectively reasonable basis to conclude that a violation has occurred. The existence of this objectively reasonable basis will begin the running of the 21-day clock for disclosure. Where there are differing legal interpretations that raise the issue of whether a violation has occurred as a matter of law, an entity should disclose the violation as soon as possible but in no case more than 21 days after the awareness of facts that constitute a possible violation. EPA will make a definitive determination concerning whether such facts actually present a violation of law.

For the sake of clarity, the explanatory text language implying that disclosures may be made after the disclosure period has run is proposed for deletion.

2. State That the Impending Inspection/Investigation or Information Request Must ''Involve The Same Facility'' in Order to Fail Under the ''Independent Discovery'' Condition

Proposed Revision: II.D.4, Discovery and Disclosure Independent of Government or Third Party Plaintiff, ''The violation must also be identified and disclosed by the regulated entity prior to:

(a) the commencement of a federal, state or local agency inspection or investigation, or the issuance by such agency of an information request [to the regulated entity] *involving the same facility of that entity; or the commencement of a broad investigation to address multi-facility compliance problems at the regulated entity. Where, as a result of violations uncovered during an inspection, investigation, or information request at a facility, EPA is planning to inspect, investigate, or send an information request to other facilities of the same regulated entity, such facilities will not qualify for audit policy credit because any violations disclosed thereafter would not be ''independent'' of government action.''*

Add to the Explanatory Text (at end of current text in section E(3)):

''Where the regulated entity owns and/or operates more than one facility, the fact that an investigation (e.g., information request or inspection) has begun with respect to one facility does not per se disqualify another facility owned or operated by the entity from receiving audit policy credit. The audit policy does encourage multi-facility auditing and disclosure of violations. However, the audit policy is designed to encourage entities to disclose violations before an entity is the subject of any investigation, not after EPA uncovers violations at one facility. EPA cautions that once an inspection or response to an information request has revealed violations at one facility, the regulated entity is more likely to be the subject of increased scrutiny. Where EPA plans an investigation of other facilities owned or operated by an entity, those other facilities will not be entitled to audit policy credit.

Rationale: The primary purpose of this condition, as stated in the current preamble to the Policy, is to ensure that regulated entities seeking relief under the Policy have taken the initiative to find violations and promptly report them, rather than reacting to knowledge of a pending enforcement action, investigation, or third-party complaint. This proposed change harmonizes the language of the Policy with EPA practice. Thus, Policy relief for a facility is not necessarily precluded by an inspection, investigation or information request at another facility owned by the same parent organization.

3. State That ''No Recommendation for Criminal Prosecution'' Is Available for Entities That Meet All of the Conditions Except for ''Systematic Discovery''

Proposed Revision: II.C.3, No Criminal Recommendations, ''(a) EPA will not recommend to the Department of Justice or any other prosecuting authority that criminal charges be brought against a regulated entity where EPA determines that all of the conditions *of Section D(2) through D(9) below* [in Section D] are satisfied, so long as the violation does not demonstrate or involve: * * *.''

Rationale: EPA proposes that ''no recommendation for criminal prosecution'' is available for entities that meet all of the conditions except for ''systematic discovery.'' In the application of this Policy to criminal matters, there is no ability to grant a reduction in gravity benefit to a disclosing entity. Even if a violation is not discovered systematically, its circumstances may not present the kind of culpability that rises to the level of criminal conduct. Because EPA wants to encourage disclosures of potential criminal violations, Policy benefits will be extended to a disclosing entity in the criminal context regardless of how discovery is made.

4. Clarify the Meaning of ''Cooperation'' Required for Disclosures Made Under the Policy

Proposed Revision: II.D.9. Cooperation, add a new sentence at the end of the paragraph: *''EPA does not intend to request an audit report to determine the applicability of this Policy for purposes of civil penalty mitigation unless EPA determines that information contained in an audit report is necessary to such determination and is not readily available otherwise.''*

Proposed Revision: Explanatory Text, I.E.8., Cooperation, add to end of paragraph, *''Cooperation in a criminal investigation shall include, at a minimum, access by EPA* to all information relevant to the violation(s) disclosed, including *that portion of the environmental audit or documentation from the compliance management system that revealed the violation(s), access to the individuals who conducted the audit or review, access to all employees of the disclosing entity, and access to all requested documents. Such cooperation may be effected directly by the company or through counsel. Full cooperation does not necessarily require that the entity waive all legal privileges available to it, but does require that the disclosing entity provide EPA with all information relevant to the violation(s) disclosed, whether or not such information might otherwise be protected by legal privilege.''*

Rationale: Part II.C.4. of the Policy states EPA's general policy and practice regarding requests for and use of environmental audits, but does not indicate under what circumstances EPA will request audit reports from entities that have disclosed violations under the Audit Policy, i.e., what is required under the Policy's ''cooperation'' condition. This language clarifies the EPA's approach to ''cooperation'' for disclosures of civil and criminal violations.

These proposed changes are consistent with EPA practice. EPA has not requested submission of audit reports to satisfy the cooperation condition unless it is necessary to apply the Policy and the information contained in the audit report is not available otherwise.

The second set of proposed revisions provides additional guidance with respect to requests for audit reports from entities that have disclosed criminal violations.

5. Clarify That Penalty Relief Is Available Under Other Enforcement Policies for ''Good Faith'' Disclosures of Violations Even for Those That Do Not Meet the Audit Policy criteria

Proposed Revision: G. Applicability, add to end of paragraph (2), *''Where an entity has failed to meet any of the conditions of Section II.D.2 through 9 and therefore is not eligible for penalty relief under this Policy, an entity may still be eligible for penalty relief under other EPA media-specific enforcement policies in recognition of good faith efforts, even where, for example, the violation may have presented an imminent and substantial endangerment or resulted in serious actual harm.''*

Rationale: This additional language responds to industry contentions that regulated entities may not be aware that penalty relief for self-disclosures is available under other enforcement policies for entities that did not qualify for relief under the Audit Policy, even if they failed under the exclusion for ''imminent and substantial endangerment/serious actual harm.'' A review of the major media-specific enforcement policies indicates that ''good faith'' efforts may result in up to 50% gravity mitigation with respect to violations that may have failed under the ''imminent and substantial endangerment/serious actual harm'' exclusion of the Audit Policy, depending upon the enforcement policy involved and the precise facts.

6. Clarify EPA's Intent Concerning the Imminent and Substantial Endangerment Exclusion

In response to concerns that the imminent and substantial endangerment exclusion from the Policy is unclear and/or too harsh, today EPA is clarifying its intent regarding this standard. This condition does not bar a company from qualifying for relief under the Audit Policy solely because the violation involves release of a pollutant to the environment; rather, it is intended to exclude those violations that present a serious risk of harm since good audit programs should prevent such occurrences. Releases of emissions do not necessarily result in an imminent and substantial endangerment.[5] To date, EPA has not invoked the imminent and substantial endangerment exclusion to deny Audit Policy credit for any disclosure.

[5] See *Guidance on the Use of Section 7003 of RCRA* (October 1997).

7. Change Nomenclature of ''Due Diligence'' to ''Compliance Management System''

Proposed revision: D.1.Systematic Discovery, ''The violation was discovered through:

(a) an environmental audit; or

(b) *a compliance management system* [an objective documented, systematic procedure or practice] reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the Agency as to how *its compliance management system meets* [it exercises due diligence to prevent, detect and correct violations according to] the criteria in Section B *and how the regulated entity discovered the violation through its compliance management system*. EPA may require as a condition of penalty mitigation that a description of the regulated entity's *compliance management system* [due diligence efforts] be made publicly available.

Proposed revision: II.B., Definitions * * * *''Compliance Management System''* [''Due Diligence''] encompasses the regulated entity's *documented* systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correction violations through all of the following: * * *.''

Proposed revision: D.6. Prevent Recurrence, ''The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental auditing *program or compliance management system* [due diligence efforts];''

Rationale: Under this proposed revision, ''compliance management system'' would replace the term ''due diligence'' without changing the listed criteria for a systematic compliance management program. The term ''compliance management system'' is much more commonly used by industry and EPA to refer to a systematic management plan or efforts to attain compliance than the term, ''due diligence efforts.'' The term ''due diligence'' arose solely from the 1991 Sentencing Guidelines as part of the definition of an ''effective program to prevent and detect violations of law,'' which is a mitigating factor in determining the criminal fine for convicted organizations. This proposed revision will avoid confusing ''due diligence'' under this Policy with ''due diligence'' inquiries in the mergers and acquisitions context. The proposed revision also states that, like the ''environmental audit'' method of

systematic discovery, the ''compliance management system'' must be documented. The explanatory text will state that the compliance management system method of systematic discovery is intended to cover violations discovered through the day-to-day operation of the system, such as detection of violations by an employee trained pursuant to the compliance management system, as well as detection through environmental audits that are part of the compliance management system.

8. Describe the EPA Processes for Handling Civil and Criminal Disclosures

Proposed revisions: add new Section I at the end of the explanatory text:

''I. Implementation of Policy

''Disclosures of civil environmental violations under the Audit Policy should be made to the EPA Regions or, where the violations to be disclosed involve more than one EPA Region, to an appropriate Headquarters office. The Regional or Headquarters offices decide in the first instance whether application of the Audit Policy in a specific case is appropriate. As in other non-disclosure cases, the Regional and Headquarters offices coordinate with the criminal program offices and the Department of Justice where there may be evidence of criminal violations. Conversely, disclosures made to the criminal enforcement program that reveal violations that may be civil in nature will be coordinated with the appropriate Regional or Headquarters civil enforcement office. The Audit Policy Quick Response Team (QRT), established in June 1995, addresses issues of national significance and ensures consistent and fair application of the Policy across EPA Regions and programs. The Audit Policy QRT is comprised of senior representatives from EPA Headquarters, Regions and the Department of Justice.

''Requests for relief under the Audit Policy for cases giving rise to potential criminal violations will be considered by the Voluntary Disclosure Board (VDB or Board) in the Office of Criminal Enforcement, Forensics and Training (OCEFT), located at EPA Headquarters. The Board will receive, monitor and consider all requests for consideration under the Policy, and make recommendations to the Director of OCEFT who will serve as the Deciding Official in all cases where disclosure indicates potential criminal violations.

''Disclosure and request for relief under the Policy in potential criminal cases should be made to the Board directly. Disclosures identifying potential criminal violations made through the Special Agent-in-Charge (SAC) or EPA regional enforcement personnel will be forwarded to the Board for initial evaluation and monitoring purposes.

''Following a disclosure of potential criminal violation(s), a criminal investigation will be initiated. During the course of the investigation, the Board will routinely monitor the progress of the investigation as necessary to ensure that sufficient facts have been established to support (or oppose) a recommendation that relief under the Policy be granted. At the conclusion of the criminal investigation, the Board will make a recommendation to the Deciding Official.

''Upon receiving the Board's recommendation, the Deciding Official will make his final recommendation to the appropriate United States Attorney's Office and/or the Department of Justice. The recommendation of the Deciding Official, however, is only that—a recommendation. A United States Attorney's Office and/or the Department of Justice retain full authority to exercise prosecutorial discretion.

''The Voluntary Disclosure Board was established in October 1997 to serve as a central body for consideration of all voluntary disclosures potentially criminal in nature. The VDB is comprised of members associated with the criminal enforcement program at EPA, including a member from the Department of Justice, Environmental Crimes Section. The Board operates to ensure consistent application of the Policy nationwide in this nationally managed criminal enforcement program.''

9. Clarify That EPA Will Release Case Information Upon Case Settlement Unless a Claim of Confidential Business Information Is Made, Another Freedom of Information Act Exemption Applies, or Any Other Law Would Preclude Such Release

Proposed Revision: Explanatory Text, I.E.2., Voluntary Discovery and Prompt Disclosure, 66709, column 1: ''[In general, the Freedom of Information Act *(FOIA)* will govern the Agency's release of disclosures made pursuant to this policy.] *Upon formal settlement of a case involving disclosure under this Policy,* EPA will [, independently of FOIA,] make publicly available any *self-disclosures and related documents, unless the disclosing entity claims them as Confidential Business Information (and that claim is validated by U.S. EPA), unless another exemption under the Freedom of Information Act is asserted and/or applies, or the Privacy Act or any other law would preclude such release. Presumptively releasable documents include compliance* agreements reached under the Policy (see Section H of the Policy)[,] *and* [as well *as,* including] descriptions of *compliance management systems* [due diligence programs] submitted under Section D.1 of the Policy. Any material claimed to be Confidential Business Information will be treated in accordance with EPA regulation at 40 CFR Part 2.''

Rationale: This change is intended to harmonize the explanatory text with EPA practice regarding the public availability of Audit Policy case information following the formal conclusion of the case.

10. Clarify That Violations Discovered Pursuant to an Environmental Audit or Use of a CMS Performed as a Requirement of Participation in an Agency Partnership Program Can Be Considered To Have Been Discovered Voluntarily

Proposed Revision: Add a new subsection (5) to the ''Applicability'' Section of the Audit Policy (II.G), as follows:

(5) For purposes of this Policy, violations discovered pursuant to an environmental audit or CMS can be considered to be voluntary even if it is conducted in conjunction with a ''partnership'' program that requires an environmental audit or CMS. EPA will consider application of the Audit Policy to such partnership program projects on a project-by-project basis.

Rationale: In partnership programs, EPA has found the Audit Policy to be useful as applied to companies sponsoring regulatory flexibility pilot projects (e.g., Project XL). This change will ensure that facilities or regulated entities participating in one of the ''partnership'' programs that EPA is conducting are not foreclosed from receiving penalty mitigation for violations discovered during an environmental compliance audit or use of a CMS performed as a condition of participation in such program.

11. Note the Availability of Interpretative Guidance on Many Issues Concerning the Availability and the Application of the Policy

Proposed Revision: II.G, add a new subsection to the ''Applicability'' section of the Policy:

''(6) EPA has issued interpretative guidance addressing several applicability issues pertaining to the Audit Policy. Those considering whether to take advantage of the Policy should review that guidance to see if it

addresses any relevant questions. The guidance can be found on the Agency's World Wide Web page at www.epa.gov/oeca/apolguid.html.''

12. Clarify That if a Facility Discloses to EPA a Violation of a Program That a State is Approved or Authorized to Administer and Enforce, EPA Will Consult With the Applicable State in Responding to the Disclosure

Proposed Revision: I.G, add a new sentence at the end of the current text in the ''Effect on States'' section of the explanatory text:

''Facilities wishing to disclose violations under the Audit Policy should disclose to the appropriate EPA Regional or Headquarters contact. When a facility discloses to EPA a violation of a state-authorized or -approved program, the Agency will inform the relevant state agency and consult with it as to an appropriate response.''

B. Discussion of Specific Proposed Revisions to Policy Implementation

The most frequently suggested change from users regarding Policy implementation is expediting the EPA time to acknowledge or respond to the disclosures and/or time to settle the case. EPA internal data also point toward needed improvements in this area as EPA took more than 15 days to acknowledge the disclosure in at least 35% of the cases and more than 90 days to settle the case in at least 66% of the cases. In many cases, EPA has experienced long delays in obtaining requested information from entities. In many other cases, however, EPA should have been able to process disclosures on a more expeditious basis. EPA intends to encourage the use of disclosure checklists that would have the effect of increasing the efficiency of collecting information needed to apply the Audit Policy, and the Agency is exploring other steps to speed the processing of disclosures.

The data reveal that entities disclosed violations at approximately 1850 facilities and that at least 900 of these facilities involved multiple disclosures by the same parent organization. The Agency proposes to encourage multi-facility disclosures in particular because such disclosures effectively leverage resources of the Agency, allow regulated entities to review their operations holistically, and benefit the environment.

For the same reasons, sector-based enforcement initiatives involving the Audit Policy also figure prominently in the future of EPA's enforcement and compliance program. These types of initiatives are also supported by direct evidence that an inspection presence provides a direct incentive for auditing for and correction of environmental violations.[6]

The Audit Policy has successfully provided a common approach toward encouraging self-policing that is consistently applied across all environmental media and EPA Regions and offices. EPA does not recommend any revisions to Policy implementation in this regard. To the extent that data indicate that awareness of the Audit Policy is low, EPA will continue to emphasize Audit Policy awareness-building activities.

Dated: May 11, 1999.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 99–12369 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–U

[6] Results of the following surveys and studies support this proposition:

- 1995 Price Waterhouse survey, ''The Voluntary Environmental Audit Survey of U.S. Business,'' question 25, (As a reason for auditing, 96% indicated ''Problems can be identified internally and corrected before they are discovered by an agency inspection.'');
- 1998 National Conference of State Legislatures, finding 5 (90% of respondents rank as being very important reasons for auditing, ''Measuring compliance with environmental requirements, and identifying problems internally and correcting them before they are discovery during an inspection by a regulatory agency.'')
- 1998 Audit Policy User's Survey, question 17 (As second most frequently cited reason for disclosing violations under the Audit Policy, ''To take proactive measures to find and address compliance problems before EPA discovered them.'')

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6343–7]

Proposed CERCLA Prospective Purchaser Agreement for the Zephyr Refinery Site

AGENCY: U.S. Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA prospective purchaser agreement for the Zephyr Refinery Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Pub. L. 99–499, notice is hereby given that a proposed prospective purchaser agreement (''PPA'') for the Zephyr Refinery Site (''Site'') located in Muskegon Township, Michigan, has been executed by Ridgemont Development, L.L.C. (''Ridgemont''), and Brink Terminal Services, Inc. (''Brink'') The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, Section 311 of the Clean Water Act, 33 U.S.C. 1321, and Section 1002(b) of the Oil Pollution Act, 33 U.S.C. 2702(b), against Ridgemont and Brink. The proposed PPA would require Ridgemont and Brink to pay the United States $20,000 to be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the Site. The Site is not on the NPL. No further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed PPA must be received by U.S. EPA on or before June 16, 1999.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Reginald A. Pallesen at (312) 886–0555, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Reginald A. Pallesen, Office of Regional Counsel (C–14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, Associate Regional Counsel, at (312) 886–0555. A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this notice.

William E. Muno,

Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 99–12365 Filed 5–14–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3139–EM]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3139–EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: April 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 27, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida, resulting from fire hazards on April 15, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency protective measures as authorized under Title V, excluding regular time costs for subgrantees regular employees. The assistance provided under this declaration does not include debris removal assistance.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

You are further authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul W. Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared an emergency:

The counties of Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Collier, Columbia, Dade, Desoto, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holms, Indian River, Jackson, Jefferson, Lee, Leon, Levy, Liberty, Manatee, Marion, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Lucie, Swannee, Union, Wakulla, Walton, and Washington. FEMA will provide appropriate assistance for required emergency protective measures as authorized under Title V of the Stafford Act. The assistance provided under this declaration does not include debris removal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12346 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and tornadoes on May 3, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program, and Hazard Mitigation in the designated areas. Further, you are authorized to provide other categories of assistance under the Public Assistance program, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Sedgwick County for Individual Assistance and Debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12345 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1270–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1270–DR), dated May 5, 1999, and related determinations.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 1999:

Andrew, Iron, Macon, and Osage Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12342 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1272–DR), dated May 4, 1999 and related determinations.

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from tornadoes and severe storms on May 3–4, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act'').

I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas and other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Caddo, Cleveland, Creek, Grady, McClain, Oklahoma, Kingfisher, Lincoln, Logan, Pottawatomie, and Tulsa Counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12343 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1272–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 5, 1999, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from tornadoes and severe storms on May 3–4, 1999, is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of May 4, 1999, to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program, including direct Federal assistance effective May 4, 1999, through May 7, 1999. This assistance may be provided to all counties designated under the major disaster declaration. You may extend this assistance for an additional period of time, if warranted.

Please notify the Governor of Oklahoma and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora

Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12344 Filed 5–14–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-11732) published on page 25041 of the issue for Monday, May 10, 1999.

The Federal Reserve Bank of Kansas City heading in paragraph A. and the entry for Robert W. Gentry, Denton, Texas, are corrected to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert W. Gentry, Denton, Texas; to acquire additional voting shares of Lake Cities Financial Corporation, Lake Dallas,Texas, and thereby indirectly acquire additional voting shares of Lake Cities State Bank, Lake Dallas, Texas.

Comments on this application must be received by May 25, 1999.

Board of Governors of the Federal Reserve System, May 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12292 Filed 5–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Bancorp Investment, Inc., Lafayette, Tennessee; to acquire 80 percent of the voting shares of Liberty State Bank, liberty, Tennessee.

2. FLAG Financial Corporation, LaGrange, Georgia; to merge with Abbeville Capital Corporation, Abbeville, South Carolina, and thereby indirectly acquire Bank of Abbeville, Abbeville, South Carolina.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Republic Bancorp, Ann Arbor, Michigan; to acquire D&N Bank, Hancock, Michigan, upon conversion from a federally-chartered savings bank to a state chartered savings bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Baxter Bancshares, Inc., Baxter Springs, Kansas; to acquire 100 percent of the voting shares of Nine Tribes Bancshares, Inc., Quapaw, Oklahoma; and thereby indirectly acquire The Bank of Quapaw, Quapaw, Oklahoma.

Board of Governors of the Federal Reserve System, May 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12291 Filed 5–14–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 20, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12450 Filed 5–13–99; 11:01 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99123]

Notice of Availability of Funds; Grant for Community-Based Intervention Research for Children Riding in Motor Vehicles

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1999 funds for a grant to conduct a Community-Based Intervention Program for Children Riding in Motor Vehicles. The purpose of the program is to design, implement, and evaluate a community-based intervention project aimed at changing the seating locations and restraint-use patterns of children riding in passenger cars and light trucks. The goal is to induce all children under the age of 12 to be seated in the rear seat (if one exists) and to be properly restrained in a safety seat or child restraint device. This program addresses the ''Healthy People 2000'' priority area of Unintentional Injuries.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $250,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

1. Design, implement, and conduct an extensive intervention program to increase placement of children properly restrained in the back seat of motor vehicles. The intervention program will be developed using a sound theoretical basis in health behavior change.

2. Establish links and/or collaborative relationships with interested partners in the intervention and two control communities, especially representatives from local health departments, police, academic institutions, and traffic safety and injury control specialists.

3. Identify the targeted intervention community and the communities which will serve as the ''control'' communities.

4. Establish a community coalition to provide direction and broad penetration of the intervention.

5. Conduct an assessment of the project. The primary outcome measure used to evaluate the intervention will be a change in the proportion of children riding in back versus the front seat of passenger cars and light trucks.

6. Conduct an analysis of the cost effectiveness of the community intervention; carry out a detailed process evaluation in the intervention community; and compile, publish, and disseminate results.

E. Application Content

The application should be developed in accordance with Form PHS–398.

1. State briefly your understanding of the purpose of the program.

2. Describe in detail the process you will use to accomplish the requirements of the program. This process description should include specific planning objectives, strategies for achievement of these objectives, and a proposed schedule for achieving these objectives. Describe the population to be served and how participants will be identified.

3. Describe your capability to conduct the proposed project, including the applicant's experience in conducting and evaluating projects similar to the proposed project.

4. Provide the name, qualifications, and proposed time allocations of the Project Director, who will be responsible for administering the grant. Describe requirements for additional staff, experience, facilities, and other resources that would define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project.

5. Provide a detailed budget which indicates anticipated costs for personnel, travel, communications, postage, equipment, contracts, supplies, and other items; and all sources of funds to meet these expenses.

6. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

7. If human subjects will be involved in this research, provide evidence of compliance with the Department of Health and Human Services regulations (45 CFR part 46) on the protection of Human Subjects.

F. Submission and Deadline

Application

Submit one original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before July 15, 1999, submit the application to the specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 percent)

The extent to which the applicant presents the magnitude of the need for this project, demonstrates experience in this area, and describes the likely impact of their activities on the need.

2. Goals and Objectives (10 Percent)

The extent to which the goal(s) and objectives are relevant to the purpose of the program, feasible for accomplishment during the project period, measurable, and specific in terms of what is to be done and the time involved. The extent to which the objectives address all activities necessary to accomplish the purpose of the program.

3. Methods (30 Percent)

The extent to which the applicant provides a detailed description of all proposed activities needed to achieve each objective and the overall program goal(s). The extent to which the study collaborators have demonstrated expertise in conducting community interventions. The extent to which the applicant has experience and history of publication on motor vehicle occupant protection. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives.

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is

adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing collaborative relationships with community(ies) and recognition of mutual benefits.

4. Evaluation (30 Percent)

The extent to which the proposed evaluation plan is detailed and capable of documenting program process and outcome measures, including benefit/cost analysis, risk assessment, and risk management (applicants may wish to refer to A Framework for Assessing the Effectiveness of Disease and Injury Prevention, MMWR, March 27, 1992/Vol.41/No. RR–3 for further information on this methodology). You may access this document on CDC's Web page at www2.cdc.gov/mmwr/mmwrsrch.htm. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

5. Staff, and Resources (20 Percent)

Providing for a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the project. The extent to which the applicant can provide adequate facilities, staff and/or collaborators, and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, broad experience in risk assessment and analysis and capacity to perform the undertaking successfully.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

7. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. semiannual progress reports
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 317(k)(2), 391, 392, and 394 of the Public Health Service Act, [42 U.S.C. section 241, 247b(k)(2), 280b, 280b–1, and 280b–2], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC home page www.cdc.gov on the Internet (click on funding).

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

For business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99123, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2717, Email address: jcw6@cdc.gov

For program technical assistance, contact: Bruce Jones, M.D., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Unintentional Injury Prevention, 4770 Buford Hwy., N.E., Mailstop K63, Atlanta, GA 30341–3724, telephone: 770 488–4545, email address: bdj2@cdc.gov

Dated: May 11, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12312 Filed 5–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99104]

Notice of Availability of Funds; Innovative Demonstration Projects to Screen and Treat Asymptomatic Males for Chlamydia Trachomatis Infection Using Urine-Based Diagnostic Tests: Translational Research

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to conduct innovative demonstration projects using nucleic acid amplification tests on urine specimens to screen and treat asymptomatic males with Chlamydia Trachomatis (CT)infection. This program addresses the ''Healthy People 2000'' priority area of Sexually Transmitted Diseases. The purpose of the program is to determine the acceptability, feasibility, and cost associated with different approaches to screening asymptomatic males for CT infection. Successful applicants will implement demonstration projects using nucleic acid amplification tests on urine specimens to screen asymptomatic males for CT infection and will conduct research in the context of the demonstration project. Please reference Appendix 1 for background information relevant to this program announcement. Appendix 2 outlines project objectives.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations in partnership with State or local health departments. Any organization may be the primary applicant, but each application must include both an agency/institution with program implementation experience and an agency/institution with research experience. All applications must include a partnership with a State or local health department.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible

to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $750,000 is available in FY 1999 to fund two to three awards, with an average yearly award of 250,000, ranging from $200,000 to $300,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds awarded under this program may not be used for treatment.

Funding Preferences

Funding preference may be given to applicants to achieve geographic balance.

D. Program Requirements

Recipients will work with CDC to assure a scientifically sound demonstration project and embedded research study. If multiple awards are made, the only requirement for uniformity of approach across sites will relate to collection of a core set of data elements (including those related to cost) to allow systematic comparisons between different approaches to male screening.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under the subparagraph Recipient Activities and CDC will be responsible for the activities listed under the subparagraph CDC Activities.

1. Recipient Activities

a. Design and implement a demonstration project to screen asymptomatic males for chlamydia infection which addresses as many of the objectives listed in Appendix 2 as possible. At a minimum, recipients should gather routine data that will permit measurement of the prevalence of infection and male treatment rates, as well as the cost to detect and treat an infected male, and his infected female partners. Recipients are encouraged to screen in settings other than a sexually transmitted diseases clinic; however, a sexually transmitted diseases clinic could be one of several settings where screening is conducted, as this could provide a useful comparison to other screening venues developed by the recipient.

b. Design and implement a research study that can be embedded within the male CT screening demonstration project and which entails longitudinal follow up of a subset of men in order to address as many of the Appendix 2 objectives requiring longitudinal follow up as possible (i.e., reinfection, notification of female partners, reported behavior change after learning a positive test result).

c. Collaborate with other recipients in developing and collecting a common set of core variables to permit systematic comparison between different approaches (for the purpose of cost comparisons, this will require measurement of all relevant costs, including providers' costs of service delivery and participants' costs).

d. Collaborate with other recipients during implementation of the demonstration project and research study. Collaboration will include (1) communication with CDC regarding project and study progress and (2) participation in quality control procedures, and in regularly scheduled meetings and conference calls with CDC.

e. Recipients will use findings from their own demonstration project/embedded research to develop at least one publication for a peer-reviewed journal.

f. Submit and receive approval of study protocol by the recipient's local institutional human investigation review board (IRB).

2. CDC Activities

a. Provide technical assistance and scientific expertise. CDC staff will provide current scientific and programmatic information relevant to the design and conduct of the demonstration project and embedded research study.

b. As needed, provide technical advice to awardees in developing and collecting a common set of core variables to enable comparisons between different approaches, including those needed to accurately and completely measure costs, and which would allow for cross-site comparisons that could include a cost effectiveness analysis. Collaborative activities may include technical advice on awardee-development of common data collection instruments. As needed, CDC may assume responsibility for developing a centralized system for data management for the core set of data elements collected by each of the funded projects.

c. Assist in analysis and dissemination of results; as needed, assist each site in analyzing data and in dissemination of study results.

d. Monitor and Evaluate Scientific and Operational Accomplishments of the Project: This will be accomplished through periodic site visits, telephone calls, and review of technical reports and interim data analysis.

e. Submit and receive approval of study protocol by the Centers for Disease Control and Prevention IRB. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and size 12 font. Appendices may include letters of support, data tables, and bibliography only.

F. Submission and Deadline

Letter of Intent (LOI)

A letter of intent must be submitted on or before June 14, 1999 to the Grants Management Specialist listed in the ''Where to Obtain Additional Information'' section of this announcement. No applications will be accepted without a letter of intent. Letters of intent must be no more than one page, must be prepared with a Courier 12-point font and must include the following: statement of intent to apply, reference to Program Announcement 99104, title of the proposed project and the names, phone numbers, and email addresses for the lead investigators representing each collaborating institution or agency.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 2, 1999 submit the application to the Grants Management Specialist listed in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for independent review. (Applicants must

request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications that do not meet these criteria will not be considered and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Rationale for the Male Screening Demonstration Project and Embedded Research Study (10 Points)

Degree to which the applicant (a) Describes the local prevalence of CT infection (with stratification by age, gender, and ethnicity); (b) demonstrates knowledge of the medical/public health literature describing urine testing to identify asymptomatic men infected with CT; (c) demonstrates insight into factors that could influence the effectiveness of a male screening strategy for primary prevention among women; (d) demonstrates insight into the logistic and ethical challenges of offering diagnostic testing to an asymptomatic population in non-traditional and non-clinical settings; (e) presents a compelling rationale for their proposed approach to screening asymptomatic males for Chlamydia infection; (f) provides data to support their choice of screening venues; (g) describes any previous or existing male screening programs in their locality and describes how the proposed demonstration project compares to any existing local male screening programs, and (h) presents a rationale for their selection of research objectives from among those in Appendix 2.

2. Objectives (5 Points)

Extent to which the application addresses the research objectives outlined in Appendix 2 of this program announcement.

3. Demonstration Project Activities (20 Points)

Extent to which the application describes the proposed activities with detailed plans for implementation of the demonstration project, including: (a) A detailed and realistic time line for the specified activities; (b) specific information on the site where screening will be conducted, hours that screening will be offered, staffing, provisions for urine specimen collection (e.g., restrooms convenient to the site where males are being invited for screening, adherence to CLIA (Clinical Laboratory Improvement Amendments) requirements for specimen collection); (c) plans for obtaining informed consent (if needed); (d) plans for males to learn test results and receive treatment; and (e) plans to seek, screen, and treat the female sex partners of infected males.

4. Potential Influence of the Demonstration Project on Public Health Practice (15 Points)

Extent to which the applicant presents a detailed and logical plan for conducting a screening program that will provide access to a male population with a high prevalence of CT infection; particularly males who may contribute disproportionately to infecting females. Points will also be given for the extent to which the study population is representative of a large pool of potentially infected men and the likelihood that such a population could be identified and accessed in other locations across the United States. Points will be awarded to applicants describing a demonstration project that could be incorporated into the array of public health activities with a minimum of additional training, resources, and infrastructure. Points will also be awarded to applications that describe a plan for integrating partner services into the demonstration project.

5. Design of Research Study Requiring Longitudinal Follow Up (20 Points)

Extent to which the embedded research study is (a) both an appropriate and optimal means of addressing research objectives in Appendix 2 that require longitudinal follow up; (b) will achieve the research objectives without interfering with assessments of acceptability and feasibility (which could be biased if measured in study subjects consenting to participate in a study requiring longitudinal follow up); (c) includes clear and valid calculations for the sample sizes that would be required to measure effects related to each of the applicants chief research objectives; (d) provides clear description of appropriate comparison groups in each aspect of the study; and (e) if the study includes adolescents, displays familiarity with the legal and ethical issues surrounding elicitation of information regarding sexual activity between adolescents and older sex partners, (including the particulars of relevant State legislation), and demonstrates a means of adhering to such legislation in the proposed study.

6. Program and Research Capacity (25 Points)

The overall ability of the applicant to perform the technical aspects of the project. The quality of the applicant's: (a) Proposed collaboration with State or local health departments and partners for either research or program implementation (including letters of support); (b) availability and identification of personnel with the needed experience and competence in community outreach and program implementation, sexually transmitted disease service delivery, partner services, study design and conduct, data collection, analysis, and dissemination; (c) assurance that staff can be hired within an appropriate amount of time; (d) ability and willingness to collaborate in the development and collection of a common set of variables to permit cross-site comparisons; (e) demonstration of access to the data needed to permit true costs of service delivery to be determined so that a cost effectiveness evaluation can be done, e.g., demonstration of the ability to identify and collect data to measure the costs for screening that include testing and treatment costs, provider costs for wages and overhead, and participants' travel and time costs, as well as costs for partner services; (f) documentation of the availability of adequate laboratory, clinical, and administrative facilities and resources to conduct the proposed research, including a letter of agreement from the laboratory that will be conducting nucleic acid amplification testing on urine specimens and a letter of agreement from the administrative or managerial director of the proposed screening site (and board of directors or community board if appropriate); (g) access to cost-efficient, locally available staff to complete data entry and data management.

7. The Degree to Which the Applicant Has Met the CDC Policy Requirements Regarding the Inclusion of Ethnic and Racial Groups in the Proposed Research. (5 Points)

This includes:

1. The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation.
2. The proposed justification when representation is limited or absent.
3. A statement as to whether the design of the study is adequate to measure differences when warranted.
4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with

community(ies) and recognition of mutual benefits.

5. This program specifically seeks applications describing male screening programs, with a long term objective to develop strategies that can increase public health capacity to detect and treat infected females. Applicants need not address the inclusion of women in their response to evaluation criterion 7.

8. Budget (Not Scored)

The budget should anticipate the salaries of appropriate staff, travel for principal investigator and project supervisor to meet with CDC annually, supplemental needs related to diagnosis, management, and treatment of CT and other concurrently diagnosed STDs, including anticipated partner tracing activities, longitudinal participation, and other needs. The applicant should provide a line-item first year budget (with a budget narrative that justifies each line item). Budgets will be evaluated on the appropriateness of budget estimates in relation to the proposed research, and the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

9. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements For Award Recipients Provide CDC with original plus two copies of

1. Semi-annual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist listed in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 of the Public Health Service Act [42 U.S.C. 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.978.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Curtis Meusel, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99104, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mail Stop E15, Atlanta, Georgia 30341, Telephone (770) 488–2738, Email address CTM6@CDC.GOV.

Complete application information is also available on the CDC home page on the Internet: HTTP://WWW.CDC.GOV

For program technical assistance, contact: Julie Schillinger, MD, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mail Stop E02, Atlanta, GA 30333, Telephone: (404) 639–8368, Email: jus8@cdc.gov.

Dated: May 11, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

Appendix 1—Background

The bulk of the morbidity associated with CT infection appears to be borne by women, in whom infection can lead to pelvic inflammatory disease with subsequent infertility, ectopic pregnancy, and chronic pelvic pain. Women with CT infection have an associated increased risk for acquisition of HIV, and are at an increased risk for adverse outcomes of pregnancy (low birth weight, prematurity); there is also an increased risk for morbidity among infants born to infected mothers (neonatal pneumonia and ocular infections). For these reasons, efforts to reduce the morbidity associated with CT infection have focused on identifying and treating infected women, relying largely on widespread screening of asymptomatic women, with subsequent treatment of infected women and, to a lesser extent, their infected sexual partners. Regions of the country with active chlamydia prevention programs have demonstrated reductions of 36–59% in the measured prevalence of infection among women served in specific settings. There remains, however, substantial variation in CT-prevalence measured in different regions of the U.S., and it is not clear what strategies would be most effective in reducing disease below the threshold (3.9–7%) achieved in regions with aggressive prevention programs.

The application of nucleic acid amplification technology to the development of a urine-based diagnostic test for CT infection has broadened the potential for conducting screening of asymptomatic women, and, for the first time, presents a feasible means of screening asymptomatic men. Although urine-based diagnostic tests have been approved for use in men and are being used in select settings, because available data suggest that severe sequelae of Ct infection are relatively infrequent in men, several important questions must be answered before national chlamydia control efforts and resources are directed to widespread screening for men. First, what approaches to male screening for CT infection are most acceptable and feasible, and second, is male screening an effective means of reducing disease in women? To address these questions it will be necessary to explore the prevalence of infection in different asymptomatic male populations which may be accessed by urine screening, to determine the acceptability and feasibility of screening these populations, and to measure the cost of detecting and treating an infected male and his infected female sex partners. To evaluate the comparative value of different approaches to screening asymptomatic males, screening would need to be conducted in a variety of different venues, including sexually transmitted diseases clinics. Ultimately, the value of screening males for CT infection must be measured against the alternative of using the same resources to screen women. Research to further knowledge of reinfection rates among males, changes in sexual behavior resulting from diagnosis with asymptomatic CT infection, and men's willingness to name and assist in locating female sex partners will be useful in interpreting the value of male screening.

Appendix 2—Research Objectives for Innovative Demonstration Projects and Embedded Research Studies

1. Objectives Related to Prevalence

a. To measure the prevalence of CT infection among populations of males accessible with urine-based screening programs.

b. To determine whether there is a trend in prevalence over the study period (are infections accessible to screening programs exhausted over a short time period?).

c. To identify predictive characteristics of infected males.

2. Objectives Related to Acceptability

a. To measure the proportion of males accepting urine-based testing.

b. To measure the characteristics of males who refuse/accept screening.

c. To characterize the reasons that males do not accept urine-based testing for Ct.

d. To identify other settings in which males would avail themselves of urine testing for Ct.

3. Objectives Related to Feasibility

a. To measure the proportion of tested males who return or otherwise learn their test results.

b. To determine the proportion of infected males who receive treatment.

c. To measure the median time until patients return for their test results.

d. To determine how many female sex partners infected males identify/name/notify.

e. To measure the characteristics of identified, named, and located partners.

f. To measure the infection rate among located partners.

g. To determine the proportion of located female sex partners who were notified by their male partner.

h. To determine if screened males access other sites where they could be screened.

i. To determine which strategies or approaches enhance completeness of timely treatment of infected men.

4. Objectives Related to Cost Estimates

a. To measure the cost to detect and treat an infected asymptomatic male.

b. To measure the costs of partner services associated with finding and treating the female sex partners of an asymptomatic infected male?

c. To measure the overall cost to identify an infected female using male screening.

5. Objectives Requiring Longitudinal Follow Up

a. To determine whether a positive screening test influences a man's intended future sexual behavior (including condom use, partner selection, partner number, health seeking behavior).

b. To determine the proportion of treated males who are re-infected at defined intervals after initial screening.

c. To ascertain how many males report that their partner has been treated at a follow up visit.

[FR Doc. 99–12313 Filed 5–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99049]

National Sexual Violence Resource Center (NSVRC) Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 1999 funds to establish a National Sexual Violence Resource Center was published in the **Federal Register** on May 4, 1999, [Vol. 64, No. 85, Pages 23839–23842]. The notice is amended as follows:

On page 2389, Third Column, Under Section D. Program Requirements, Item No. 8, change to read: Provide a detailed evaluation plan that will document program process, effectiveness, impact, and outcomes.

Dated: May 11, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12311 Filed 5–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0192]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Infant Formula Recall Regulations and Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA). In addition, this notice is correcting the title of the information collection. In the **Federal Register** of February 23, 1999 (64 FR 8832 at 8833), the title of the information collection was incorrectly listed as a ''Reinstatement;'' it should have been listed as an ''Extension.'' This document corrects that error.

DATES: Submit written comments on the collection of information by June 16, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, 107.280 (OMB Control Number 0910–0188—Extension)

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations (part 107, subpart E (21 CFR part 107, subpart E)) implement these statutory provisions.

Section 107.230 requires each recalling firm to: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional

effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market. If manufacturers were not required to provide this information to FDA, FDA's ability to ensure that recalls are conducted properly would be greatly impaired.

In the **Federal Register** of February 23, 1999 (64 FR 8832), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.230	3	1	3	4,500	13,500
107.240	3	1	3	1,482	4,446
107.250	3	1	3	120	360
107.260	3	1	1	650	650
Total					18,956[2]

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Due to clerical error, the reporting burden hours for §§ 107.230, 107.240, 107.250, and the total burden hours that appeared in a notice issued in the FEDERAL REGISTER of February 23, 1999 (64 FR 8832), were incorrect. Table 1 of this document contains the correct estimates.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been three recalls in the last 3 years, or one recall annually.

Dated: May 10, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12283 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Innovative Food Safety Projects; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Division of Federal-State Relations, is announcing the availability of grant funds for the support of innovative food safety pilot programs. Approximately $300,000 will be available in fiscal year 1999. FDA anticipates making six to eight awards, not to exceed $50,000 (direct and indirect costs combined) per award. Support of these grants will be for 1 year. The number of grants funded will depend on the quality of the applications received and the availability of Federal funds to support the grant. This is a pilot grant program which, if successful, may lead to other grant programs in the future. These grants are not intended to fund or conduct food inspections.

DATES: Submit applications by July 1, 1999. If the closing date falls on a weekend or on a holiday, the date of submission will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should be submitted to Robert L. Robins, Chief Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7185, e-mail ''rrobins@oc.fda.gov''. (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852.)

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Richard H. Barnes or Glenn Johnson, Division of Federal-State Relations, Office of Regulatory Affairs, Food and Drug Administration (HFC–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, Internet site: ''www.fda.gov/ora/fed—state''.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA will support projects covered by this notice under section 1701 (300u) of the Public Health Service Act (42 U.S.C. 241). FDA's project program is described in the Catalog of Federal Domestic Assistance, No. 93–245, and applicants are limited to food safety regulatory agencies of State and local governments. The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit work plans that address specific objectives of ''Healthy People 2000.'' Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, stock No. 017–0010–0474–0) through Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, 202–512–1800.

II. Background

ORA is the inspection component of FDA and has 1,000 investigators and inspectors who cover the country's approximately 95,000 FDA-regulated businesses. These investigators and inspectors inspect more that 15,000 facilities a year. In addition to the standard inspection program, they conduct special investigations, food inspection recall audits, perform consumer complaint inspections and sample collections. In addition, FDA has relied on the States in assisting with the previously mentioned duties through formal contracts, partnership agreements, and other informal arrangements. Under the President's Food Safety Initiative (FSI), the demands on both the agency and the States will increase. Procedures need to be reviewed and innovative changes made that increase effectiveness and efficiency and conserve resources. ORA will support FSI by providing: (1) Effective and efficient compliance of regulated products; and (2) high quality, science-based work that maximizes consumer protection.

Under FSI, FDA is developing innovative food safety programs that will be utilized nationally by State and local food safety regulatory agencies. Even though the American food supply is among the safest in the world, millions of Americans are stricken by illness each year caused by the food they consume, and some 9,000 Americans a year, primarily the very young and elderly, die as a result. The goal of FSI is to further reduce the incidence of foodborne disease to the greatest extent possible. Innovative food safety programs that are developed at the State and local level and have national implications could enhance programs that are developed at the Federal level.

A. Project Goals, Definitions, and Examples

The specific objective of this program will be to complement, develop or improve State and local food safety programs that would have applicability to food safety programs nationwide. Applications that fulfill the following specific project objectives will be considered for funding. Each application must address only one project. Applicants may apply for more than one project area, but must submit a separate application for each project. These grants are not to fund or conduct food inspections for food safety regulatory agencies. Applications relating to the Retail Food Program area should be applicable to program improvement processes consistent with FDA's draft entitled ''Recommended National Retail Food Regulatory Program Standards'' (''http://www.cfsan.fda.gov/~dms/ret-toc.html'') (see review criteria).

There are four key project areas identified for this effort:

1. Inspection

Development of innovative regulatory inspection methods or techniques for the inspection of various food establishments in order to improve effectiveness and efficiency. Innovative Regulatory Program Methodology projects must demonstrate an effect on factors which contribute to foodborne illness in all, or a segment of, food industry programs. For example, projects could address key elements from the draft entitled ''Recommended National Retail Food Regulatory Program Standards,'' such as the five major *Food Code* Interventions (management knowledge; employee health; hands as a vehicle of contamination; time/temperature relationships; and consumer advisory), or the five Centers for Disease Control and Prevention risk factors (improper holding temperature; inadequate cooking; contaminated equipment; unsafe source; and poor personal hygiene).

2. Regulation and Compliance

Development of new procedures for industry that would enhance the efficiency and effectiveness of Federal, State, and local compliance actions. Examples of projects in this area could include innovative regulation and compliance strategies for State and local food safety regulatory agencies. The goal of these projects should be to achieve efficient and effective compliance with regulations that impact contributing factors to foodborne illness.

3. Information Systems

Development of systems for collection, storage, and retrieval of data on projects that support food safety regulatory State or local programs. These systems should utilize readily available ''off the shelf'' technology systems that could be used by food safety regulatory agencies of any size.

4. Education and Health Information Dissemination

Development of innovative education projects and materials for State and local food safety regulatory officials that foster consistency and uniform application of State and local food regulations. These education projects and/or materials must be reproducible by other State and local food safety regulatory agencies. These projects may incorporate concurrent education of both State and local food safety regulatory agencies and the food industry.

B. Applicability

All grant application projects that are developed at State and local levels must have national implication or application that can enhance Federal, State, and local food regulatory programs and reduce factors that cause foodborne illness. At the discretion of FDA, successful project formats will be made available to interested Federal, State, and local food safety regulatory agencies.

III. Reporting Requirements

Quarterly progress reports as well as a Final Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Chief Grants Management Officer (address above), within 90 days of the expiration date of the grant. The Final Program Progress Report must provide full written documentation of the project, copies of any results, as described in the grant application, and an analysis and evaluation of the results of the project. The documentation must be in a form and contain sufficient detail that other State and local food safety regulatory agencies could reproduce the final project.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the project grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 also apply to this program and are implemented through Department of Health and Human

Services (DHHS) regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOC's is included in the application kit. The SPOC should send any State review process recommendations to FDA's Chief Grants Management Officer (address listed above). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60 day cut-off.

B. Eligibility

These grants are available to State and local government food regulatory agencies (see SPOC requirements stated previously).

C. Length of Support

The length of support will be for 1 year from date of award.

V. Review Procedure and Criteria

All applications submitted in response to this request for application (RFA) will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or her designee.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or programmatic nature must be directed to the ORA program staff (address above) and all questions of an administrative or financial nature must be directed to the grants management staff (address above). Applications will be given an overall score and judged based on all of the following criteria:

1. Applications relating to the Retail Food Program (''http://www.cfsan.fda.gov/~dms/ret-toc.html'') only: The outcomes of the project should be consistent with the program improvement process described in FDA's draft entitled ''Recommended National Retail Food Regulatory Program Standards'' (http://www.cfsan.fda.gov/~dms/ret-toc.html''). These standards will serve as a guide to regulatory retail food program managers for the design and management of a retail food program. The standards apply to the operation, management, and promotion of a regulatory retail food program focused on the reduction of risk factors known and suspected to cause foodborne illness and integration of the five major *Food Code* interventions listed in section II.A.1 of this document. The FDA draft entitled ''Recommended National Retail Food Regulatory Program Standards'' and the 1999 *Food Code* are found on the Internet site at ''http://www.cfsan.fda.gov/~dms/ret-toc.html'' or contact your local FDA Regional Retail Food Specialist from the list provided in the application packet about obtaining copies.
2. Application budgets must remain within the $50,000 cap for combined direct and indirect costs. Applications exceeding this dollar amount will be returned as nonresponsive.
3. Applications must provide a sound rationale and appropriate grant design to address the objectives of the RFA and the project must be reproducible within the national regulatory framework.
4. Applications must include an explanation of the desired goals of the pilot project.
5. Applications must include a full description of the project design, implementation plan, methods of execution, and timeline for completion. The application must include a full description of measures of effectiveness and a description of the source documents or data collection methods for establishing the baseline for measurement.
6. Applications must address the adequacy of facilities, expertise of project staff, equipment, data bases, and support services needed for the project.

VI. Submission Requirements

The original and two copies of the completed Grant Application Form PHS–5161–1 (revised May 1996) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Robert L. Robins (address above). The application receipt date is July 1, 1999. If the receipt date falls on a weekend or on a holiday, it will be extended to the following workday. No supplemental material or addenda will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled ''Response to RFA–FDA–ORA–99–Project I, Project II, Project III or Project IV.''

VII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed nonresponsive and returned to the applicant. Instructions for completing the application are included in Form PHS–5161–1. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS–5161–1 (revised May 1996). All instructions for the enclosed Standard Form 424 (SF–424) should be followed using the nonconstruction application pages.

The face page of the application should indicate ''RFA–FDA–ORA–99–Project I, Project II, Project III or Project IV.''

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under Office of

Management and Budget Circular A–102.

C. Legend

Unless disclosure is required by the FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: May 10, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12287 Filed 5–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–01]

Mortgagee Approval for Single Family Programs; Clarification Procedures for Terminating Origination Approval Agreements and Placement in Credit Watch Status

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

ACTION: Notice.

SUMMARY: It is the longstanding policy of HUD's Federal Housing Administration (FHA) to issue periodically mortgagee letters to FHA-approved lenders to apprise the lenders of upcoming changes in FHA programs, new processing requirements, or clarification of existing procedures, among other things. The FHA has issued a mortgagee letter to advise FHA lenders that HUD/FHA will be using its regulatory authority to terminate lenders' authorization to originate single family loans or, alternatively, place lenders on Credit Watch status (an evaluation period) in geographic areas where the lender has a high rate of early defaults and claims. The FHA is publishing the contents of this mortgagee letter in the **Federal Register** for the benefit of the public.

FOR FURTHER INFORMATION CONTACT: For further information contact: the Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St, SW, Room B–133, Washington, DC, 20410; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. The latest revisions to these regulations were published as an interim rule on December 10, 1997 at 62 FR 65180 (which contains the text of the amendments) and were published as a final rule on August 17, 1998 (63 FR 44360), which was effective September 17, 1998. In the near future, HUD/FHA will systematically review mortgagees' early default and claim rates, that is, defaults (loans 90 or more days delinquent) and claims on mortgagees' loans during the initial 24 months from endorsement. HUD may place mortgagees with excessive default and claim rates on Credit Watch status or, in cases of more severe performance deficiencies, terminate mortgagees' loan origination approval authority.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Frequency and Scope of Reviews

Every three months, HUD will review the rate of defaults and claims on all FHA-insured single family mortgages. The review will analyze the performance of every participating mortgagee branch in each geographic area served by a HUD field office. The review will be limited to loans endorsed for insurance within the preceding 24 months.

Unacceptable Results

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. Mortgagees whose default and claim rates exceed both the national rate and 200% of the field office rate are at risk and may have their Agreements terminated.

Initially, HUD will focus its attention on those mortgagees showing particularly high default and claim rates. For the first review period, HUD will consider terminating the Agreement of any mortgagee whose default and claim rate exceeds both the national rate and 300% of the field office rate. HUD will notify the mortgagee, via certified mail, before terminating its Agreement.

In any one of the subsequent review periods, HUD may set the field office portion of the termination threshold at a rate other than 300% of the field office rate, but not lower than 200% of such rate. HUD will give notice of the threshold for each review period by Mortgagee Letter.

Mitigating Factors Evaluated Initially

Prior to sending a Termination notice, HUD/FHA will analyze mortgagees' portfolios of loans to determine if their poor performance is due to where they originated loans and the types of loans they originated. HUD/FHA will analyze loan types in terms of FHA's three Insurance Funds and place in terms of underserved versus served census tracts. For each of these five analyses, the mortgagee's loan performance will be compared to the Field Office average for similar loans. For example, in the first review period, if the mortgagee's rate of defaults and claims on loans in underserved census tracts does not exceed 300% of the field office's rate of defaults and claims in underserved census tracts, the mortgagee's performance is below the Termination threshold in underserved areas. Mortgagees with a performance below the Termination threshold in each of these five assessments will not receive a Termination Notice; however, they may receive a Credit Watch notice (see Credit Watch description below).

Appeal Process

HUD regulations at 24 CFR 202.3(c)2)(ii)(C) permit a mortgagee to request an informal conference with the Deputy Assistant Secretary (DAS) for Single Family Housing, or his or her designee prior to the termination of its Origination Approval Agreement. A mortgagee desiring an informal conference must submit a written request to the Docket Clerk, Departmental Enforcement Center, Legal Division, Room B–133/VALA, U.S. Department of Housing and Urban

Development, 451 7th Street, SW, Washington, DC 20410 within *30* calendar days of the date of receipt of the Termination notice.

An informal conference is an oral and/or written presentation, by the mortgagee or its representative, of information and argument in opposition to the termination. Whether the presentation is written, oral, or both is at the option of the mortgagee. A written submission may accompany the request for an informal conference or be sent separately; however it must be sent to the Docket Clerk within 30 calendar days from the date of receipt of the Termination notice. Written submissions should not exceed 15 pages. Oral presentations may be held in person in Washington, DC or telephonically, and will be held as quickly as possible but generally no later than 30 days from the date of the request. All presentations, whether written or oral, must specifically address relevant reasons and factors that were beyond the mortgagee's control that contributed to its excessive early default and claim rates or any other facts and circumstances which would explain the poor performance of the mortgagee's loans. After consideration of the material presented, the DAS or the designee will issue a decision in writing within approximately 20 days of the informal conference. HUD/FHA may determine that the Termination should be sustained, withdrawn or replaced by putting the mortgagee on Credit Watch status. If sustained, the Termination will not take effect until a final notice of determination is issued.

If a mortgagee does not request an informal conference within 30 days of receiving the Termination notice, the right to confer (by oral or written presentation) will be deemed to have been waived by the mortgagee and its Agreement will be terminated 60 days from the date of the Termination notice without further notification from HUD.

Effect

Termination of the Agreement precludes that office of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in the notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area.

A terminated mortgagee may request to have its authority to originate FHA loans reinstated no earlier than 6 months after the effective date of the Termination. The request, addressed to the Director, Lender Activities and Program Compliance, should describe any actions taken (e.g., changes in operations and/or personnel) to eliminate the cause(s) of the poor loan performance that led to the Termination.

Scope

If more than one of a mortgagee's branch offices will be terminated in a field office, HUD will assess the mortgagee's performance in aggregate (all branch offices) in that area. If the institution's default and claim rate in the area exceeds the national rate and exceeds the field office portion of the termination threshold (for the first quarter, 300% of the field office default and claim rate), HUD may terminate all of the mortgagee's branch offices in that area.

Publishing Actions

The Department will publish a list of mortgagees which have had their Origination Approval Agreements terminated in the **Federal Register** and on HUD's Web Site, together with a general explanation of the cause and effect of terminating the Agreements.

Credit Watch Status

Unlike Termination of an Origination Approval Agreement, Credit Watch does not affect a mortgagee's ability to originate single family mortgages for submission for FHA mortgage insurance. It is a warning that a mortgagee's Agreement may be terminated in the future if the mortgagee's default and claim rate does not improve.

Frequency and Scope of Reviews

Every three months, HUD will review the rate of defaults and claims on all FHA-insured single family mortgages. The review will analyze the performance of every participating mortgagee branch in each geographic area served by a HUD field office. The review will be limited to loans endorsed for insurance within the preceding 24 months.

Unacceptable Results

HUD is authorized under its regulations to place a mortgagee on Credit Watch status when the mortgagee's default and claim rate exceeds 150 percent of the field office default and claim rate.

Initially, HUD will focus its attention on those mortgagees showing particularly high default and claim rates (but not high enough to prompt termination). In the initial review period, HUD will consider placing on Credit Watch any mortgagee whose default and claim rate exceeds 200% of the field office rate.

In any one of the subsequent review periods, HUD may set the threshold for Credit Watch at a rate other than 200%, but not lower than 150%, of the field office rate. HUD will give notice of the threshold for each review period by Mortgagee Letter. For each review period, mortgagees whose default and claim rates exceed 150% but fall below the Credit Watch threshold for that round will be notified of their performance rating but will not initially be placed on Credit Watch. However, these lenders should promptly take action to eliminate the cause of their high default and claim rates.

Mitigating Factors Evaluated Initially

Prior to placing a mortgagee on Credit Watch status, HUD/FHA will analyze mortgagees' portfolios of loans to determine if their poor performance is due to where they originated loans and the types of loans they originated. HUD/FHA will analyze loan types in terms of FHA's three Insurance Funds and place in terms of underserved versus served census tracts. For each of these five analyses, the mortgagee's loan performance will be compared to the Field Office average for similar loans. For example, in the first review period, if the mortgagee's rate of defaults and claims in underserved census tracts does not exceed 200% of the field office's rate of defaults and claims in underserved census tracts, the mortgagee's performance is acceptable in underserved areas. Mortgagees with acceptable performance in each of these five assessments will not be placed on Credit Watch Status. In addition, having a default and claim rate at or below the national default and claim rate will be considered a mitigating factor.

Appeals

Because Credit Watch Status does not preclude a mortgagee from originating mortgages and submitting them for insurance and there is no public announcement of lenders on Credit

Watch status, mortgagees are discouraged from appealing placement on Credit Watch. However, written appeals will be considered.

Delayed Effective Date

A mortgagee will be notified that it is being placed on Credit Watch Status at least 30 days before the effective date. Mortgagees are strongly encouraged to use this time to investigate and remedy the cause(s) of the high rates of early defaults and claims, so that their performance will have improved on the portfolio that HUD will assess.

''Watched'' Portfolio

Following placement on Credit Watch status, HUD will review the portfolio of the mortgagee's loans that are insured by HUD/FHA during the six months beginning the day Credit Watch Status became effective to check for signs of improvement. The performance of this portfolio will be compared against the field office default and claim rates on mortgage loans insured during the same six month period.

Watch Assessment

If the default and claim rate on the ''watched'' portfolio (as described above) is acceptable in comparison to the field office default and claim rates one year after the six month tracking period ends (i.e., 18 months after the effective date when HUD placed the mortgagee on Credit Watch Status), the mortgagee will be removed from Credit Watch status. An acceptable default and claim rate is one that does not exceed the Credit Watch threshold when compared to the field office default and claim rate. A mortgagee with a rate above that threshold may be removed from Credit Watch, depending on mitigating factors and whether the default and claim rate is rising or falling.

Termination Analysis Continues

Mortgagees must be aware that if they are placed on Credit Watch Status, in addition to performing an assessment of the mortgagee's ''watched'' portfolio, HUD/FHA will continue to assess all mortgage loans insured over the 24 months preceding the analysis. If the mortgagee's 24 month default and claim rate exceeds the termination threshold, the mortgagee may receive a notice that HUD proposes to terminate its Origination Approval Agreement. This is why mortgagees should promptly investigate and remedy causes of high default and claim rates as stated above.

Publishing Actions

Mortgagees placed on Credit Watch Status will not be listed in either the **Federal Register** or on HUD's Web Site.

Considerations

Volume

HUD/FHA is aware that defaults may stem from changes in the mortgagors' circumstances, rather than imprudent underwriting. To lessen the effect of a small number of loans, HUD/FHA will establish a minimum number of defaults and claims. The Department will perform Credit Watch and Termination analyses only for mortgagees that have defaults and claims above the *de minimis* amount but with the following caveat. If HUD/FHA finds a mortgagee that originates few loans but continually has a default and claim rate that exceeds the field office and national default and claim rates, the Department reserves the right to take appropriate action within the Credit Watch/Termination regulations.

Underserved Areas

For both Credit Watch and Termination actions, HUD/FHA is defining underserved census tracts as those identified by OMB as meeting the definition found at 24 CFR 81.2. Underserved census tracts are: (1) tracts in metropolitan areas (a) having a median income of no more than 90% of the MSA as a whole or (b) having a median income of no more than 120% and minorities comprise at least 30% of the tract's population; (2) all tracts in any non-metropolitan county which (a) have a median income of no more than 95% of the non-metropolitan part of the State or the Nation, whichever is greater, or (b) have a median income of no more than 120% and minorities comprise at least 30% of the county's population.

Riskier Programs

Mortgages insured under the Mutual Mortgage Insurance Fund (e.g. 203b) should be less risky than loans insured under the General Insurance Fund (e.g. 203k) or the Special Risk Insurance Fund (e.g. 223e). After determining that a mortgagee has an excessive rate of early defaults and claims in a field office, its performance by fund will be analyzed as described above under mitigating factors.

New to FHA

Where an institution has been approved for less than 24 months, its branches will be placed on Credit Watch in lieu of being terminated if their performance exceeds the termination threshold but with the following caveat. If HUD/FHA finds a new mortgagee continually has a default and claim rate that exceeds the field office and national default and claim rates, the Department reserves the right to take appropriate action within the Credit Watch/Termination regulations.

Conclusion

The procedures outlined in this notice (and the Mortgagee Letter issued to FHA mortgagees) should have minimal impact for mortgagees that have in place and are effectively using an adequate quality control plan for loan origination. These procedures are expected to impact mortgagees that have an inadequate quality control plan or are inadequately executing their plan. The result will benefit the public and most FHA mortgagees, as well as the Department.

Dated: May 10, 1999.

William C. Apgar,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 99–12282 Filed 5–14–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of Two Single Family Residences, Each on 0.75 Acres of the 20.5 Acres on City Park Road in Travis County, TX

SUMMARY: John and Jim Hunt (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–010556–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of construction of two single family residences on City Park Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and

National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before June 16, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number TE–010556–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants

Jim and John Hunt plan to construct two single family residences on City Park Road Austin, Travis County, Texas. This action will eliminate less than two acres of habitat and indirectly impact less than eight additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 per home into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler and place the remaining balance of the property in a conservation easement in perpetuity.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would increase the impacts on the listed species and surrounding environment.

Geoffery Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–12314 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Pond Creek National Wildlife Refuge in Sevier County, AR, and Notice of Meeting To Seek Public Participation

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review a Draft Comprehensive Conservation Plan and Environmental Assessment for Pond Creek National Wildlife Refuge in Sevier County, Arkansas, and plans to hold a public meeting in the vicinity of the refuge to solicit public comments on the Draft Plan. The Service is furnishing this notice in compliance with Service comprehensive planning policy, the National Environmental Act Policy, and implementing regulations to achieve the following:

(1) advise other agencies and the public of our intention, and

(2) obtain comments on the proposed plan and the other alternatives considered in the planning process.

DATES: The Service will hold the public meeting at 7 p.m. on June 3, 1999, at the Horatio Elementary School cafeteria, Horatio, Arkansas. The Draft Plan will be made available for review and comment. Written comments should be submitted no later than June 30, 1999, to the address below.

ADDRESSES: Comments and request for copies of the Draft Plan should be addressed to Mr. Ed Loth, U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, GA 30345, or by calling 404/679–7155.

SUPPLEMENTARY INFORMATION: Pond Creek National Wildlife Refuge is a 27,000-acre area located between the Cossatot and Little rivers. This refuge was established to protect, enhance, and manage a valuable bottomland hardwood wetland ecosystem for the benefit of migratory and resident waterfowl, neotropical birds, wading birds, and other wetland-dependent wildlife. The area is considered a vital component of the North American Waterfowl Management Plan and the Arkansas-Red Ecosystem Plan.

It is the desire of the Fish and Wildlife Service that Pond Creek National Wildlife Refuge become ''a model refuge that protests and manages biological diversity for the enjoyment and benefit of present and future generations.'' To achieve this vision, the refuge seeks to achieve the following four goals: (1) habitat management-maintain and restore diverse habitats designed to achieve refuge purpose and wildlife population objectives; (2) populations management-maintain viable, diverse populations of native flora and fauna consistent with sound biological principles; (3) land conservation-protect the area's wetlands and restore values through land protection strategies; and (4) wildlife-dependent recreation and education—develop and implement a quality wildlife-dependent recreation program that leads to enjoyable recreation experiences and a greater understanding and appreciation of fish and wildlife resources.

The Draft Plan evaluates the following four alternatives for managing the refuge over the next 15 years: custodial management, minimal management, balanced management, and resource management. The Service believes the balanced management alternative is the best alternative to guide the refuge's future direction. In essence this alternative will:

- Increase protection of threatened and endangered species;
- Increase waterfowl and songbird utilization and production;
- Enhance resident wildlife populations;
- Restore wetlands and hydrology; and
- Provide long-term opportunities for wildlife-dependent recreation and environmental education.

Dated: May 4, 1999.

C. Monty Halcomb,

Acting Regional Director.

[FR Doc. 99–12289 Filed 5–14–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–09–1320–01; MTM 80697]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid MTM 80697—Western Energy Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described

below in Rosebud County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Western Energy Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearing have been completed in accordance with 43 CFR part 3425. Concerns and issues expressed by the public during the public scoping process centered on social, economic, and cultural impacts to the Northern Cheyenne and Crow Tribes, hydrologic impacts to the area, and the need to do an Environmental Impact Statement (EIS) as the appropriate level of environmental documentation for the development of the coal resources. Three alternatives (Preferred, No Action, and Cultural Resource Avoidance) were developed to analyze impacts and to address issues relating to the proposed action. The Preferred Alternative, including special stipulations and mitigation measures, was chosen because it will maximize the beneficial use of the subject coal resource and will mitigate impacts to one historic site and two sites which have high values as traditional cultural properties.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered consists of all recoverable reserves in the following-described lands located approximately 10 miles west of the town of Colstrip:

T. 1 N., R. 39 E., P.M.M.
Sec. 2: N½S½NW¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1–4 S½N½, N½S½, N½SW¼SE¼, SE¼SE¼
Sec. 8: NE¼NE¼, N½NW¼NE¼, SE¼NW¼NE¼, N½N½NW¼
Sec. 14: S½SW¼, N½NE¼SE¼, W½SE¼
T. 2 N., R. 40 E., P.M.M.
Sec. 32: NE¼, E½NE¼NW¼, SW¼NE¼NW¼, S½SW¼NW¼, SE¼NW¼, N½S½, SW¼SW¼, N½SE¼SW¼, N½SW¼SE¼

Containing 1,401, Rosebud County, Montana.

The Rosebud seam, averaging 22.3 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 27.6 million tons of recoverable reserves. Coal quality, as received, averages 8,360 BTU/lb., 25.52 percent moisture, 10.03 percent ash, and 0.97 percent sulfur. This coal bed is being mined in adjoining tracts by Western Energy Company.

Rental and Royalty

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATES: Lease Sale—The lease sale will be held at 10 a.m., Wednesday, June 16, 1999, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids *Clearly Marked* ''Sealed Bid for MTM 80697 Coal Sale—not to be opened before 10:00 a.m., Wednesday, June 16, 1999'' must be submitted on or before 9:00 a.m., Wednesday, June 16, 1999, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: May 11, 1999.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 99–12315 Filed 5–14–99; 8:45 am]

BILLING CODE 4310 DN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Revegetation: Standards for Success

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

ACTION: Request for public comments and notice of public meetings.

SUMMARY: OSM will hold public meetings to solicit comments, concerns, and new ideas regarding the performance standards for determining the success of revegetation. We also invite written comments regarding this issue.

We prepared a concept paper to assist those interested in commenting in writing or preparing for the meetings. The concepts we presented are not an indication of any preconceived direction that new policies or rules would take. Instead, they represent a compilation of ideas and questions that have been raised. You, however, are not limited to these ideas or questions and we encourage you to bring forward new concepts or ideas for consideration.

DATES: *Written comments*: OSM will accept written comments until 5:00 p.m., c.d.t, on July 30, 1999.

Public meetings: We will meet with interested persons to receive comments on this issue until July 30, 1999. If requested, we will meet you on the dates and in the locations listed under **ADDRESSEES:** Public Meetings.'' You may also request additional meetings. In order to make proper arrangements for these additional meetings, make your request before June 30, 1999.

ADDRESSES: *Written comments and requests for concept paper:* You should hand deliver, mail, or e-mail written comments and requests for the concept paper to one of the persons listed under **FOR FURTHER INFORMATION CONTACT.** You also may call one of the persons listed to obtain a copy of the concept paper.

Telefax: You may obtain copies of the concept paper from FAX ON DEMAND by calling (202) 219–1703 and following the instructions of the recorded announcement.

Internet: You may view or download the concept paper from the OSM homepage at www.osmre.gov.

Public meetings: If requested, we will meet with you, individually or in groups, at the following locations: May 27, 1999, in Bismarck, North Dakota; June 2, 1999, in Denver, Colorado; June 18, 1999, in Gillette, Wyoming; June 22, 1999, in Alton, Illinois; and June 24, 1999, in Knoxville, Tennessee. If you

are interested in attending a meeting at any of these locations, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** to schedule the meeting and to obtain the address. If we do not receive a request for a meeting at a particular location, we will not hold the meeting.

You may request an additional meeting by contacting one of the persons listed under **FOR FURTHER INFORMATION CONTACT.** If you require special accommodation to attend a meeting, also contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ervin Barchenger, Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002, Telephone (618) 463–6463, extension 129, e-mail: ebarchen@osmre.gov; or

Robert Postle, Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, CO 80202, Telephone (303) 844–1400, ext. 1469, e-mail: bpostle@osmre.gov.

SUPPLEMENTARY INFORMATION: You will find the standards for revegetation success in Section 515(19) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Section 515(19) requires a ''diverse, effective, and permanent vegetative cover that is equal in extent of cover to pre-mining vegetation and is capable of self-regeneration and plant succession.'' SMCRA also requires that the operator assume responsibility for successful vegetation (as defined above) for either 5 or 10 years (depending on rainfall) after completing efforts to establish the vegetation to assure those efforts are successful. See 30 CFR 816/817.116 for the implementing regulations.

Congress apparently recognized the value of vegetative diversity as well as the transitional nature of reestablished vegetative communities that exist after 5 or 10 years. It understood that neither mature hardwood forests nor stable climax prairie or desert shrub communities can develop within just a few years. Therefore, Congress created a revegetation success standard that is based, in part, on establishing a vegetation cover that is a diverse community of native perennial species and that has the potential for regeneration and plant succession into the plant community ultimately sought. Thus, revegetation efforts must contain the appropriate mix of species to establish a transitional community capable of developing into the desired plant community through natural succession.

Our revegetation success regulations, intended to implement the statutory performance standard requirements, focus on cover, production, and stocking, and require statistically valid sampling of vegetation (and statistical analysis with a confidence interval) for bond release. For some areas of reclamation, such as agricultural cropland, hayland, commercial forest land, etc., a focus on cover, production or stocking may be the most appropriate way of determining success. However, concerns have developed over the appropriateness and effectiveness of the current regulations for judging vegetation success for land uses involving establishment of permanent vegetation, such as grazingland, fish and wildlife habitat, and non-commercial forest.

We are conducting this outreach effort to determine if there is a more effective way to evaluate achievement of the statutory revegetation success standard that also encourages the diversity objective contained in SMCRA. That is, has an effective and diverse community, including appropriate native species, been established that will be able to, through natural succession, develop into the mature plant community appropriate for the designated land use. Increased diversity should result in enhancing fish and wildlife uses, as well as improving the resiliency of the reestablished plant community.

We are seeking to involve the public in advance of developing any modifications to our position on these issues. To initiate discussions, we prepared a concept paper that contains ideas and questions that may assist those interested in commenting or preparing for the meetings. The concepts presented are not an indication of any preconceived direction that new policies or rules should take, but rather represent a compilation of ideas and questions that have been raised. However, you are not limited to those ideas or questions. We encourage you to bring forward new concepts or ideas for consideration. If we determine that the input we receive indicates a need for a revision of the regulations, we will follow standard procedures by publishing a proposal in the **Federal Register** and holding public hearings to seek comments.

Dated: May 10, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–12359 Filed 5–14–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a partial Consent Decree in *United States* v. *Agway, Inc., et. al,* Civil Action No.99–CV–0708 (N.D.N.Y.) was lodged with the United States District Court for the Northern District of New York on May 6, 1999.

The proposed partial consent decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), against Agway, Inc., General Electric Co., Metalworking Lubricants Co., and Nycomed, Inc. (''Settling Defendants'') under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607. The proposed partial consent decree would not resolve any claims against the remaining defendant, Schenectady International, Inc., under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607. The claims sought to recover past response costs incurred at the Friedrichsohn's Cooperate (''Site'') in the Town of Waterford, New York. The United States alleged that the four setting defendants are liable as the generators of the hazardous waste disposed of at the Site under Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(1). The Complaint states claims against the Settling Defendants under Section 107 of CERCLA, 42 U.S.C. § 9607, for reimbursement of response costs. The proposed partial Consent Decree requires the Settling Defendants to reimburse the United States $490,000 in past response costs.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Agway, Inc., et al.,* Civil Action No. 99–C–0708 (N.D.N.Y.), DJ #90–11–2–1335.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of New York, 45 Broadway, Room 231, Albany, NY 12207; at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007–1866; and at the Consent Decree

Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $5.50 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–12376 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on April 28, 1999, a proposed Consent Decree in *United States* versus *Cannelton Industries, Inc.*, Civil Action No. 2:99cv92, was lodged with the United States District Court for the Western District of Michigan, Northern Division.

In this action the United States sought the reimbursement of response costs in connection with the Cannelton Industries Site in Sault Ste. Marie, Chippewa County, Michigan (''the Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* The Consent Decree settles the United States claims against Cannelton Industries, Inc. for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. According to the terms of the Consent Decree, Cannelton Industries, Inc. will pay the United States $1,700,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Cannelton Industries, Inc.*, D.J. Ref. 90–11–3–06360.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 330 Ionia Avenue, NW, Suite 501, Grand Rapids, Michigan 49503, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.00 (20 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–12336 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 29, 1999, a proposed consent decree in *United States* v. *City of Chicago, Illinois*, Civil Action No. 1:97–CV–06897, was lodged with the United States District Court for the Northern District of Illinois.

In this action, the United States sought civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Illinois State Implementation Plan resulting from emissions into the atmosphere from ''Waste-To-Energy'' trash incineration facility located at 700 North Kilbourn Avenue in Chicago, Illinois. Under the terms of the proposed consent decree, the City of Chicago will pay a civil penalty of $200,000 and perform four supplemental environmental projects at a cost of $700,000 to resolve the United States' claims. The first two projects require the City to spend $450,000 to remove and dispose of contaminated soils at two abandoned sites near the incinerator. The third project requires the City to spend $100,000 to construct a Lead Safe House. The Lead Safe House will serve as a temporary residence for low-income Chicagoans while lead abatement work is being undertaken in their homes. The fourth project requires the City to spend $150,000 on a lead abatement projects in Northwest Chicago.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Chicago, Illinois*, Civil Action No. 1:97–CV–06897, and Department of Justice Reference No. 90–5–2–1–1930.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.59 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 99–12337 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 2, 1999 a proposed Consent Decree (''Decree'') in *United States* v. *Thomas Plating Company, Inc. et al.*, Civil Action No. 98–N–1536, was lodged with the United States District Court for the District of Colorado. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, to recover the past response costs incurred at or in connection with the Thomas Plating facility in Englewood, Colorado.

The proposed Consent Decree resolves claims against Thomas Plating Company, Inc., and F. Jerome Thomas. Under the terms of the proposed Consent Decree the United States will recover response costs in the amount of $270,000 and the settling defendants are obligated to sell, recycle, or arrange for the proper transport and disposal of fourteen drums of plating chemicals and plating equipment remaining at the now abandoned Thomas Plating facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Thomas Plating Company, Inc. et al.*, Civil Action No. 98–N–1536, and D.J. Ref. # 90–11–2–1327.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202, and the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, Co. 80202, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.00 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–12338 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Citadel Communications Corporation, Triathlon Broadcasting Company, and Capstar Broadcasting Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Amended Competitive Impact Statement have been filed with the United States District Court for the District of the District of Columbia in *United States of America* v. *Citadel Communications Corporation*, Capstar Broadcasting Corporation and Triathlon Broadcasting Company, Civil Action No. 99–CV01043. On April 30, 1999, the United States filed an Amended Complaint alleging that the Joint Sales Agreement (''JSA'') in Colorado Springs, Colorado, and Spokane, Washington and Triathlon's acquisition of certain radio stations in Spokane, Washington violates Section One of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Citadel and Capstar to terminate the JSA pursuant to the Final Judgment and Capstar to divest a particular station in Spokane, Washington. Copies of the Amended Complaint, proposed Final Judgment and Amended Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001).

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation

It is stipulated by and between the United States Department of Justice Antitrust Division (''Antitrust Division''), Citadel Communications Corporation (''Citadel''), and Capstar Broadcasting Corporation (''Capstar''), by their respective attorneys, as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties have agreed to waive all objections to personal jurisdiction and venue in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. Citadel and Capstar have agreed to terminate the Citadel-Triathlon Joint Sales Agreement (''JSA'') (defined in Section II(e) of the Final Judgment) pursuant to the Final Judgment, but subject to Paragraph 9 of this stipulation. In addition, the parties have agreed to make certain transfers of radio stations. Capstar's transfer of KEYF–FM to Citadel in Spokane is part of the agreement memorialized in the Final Judgment.

5. The parties have agreed to take the following actions that the United States has agreed not to oppose. In Colorado Springs, Capstar has agreed to transfer KSPZ–FM, KVOR–AM, and KTWK–AM to Citadel while Citadel has agreed to transfer KKLI–FM to Capstar. In Spokane, Capstar has agreed to transfer KEYF–FM and KEYF–AM to Citadel. Also in Spokane, Citadel has entered into an agreement with an unrelated third party to acquire KNJY–FM. Although the Final Judgment is not contingent upon these exchanges and acquisitions, the Antitrust Division has analyzed the transactions and has no objection to them.

6. Citadel and Capstar state that there are no agreements or understandings between them that will affect how they will program or format the radio stations that they own in Colorado Springs or Spokane.

7. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

8. Defendants represent that the JSA will be terminated and the divestiture of KEYF–FM will be made as ordered, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

9. If Capstar does not acquire Triathlon Broadcasting Company by June 2, 1999, the Antitrust Division will

withdraw the proposed Final Judgment and dismiss Capstar as a defendant in this matter.

Dated: April 7, 1999.

For Plaintiff United States of America.

Karl D. Knutsen,

United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

For Defendant Capstar Broadcasting Corporation.

Neil W. Imus,

Vinson & Elkin L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 639–6675.

Dated: April 8, 1999.

For Defendant Citadel Communications Corporation.

Debra H. Dermody,

Reed, Smith, Shaw, & McClay, 435 Sixth Ave., Pittsburgh, PA 15219, (412) 288–3302.

Final Judgment

Whereas, plaintiff, the United States of America, has filed its complaint in this action, and plaintiff and defendants Citadel Communications Corporation (''Citadel'') and Capstar Broadcasting Corporation (''Capstar'') by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, these defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

And whereas, the essence of this Final Judgment is the prompt and likely termination of the Joint Sales Agreement ''JSA'' in Colorado Springs, Colorado and Spokane, Washington, identified below, which will help ensure that competition is substantially preserved;

And whereas, plaintiff requires Citadel and Capstar to terminate the JSA for the purpose of restoring competition in the sale of radio advertising;

And whereas, Citadel and Capstar have represented to the plaintiff that the JSA can and will be terminated, subject to paragraph 9 of the Stipulation, and that Citadel and Capstar will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify termination of the JSA described below:

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, *it is hereby ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the defendants and over the subject matter of this action, and defendants have agreed to waive any objection to personal jurisdiction. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Capstar'' means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Hicks, Muse, Tate, & Furst Incorporated (''Hicks-Muse''), a Delaware corporation with its headquarters in Dallas, Texas.

B. ''Citadel'' means defendant Citadel Communications Corporation, a Nevada corporation with its headquarters in Las Vegas, Nevada, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Defendants'' means Citadel and Capstar.

D. ''Antitrust Division'' means the Antitrust Division of the United States Department of Justice.

E. ''JSA'' means the Joint Sales Agreement entered on or around December 15, 1995 among Citadel and Pourtales Radio Partnership (to which Triathlon is successor), providing for the sale of radio advertising time in Colorado Springs, Colorado and Spokane, Washington.

F. ''Radio Assets'' means all of the assets, tangible or intangible, used in the operation of the following radio stations that sell advertising time in Colorado Springs, Colorado, and Spokane, Washington, including all real property (owned or leased) used in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission and other government agencies related to these stations; all contracts, agreements, leases and commitments of defendants relating to their operation; all trademarks, service marks, trade names, copyrights, patents, slogans; programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business:

(1) In Colorado Springs, KSPZ–FM, KKFM–FM, KKMG–FM, KVUU–FM, KKLI–FM, KVOR–AM, and KTWK–AM; and

(2) In Spokane, KAEP–FM, KDRK–FM, KEYF–FM, KNFR–FM, KISC–FM, KKZK–FM, KGA–AM, KEYF–AM, KAQQ–AM, KJRB–AM, and KUDY–AM.

(G) ''Triathlon'' means Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, named as a defendant in this action.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The defendants shall require, as a condition of the sale or other disposition of any of the Radio Assets, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. Termination of JSA and Divestment of KEYF–FM

A. Citadel and Capstar are hereby ordered and directed in accordance with the terms of this Final Judgment to terminate the JSA as quickly as possible, but no later than June 2, 1999.

B. Capstar is also ordered to divest KEYF–FM in Spokane as quickly as possible, but no later than June 2, 1999.

C. The Antitrust Division, in its sole discretion, may extend the time period for termination for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

D. Citadel and Capstar shall not acquire any other radio stations that sell radio advertising time in either Colorado Springs or Spokane except under the procedures stated in Section V. Further, Citadel and Capstar shall not enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either Colorado Springs or Spokane except under the procedures and conditions stated in Section V.

E. Citadel shall not confer with operators of other radio stations that sell advertising time in Colorado Springs or Spokane regarding the price of radio advertising time—including any discounts for advertisers or classes of

advertisers or the availability of added value such as free or bonus spots, remote broadcasts, or other promotions.

V. Notice

Capstar and Citadel shall provide advance notification to the Antitrust Division when they directly or indirectly acquire any assets of or any interest (including any financial, security, loan, equity or management interest) in any radio station that sells advertising time in Colorado Springs, Colorado, or Spokane, Washington, or enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either city. This obligation to provide notice is met under this section when a transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''),

Notification under this section shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only about the sales of radio advertising time in Colorado Springs and Spokane. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

Citadel shall not enter into any JSA or any other cooperative selling arrangement with any other operator of radio stations that sells or helps to sell radio advertising time in either Colorado Springs or Spokane without advance written approval from the Antitrust Division.

VI. Preservation of Assets

Unitl the termination of the JSA required by Section IV has been accomplished, Citadel shall take all steps necessary to maintain and operate the Radio Assets as active and viable entities to the extent it is able under the JSA; maintain the management, staffing, sales and marketing of the Radio Assets; and maintain the Radio Assets in operable condition at current capacity configurations. Citadel and Capstar agree that they may hire each other's employees and that they will not enforce any non-complete provisions in the employment contracts of any sales employee of any radio station they own in Colorado Springs.

VII. Financing

Citadel and Capstar shall not finance for each other all or any part of any transaction related to this Final Judgment.

VIII. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the defendants' principal offices, the defendants shall submit written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section VIII of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by the plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

IX. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XI. Public Interest

Entry of this Final judgment is in the public interest.

Dated _____

_____

United States District Judge

Plaintiffs Explanation of Consent Decree Procedures

Plaintiff, the United States of America, submits this short memorandum summarizing the procedures regarding the Court's entry of the proposed Final Judgment. The Judgment would settle this case pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA''), which applies to civil

antitrust cases brought and settled by the United States.

1. Today, plaintiff has filed a Complaint, a proposed Final Judgment, and a Stipulation by which the parties have agreed to the Court's entry of the proposed Final Judgment following compliance with the APPA, and a Motion to Enter the Stipulation and Order. The defendants have agreed not to consummate their transaction until the Court signs the Stipulation and Order. The Court's entry of the Stipulation will enable it immediately to govern the parties's behavior relating to the transaction, until such time as the Final Judgment is entered pursuant to the APPA.

2. Plaintiff is also filing a Competitive Impact Statement relating to the proposed Judgment [15 U.S.C. 16(b)].

3. The APPA requires that plaintiff publish the proposed Final Judgment and Competitive Impact Statement in the Federal Register and in certain newspapers at least 60 days prior to entry of the Final Judgment. The notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division [15 U.S.C. 16(b)-(c)].

4. During the sixty-day period, plaintiff will consider, and at the close of that period respond to, any comments received, and it will publish the comments and responses in the **Federal Register.**

5. After the expiration of the sixty-day period, plaintiff will file with the Court the comments, the government's responses, and a Motion for Entry of the Final Judgment (unless the United States has decided to withdraw its consent to entry of the Final Judgment, as permitted by Paragraph 2 of the Stipulation) [*see* 15 U.S.C. 16(d)].

6. At that time, pursuant to the APPA, 15 U.S.C. 16(e)–(f), the Court may enter the Final Judgment without a hearing, if it finds that the Final Judgment is in the public interest.

Dated: April 28, 1999.

Respectfully submitted.

Karl D. Knutsen,

Attorney, United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H St., NW, Suite 4000, Washington, DC 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Complaint, Final Judgment, Stipulation, Competition Impact Statement, and Plaintiff's Explanation of Consent Decree Procedures were served this 28th day of April, 1999, by hand and Fedex, to the following:

Debra H. Dermody, Reed, Smith, Shaw, & McClay, 435 Sixth Avenue, Pittsburgh, PA 15219, Counsel for Citadel Communications Corporation, By Fedex.

David J. Laing, Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, Counsel for Triathlon Broadcasting Company, By hand.

Neil W. Imus, Vinson & Elkins L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Capstar Broadcasting Corporation, By hand.

Karl D. Knutsen

Amended Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Amended Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed an amended civil antitrust Complaint on April 30, 1999 (''Complaint'') alleging that Citadel Communication Corporation's (''Citadel'') ''Joint Sale Agreement'' (''JSA'') with Triathlon Broadcasting (''Triathlon'') violates Section One of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that the JSA between Citadel and Triathlon is anticompetitive in the Colorado Springs, Colorado, and Spokane, Washington, radio advertising markets. The Complaint also alleges that Triathlon's acquisition of additional radio stations in Spokane is anticompetitive.

The Complaint alleges that in Colorado Springs, Citadel's KKFM–FM, and KKMG–FM competed against Triathlon's KSPZ–FM, KVUU–FM, KTWK–AM, and KVOR–AM prior to the JSA, and that since the creation of the JSA, Citadel has acquired KKLI–FM. The complaint further alleges that since Citadel and Triathlon instituted the JSA in Colorado Springs, Citadel now sets the prices for radio advertising for both its and Triathlon's stations. In addition, the complaint alleges that Citadel approached its remaining competitors in Colorado Springs and suggested that they could all make more money if they were to eliminate a discount to certain advertisers, thus indicating its intent and willingness to collude and avoid price competition.

The complaint alleges that in Spokane, Citadel's KAEP–FM, KDRK–FM, KJRB–AM, and KGA–AM competed against Triathlon's KKZX–FM, KEYF–FM, KEYF–AM, and KUDY–AM prior to the JSA. The complaint further alleges that since Citadel and Triathlon instituted the JSA in Spokane, Citadel now sets the prices for radio advertising for both its and these Triathlon stations. In addition, the complaint alleges that Triathlon later acquired KNFR–FM, KISC–FM, and KAQQ–AM in Spokane, and has a reduced incentive to compete against the JSA because it receives a share of the profits from the JSA.

Finally, the complaint alleges that Capstar Broadcasting Corporation (''Capstar'') has announced its agreement to acquire Triathlon, including its stations in Colorado Springs and Spokane. After it acquires Triathlon, Capstar would become a party to the JSA, if the JSA were still in existence.

The prayer for relief seeks: (a) adjudication that Citadel's JSA with Triathlon in Colorado Springs violates Section One of the Sherman Act, 15 U.S.C. 1; (b) adjudication that Citadel's JSA with Triathlon and Triathlon's acquisition of non-JSA stations in Spokane violate Section One of the Sherman Act, 15 U.S.C. 1; (c) entry of an injunction terminating the JSA in both Colorado Springs and Spokane and requiring Capstar to divest KEF–FM in Spokane; (d) entry of an injunction preventing Citadel from discussing the price of radio advertising time with competitors in Colorado Springs and Spokane; and (e) such other relief as is proper.

The United States has reached a proposed settlement with Citadel and Capstar which is memorialized in the proposed Final Judgment filed with the Court. Under the terms of the proposed Final Judgment, Citadel and Capstar will terminate the JSA and Capstar will divest KEYF–FM.

The plaintiff and defendants Citadel and Capstar have stipulated that the proposed Final Judgment may be entered after compliance with the APPA and that they can fulfill their obligations under the Final Judgment. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Citadel is a Nevada corporation with its headquarters in Las Vegas, Nevada.

According to industry estimates, it owns 107 radio stations in 20 U.S. markets. Triathlon is a Delaware Corporation with its headquarters in San Diego, California. According to industry estimates, it currently owns 31 radio stations in six U.S. markets. Capstar has announced its agreement to acquire Triathlon.

Capstar is a Delaware corporation with its headquarters in Austin, Texas. It is associated with Hicks, Muse, Tate, & Furst Incorporated (''Hicks-Muse''), a Delaware corporation with its headquarters in Irving, Texas. According to industry estimates, Capstar owns approximately 309 radio stations in 76 U.S. markets. Chancellor Media Company, a company with which Capstar shares some directors and owners, has announced its intention to acquire Capstar.

B. Description of the Events Giving Rise to the Alleged Violation

Prior to December, 1995, the Citadel and Triathlon radio stations in Colorado Springs and Spokane competed against each other within their respective cities. On or about December 15, 1995, however, Citadel and Triathlon's predecessor corporation entered into a Joint Sales Agreement (''JSA''). Under the terms of the JSA, Citadel sets prices and sells advertising time on the radio stations subject to the JSA in both Colorado Springs and Spokane. Citadel also collects payments from advertisers, makes a monthly report to Triathlon, deducts expenses, and divides the profits between the parties. Citadel and Triathlon have operated under the JSA since December, 1995. Later, Triathlon acquired another group of radio stations in Spokane.

C. Anticompetitive Consequences of the JSA

1. The Sale of Radio Advertising Time in Colorado Springs, Colorado, and Spokane, Washington, Are The Appropriate Markets in Which To Analyze This Antitrust Action

The Complaint alleges that the provision of advertising time on radio stations serving Colorado Springs, Colorado, and Spokane, Washington, constitutes a line of commerce and sections of the country, or relevant markets, for antitrust purposes. Radio stations, by their programming, seek to attract listeners. The radio stations then sell advertising time to advertisers who want to reach those listeners. Radio's unique characteristics as an inexpensive drive-time and workplace news and entertainment companion has given it distinct and special qualities. Retailers, in an effort to reach potential customers, use a mix of electronic and print media to deliver their advertising messages. In so doing, they have learned that certain media are more cost-effective than others in meeting certain of their advertising goals and that radio can serve several such goals.

When radio advertisers use radio as part of a ''media mix,'' they often view the other advertising media (such as television or newspapers) as a complement to, and not a substitute for, radio advertising. Many advertisers who use radio as part of a multi-media campaign do so because they believe that the radio component enhances the effectiveness of their overall advertising campaign. They view radio as giving them unique and cost-effective access to certain audiences. They recognize that because radio is portable, people can listen to it anywhere—especially in places and situations where other media are not present, such as in the office and car. In addition, they know that radio formats are designed to attract listeners in specific demographic groups. As a consequence of the foregoing factors, the closest substitute to advertising on one radio station, for many advertisers, is advertising on other radio stations.

In addition to accomplishing these goals more efficiently than other media, radio advertising is the relevant market in which to evaluate the JSA because a hypothetical monopolist of radio stations could profitably raise prices. Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in the cost of radio advertising time, the existence of such advertisers would not prevent all radio stations in the Colorado Springs and Spokane markets from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. Harm to Competition

a. The concentration of radio stations in Colorado Springs and Spokane substantially harms competition. The Complaint alleges that Citadel's JSA with Triathlon in Colorado Springs and Spokane along with Triathlon's subsequent acquisition of additional stations in Spokane harms competition. Prior to the JSA, an advertiser buying radio advertising time could select a combination of Citadel, Triathlon, and independent stations that would allow it to exclude either the Triathlon or Citadel stations—thus giving both Citadel and Triathlon an incentive to negotiate with the advertiser. After the JSA, however, the Citadel and Triathlon stations subject to the JSA no longer compete with each other. Because the JSA represents a large percentage of the radio advertising available in those geographic markets, many advertisers in those markets cannot meet their listener goals without using the JSA stations. Realizing that these advertisers cannot buy around its JSA, Citadel can raise prices to many advertisers.

b. Advertisers could not turn to other Colorado Springs or Spokane radio stations to prevent Citadel from imposing an anticompetitive price increase. If Citadel and Triathlon raised prices to advertisers in Colorado Springs or Spokane, other radio stations in Colorado Springs and Spokane would not and could not profitably offer additional advertising inventory or change their formats to provide access to different audiences, thus mitigating the effect of the price increase. Stations are constrained in their ability to play additional commercials by the tendency of listeners to avoid stations that play too much advertising and the insistence of advertisers on ''separation'' from similar advertisers. Thus, even if advertisers trying to avoid a price increase wanted to run additional commercials on non-Citadel and non-Triathlon stations, the alternative stations would likely be unable to accommodate them. Moreover, even assuming that such a station could accommodate an increase in advertisers, it would perceive the increase in demand for its product and would have an incentive to raise its prices as well. Finally, successful stations are reluctant to change formats because of the risk and costs involved in a format change and unsuccessful stations may not be able to gain a large enough audience to undermine a supra-competitive price increase. In addition, an advertiser wishing to reach a broad audience cannot simply run more commercials on fewer stations, because the advertiser will not reach a broad enough audience without a range of stations.

In both the Colorado Springs and Spokane radio advertising markets, new

entry is unlikely as a response to a supra-competitive price increase from the JSA. In addition, it is unlikely that stations in adjacent communities could boost their power so as to enter the Colorado Springs or Spokane markets without interfering with other stations and thus violating Federal Communications Commission regulations.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in both Colorado Springs and Spokane. It requires Citadel and Capstar [1] to terminate their JSA as soon as possible, but no later than June 2, 1999. Plaintiff, at its sole discretion, may extend the time period for the parties to comply with the terms of the Final Judgment for two additional 30-day periods. In addition, the proposed Final Judgment requires Capstar to divest KEYF–FM in Spokane. Defendants have also expressed their desire to exchange certain other stations among themselves and plaintiff has stipulated that it will not contest any or all of their proposed exchanges. *See* Stipulation and Order, ¶¶ 4 & 5. The Final Judgment provides that neither defendant, nor their successors, can acquire any other radio station in either Colorado Springs or Spokane without giving the Antitrust Division of the Department of Justice prior notice. Furthermore, the Final Judgment places conditions on the parties if they wish to enter any subsequent JSA in either Colorado Springs or Spokane. Capstar (never a party to the JSA) may not enter into a JSA in those cities without notifying that Antitrust Division; Citadel may not enter a JSA in those cities without permission from the Antitrust Division. Despite their clear competitive significance. JSAs may not all be reportable to the Department under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''). Thus, this provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in these radio advertising markets.

[1] Although this action names Triathlon as a defendant, the Department expects that Triathlon will be acquired by Capstar soon and will be acquired by Capstar soon and will then cease to have a separate legal existence. Hence, relief against it is unnecessary. When Triathlon's separate existence is terminated, the Department will move to dismiss it as a defendant. This will occur before the Department moves for entry of the proposed Final Judgment at the conclusion of the Tunney Act review process.

Finally, the proposed Final Judgment prevents Citadel from discussing radio advertising prices and discounts with other radio stations in both Colorado Springs and Spokane. Nothing in this proposed Final Judgment limits the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of defendants in Colorado Springs, Spokane, or any other markets, including their entry into a JSA or any other agreements related to the sale of advertising time except those specifically identified in the Complaint.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conducted prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the termination of the JSA and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Colorado Springs and Spokane radio advertising markets. Thus, the proposed Final Judgment achieves all of the relief the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.''

In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995). In conducting this inquiry. ''[t]he Court is nowhere compelled to go to trial or to engage in

extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[2] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.)); *see also Microsoft*, 56 F.3d at 1460–62. Rather,

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, need not be certain to eliminate every anticompetitive effect of a particular practice. Court approval of a final judgment requires a more flexible and less strict standard than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''[14]

In this case, the proposed Final Judgment meets the appropriate standard. The Final Judgment dissolves the JSA. In addition, Capstar's divestiture of KEYF-FM in Spokane will cure the anticompetitive effects of Triathlon's prior acquisitions there. The exchanges of stations anticipated by defendants Citadel and Capstar leave both surviving parties with radio advertising market shares of approximately 40% or less in both Colorado Springs and Spokane.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted.

Karl D. Knutsen,

Attorney, Colorado Bar Reg. No. 23997, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Amended Complaint and amended Competitive Impact Statement were served this 26th day of April, 1999, by United States mail, to the following:

Debra H. Dermody, Reed, Smith, Shaw, & McClay, 435 Sixth Ave., Pittsburgh, PA 15219, Counsel for Citadel Communications Corporation

David J. Laing, Baker & McKenzie, 815 Connecticut, Washington, D.C. 20006, Counsel for Triathlon Broadcasting Company

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Capstar Broadcasting Corporation

Karl D. Knutsen

[FR Doc. 99–12339 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–11–M

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *Reprinted in U.S.C.C.A.N. 6535, 6538.*

[3] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broad, Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[4] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (*quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985). Washington, D.C. 20530

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Suiza Foods Corporation and Broughton Foods Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Kentucky, London Division in *United States of America* v. *Suiza Foods Corporation and Broughton Foods Company*, Civil Action No. 99–CV–130. On March 18, 1999, the United States filed a Complaint alleging that the proposed acquisition by Suiza Foods Corporation (''Suiza'') of the stock of Broughton Foods Company (''Broughton''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on April 22, 1999, requires Suiza to divest the Southern Belle plant and related assets in Somerset, Kentucky, pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States of America, Plaintiff, vs. Suiza Foods Corporation, d/b/a Louis Trauth Dairy, Land O'Sun Dairy, and Flav-O-Rich Dairy, and Broughton Foods Company, d/b/a Southern Belle Dairy, Defendants. Civil Action No. 99–CV–130.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of Kentucky, London Division.

(2) The parties stipulate that a Final Judgment in the form hereto attached

may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) Defendants shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VI of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of this Stipulation, and every thirty (30) calendar days thereafter pending entry of the Final Judgment.

(6) In the event the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(7) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

(8) Upon entry of this Stipulation as an Order of the Court, and consistent with this Stipulation, insofar as the defendants were enjoined by Orders of the Court on March 18, 1999, and April 14, 1999, from consummating their proposed transaction and from bringing their operations under common ownership and control, such previous Orders shall be vacated.

Respectfully submitted,

James K. Foster,

Attorney, U.S. Department of Justice, Antitrust division, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530, Telephone: (202) 514–8362, Facsimile: (202) 307–5802.

Paul T. Denis,

Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004, Telephone: (202) 942–5000, Facsimile: (202) 942–5999.

Attorney for Defendant Suiza Foods Corporation

Joseph L. Famularo,

United States Attorney, 110 W. Vine Street, Suite 4000, Lexington, Kentucky 50407, Telephone: (606) 233–2666.

William J. Kolasky,

Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037, Telephone: (202) 663–6357, Facsimile: (202) 663–6363.

Attorney for Defendant Broughton Foods Company

So Ordered, this ____ day of _____. 1999.

_____

United States District Judge

Final Judgment

Whereas plaintiff the United States of America (hereinafter ''United States''), having filed its Complaint herein, and defendants, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any part with respect to any issue of law or fact herein;

And whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain assets to a third party is the essence of this agreement;

And whereas, plaintiff requires defendants to divest, as a viable business, the Southern Belle Dairy so as to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be to continue to operate the Southern Belle Dairy as a viable, ongoing business;

And whereas, defendants have represented to plaintiff that the divestiture required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed as follows:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the person(s) to whom defendants shall sell the Southern Belle Dairy (as defined below).

B. ''Southern Belle Dairy'' means the entire milk processing plant owned by Broughton Foods Company located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, Southern Belle Dairy or any of its distribution branches and locations.

C. ''Suiza Foods Corporation'' means defendant Suiza Foods Corporation and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

D. ''Broughton Foods Company'' means defendant Broughton Foods Company and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

II. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Southern Belle Diary may not be sold to an Acquirer that has not agreed to be bound by the provisions of this Final Judgment

IV. Divestitute of Assets

A. Suiza Foods Corporation is hereby ordered and directed, within six (6) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Southern Belle Dairy to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to one (1) month, and shall notify the Court in such circumstances.

B. Unless the United States consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Southern Belle Dairy defined above. Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Southern Belle Dairy can and will be operated by the Acquirer as a viable, ongoing business. Divestiture of the Southern Belle Dairy, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the dairy business, (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the dairy business; and (3) that none of the terms of any agreement between the Acquirer and defendant give defendant the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

C. In accomplishing the divestiture ordered by this Final Judgment, Suiza Foods Corporation shall make known, by usual and customary means, the availability of the Southern Belle Dairy. Suiza Foods Corporation shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to customary confidentiality assurance, all information regarding the Southern Belle Dairy customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Southern Belle Dairy to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

E. Suiza Foods Corporation shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment. Defendants shall not take any action that will impede in any way the operation of the Southern Belle Dairy other than in the ordinary course of their other business.

V. Appointment of Trustee

A. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV.A., it shall notify the plaintiff of that fact in writing. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV.A., and upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Southern Belle Dairy. Unless the plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Southern Belle Dairy can and will be operated by the Acquirer as a viable on-going business.

B. After the appointment of a trustee becomes effectively, only the trustee shall have the right to sell the Southern Belle Dairy. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Suiza Foods Corporation, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Suiza Foods Corporation and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Southern Belle Dairy and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Suiza Foods Corporation shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of, and relating to, the Southern Belle Dairy, and defendants shall develop financial or other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture. Defendants shall permit prospective acquires of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final

Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Southern Belle Dairy, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Southern Belle Dairy. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

A. Within two (2) business days following execution of a definitive agreement, Suiza Foods Corporation or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Suiza Foods Corporation. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Southern Belle Dairy, together with full details of the same. Within fifteen (15) calendar days after receipt of the notice, the plaintiff may request from Suiza Foods Corporation, the proposed purchaser, or any third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Suiza Foods Corporation or the trustee shall furnish the additional information within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after receipt of the additional information by the United States, whichever is later, the United States shall notify in writing Suiza Foods Corporation and the trustee, if there is one, whether or not it objects to the proposed divestiture. If the United States notifies in writing Suiza Foods Corporation and the trustee, if there is one that it does not object, then the divestiture may be consummated, subject only to Suiza Foods Corporation's limited right to object to the sale under Section V.B. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V may not be consummated. Upon objection by Suiza Foods Corporation under Section V.B., the proposed divestiture under Section V shall not be accomplished unless approved by the Court.

B. Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Suiza Foods Corporation shall deliver to the plaintiff a written affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) calendar days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Southern Belle Dairy, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Each such affidavit shall also include a description of the efforts that Suiza Foods Corporation has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendant, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Suiza Foods Corporation shall maintain full records of all efforts made to divest all or any portion of the Southern Belle Dairy.

VII. Financing

Suiza Foods Corporation shall not finance all or any part of any purchase of the Southern Belle Dairy made pursuant to Sections IV or V of this Final Judgment

VIII. Hold Separate Requirements

Unless otherwise indicated, from the date of filing of this proposed Final Judgment with the Court and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished:

A. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall preserve, maintain, and operate the Southern Belle Dairy as an independent competitor with management, production, sales and operations held entirely separate, distinct and apart from those of Suiza Foods Corporation. Suiza Foods Corporation shall not coordinate the production, marketing or sale of products from Southern Belle Dairy's business with the business that it will own as a result of the acquisition of Broughton Foods Company.

B. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of products; that the management of the Southern Belle Dairy will not be influenced by Suiza Foods Corporation, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Southern Belle Dairy will be kept separate and apart from the operations of Suiza Foods Corporation. Suiza Foods Corporation's influence over the Southern Belle Dairy shall be limited to that necessary to carry out its obligations under the Final Judgment. Suiza Foods Corporation may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Southern Belle Dairy to the extent necessary to allow Suiza Foods

Corporation to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports including provision of due diligence information required to be made available pursuant to this Final Judgment.

C. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall use all reasonable efforts to maintain the operations of the Southern Belle Dairy, and shall maintain at current or previously approved levels, whichever are higher, internal funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Southern Belle Dairy.

D. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient working capital to maintain the Southern Belle Dairy as an economically viable, ongoing business.

E. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient lines and sources of credit to maintain the Southern Belle Dairy as an economically viable, ongoing business.

F. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy is fully maintained in operable condition at no lower than its current rated capacity levels, and shall maintain and adhere to normal repair and maintenance schedules for the Southern Belle Dairy.

G. Suiza Foods Corporation shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any assets of the Southern Belle Dairy.

H. The management of Southern Belle Dairy shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Southern Belle Dairy.

I. Except in the ordinary course of business or as is otherwise consistent with this Final Judgment, Suiza Foods Corporation shall not hire and shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on the date of the filing of this proposed Final Judgment work at the Southern Belle Dairy, unless such individual has a written offer of employment from a third party for a like position.

J. Until such time as the Southern Belle Dairy is divested, it shall be managed by Martin Shearer. Mr. Shearer shall have complete managerial responsibility for the Southern Belle Dairy, subject to the provisions of the Final Judgment. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, and in the event that Mr. Shearer is unwilling or unable to perform these duties, Suiza Foods Corporation shall appoint, subject to plaintiffs approval, a replacement acceptable to plaintiff within ten (10) working days. Should Suiza Foods Corporation fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement.

K. Suiza Foods Corporation shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

L. Within twenty (20) calendar days of the filing of this Final Judgment, Suiza Foods Corporation shall deliver to the United States an affidavit which describes in detail all actions Suiza Foods Corporation has taken and all steps Suiza Foods Corporation has implemented on an on-going basis to preserve the Southern Belle Dairy pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, Suiza Foods Corporation's efforts to maintain and operate the Southern Belle Dairy as an active competitor, maintain the independent management, staffing, sales, marketing, and pricing of the Southern Belle Dairy and maintain the Southern Belle Dairy in operable condition at current capacity levels. Suiza Foods Corporation shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Suiza Foods Corporation's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Suiza Foods Corporation or Broughton Foods Company made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview either informally or on the record, directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in Sections VIII or IX shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the plaintiff, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of

Civil Procedure,'' then the plaintiff shall give ten (10) calendar days' notice to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination of Provisions

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on March 18, 1999, in United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company (''Broughton'') by Suiza Foods Corporation (''Suiza '') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete head-to-head to sell milk to school districts, and that in 55 of those school districts located in South Central Kentucky, the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

After this suit was filed, a proposed settlement was reached that permits Suiza to complete its acquisition of Broughton, yet preserves competition in the South Central Kentucky school districts where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement have been filed with the Court.

The proposed Final Judgment orders Suiza to divest the entire Southern Belle Dairy plant based in Pulaski County, Kentucky, and all related assets. Unless the plaintiff grants a time extension, Suiza must divest the Southern Belle Dairy and related assets within six (6) months after the filing of the Complaint in this action or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Suiza does not divest the Southern Belle Dairy and related assets within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate the Southern Belle Dairy as an active competitor, such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products, maintain sufficient management and staffing, and maintain the Southern Belle Dairy in operable condition at current capacity configurations.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Suiza, a large nationwide operator of milk processing plants, is a Delaware corporation headquartered in Dallas, Texas. Suiza had sales of approximately $1.8 billion in 1997. Using the Flav-O-Rich, PET and Trauth names, Suiza distributes its products to Kentucky grocery stores, convenience stores, schools, and institutions from its dairies located in London and Newport, Kentucky; and Bristol and Kingsport, Tennessee.

Broughton is an Ohio corporation with its headquarters in Marietta, Ohio. Broughton had sales of approximately $87.2 million in 1997. In Kentucky, Broughton, using the Southern Belle and Broughton's names, distributes its products to grocery stores, convenience stores, independent distributors, schools, and institutions from its dairies in Somerset, Kentucky and Marietta, Ohio.

B. Description of the Events Giving Rise to the Alleged Violations

On September 10, 1998, Suiza and Broughton entered into an agreement and plan of merger, pursuant to which Suiza intends to purchase all of the stock of Broughton for $109.7 million and assume Broughton liabilities of $13 million. The statutory waiting period during which the firms were prohibited from completing their proposed acquisition expired March 19, 1999, 15 U.S.C. 18a(e)(2). The Complaint was filed on March 18, 1999, together with a Motion For Preliminary injunction. On April 9, 1999, the defendants agreed to not complete their proposed acquisition pending trial and the Motion For Preliminary Injunction was withdrawn. On April 29, 1999, the Stipulation and Proposed Final Judgment to resolve the suit was filed with the Court in London, Kentucky.

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the sale of school milk constitutes a relevant product market and a line of interstate commerce. Milk is a product that has special nutritional characteristics and no practical substitutes, and dairies sell milk to schools with special services, including storage coolers, daily or every-other-day delivery to each school, limited hours delivery, constant rotation of old milk and replacement of expired milk. Moreover, school districts must provide milk in order to receive substantial funds under federal school meal subsidy programs. The Complaint defines the sale of milk together with its delivery services as the product ''school milk.'' There are no other products that school districts would substitute for school milk in the event of a small but significant price increase. If the price of school milk rose by a small but significant amount, school districts would be forced to pay the increase.

The Complaint alleges that the relevant geographic market in which to assess the competitive effects of the proposed acquisition is a 39-county area of Kentucky (''South Central Kentucky''), and narrower markets contained therein, including each of the 55 listed school districts likely to be affected by the acquisition (''South Central Kentucky School Districts''). As a practical matter, South Central Kentucky School Districts would be unable to turn to additional school milk producers not currently bidding or not currently intending to bid for school milk contracts within South Central Kentucky School Districts to supply them with school milk if the price of school milk were to increase by a small but significant amount.

The Complaint alleges that Suiza's proposed acquisition of Broughton would lessen competition substantially in the sale of school milk in each of the South Central Kentucky School Districts. In 32 of the listed school districts, only two competitors would likely remain after the acquisition. Because dairies bid on each school milk contract separately, where the acquisition would reduce the number of bidders on these contracts from three to two, the likelihood that the remaining bidders will bid less aggressively against each other on both price and service terms is significantly increased.

In 23 of the listed school districts, the effect of the proposed acquisition would be to establish a monopoly. In these counties, the proposed acquisition would give the post-acquisition firm the power unilaterally to raise prices or to decrease the level or quality of service provided to these school districts.

The Complaint also alleges that entry by other dairies or distributors would not be timely, likely or sufficient to deter any anticompetitive effect caused by the acquisition. Dairies or distributors would be unlikely to decide that it has become profitable to compete for this low margin, low volume, seasonal business as a result of a small but significant increase in school milk prices.

The Complaint also alleges, in support of its allegations concerning relevant product market, likely competitive effects, and entry, the existence of an admitted school milk bid-rigging conspiracy between Southern Belle Dairy and Flav-O-Rich Dairy continuing from the late 1970s through 1989, in 23 of the 39 counties likely to be affected by the acquisition. Although the dairies involved in the conspiracy were later purchased by Broughton (Southern Belle) and Suiza (Flav-O-Rich), the history of school milk bid rigging in South Central Kentucky indicates that school milk markets there are conducive to collusion. The proposed acquisition would likely increase the danger of tacit or overt collusion in those school districts where the acquisition would reduce the number of competing firms from three to two, and in districts with no remaining competition, the proposed acquisition would recreate the harmful effects of the criminal bid-rigging conspiracy.

For all of these reasons, plaintiff concludes that the proposed transaction is likely to lessen competition substantially in the sale of school milk in South Central Kentucky, and result in increased prices and/or reduced quality and services, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the sale of school milk in South Central Kentucky. It requires the divestiture of all of the Southern Belle Dairy operation. This relief maintains the level of competition that existed premerger and ensures that the affected markets will suffer no reduction in competition as a result of the merger, and the South Central Kentucky School Districts will continue to have alternatives to Suiza/Flav-O-Rich in purchasing school milk.

Unless plaintiff grants an extension of time, the divestiture must be completed within six (6) months after the filing of the Complaint in this matter or within five (5) business days after notice of entry of this Final Judgment by the Court, whichever is later. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate the Southern Belle Dairy as an active competitor, such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products; maintain sufficient management and staffing, and maintain the Southern Belle Dairy in operable condition at current capacity configurations.

The divestiture must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divesture shall include all the assets of the Southern Belle Dairy being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as a viable, ongoing business. In addition, the purchaser must intend in good faith to continue the operations of the Southern Belle Dairy business that were in place prior to the filing of the Complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to ensure that the business to be divested remains competitive with Suiza in South Central Kentucky.

If defendants fail to divest the Southern Belle Dairy within the time period specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the Southern Belle Dairy, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which its is accomplished. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The relief in the proposed Final Judgment is intended to remedy only the likely anticompetitive effects of Suiza's proposed acquisition of Broughton in South Central Kentucky. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of the defendants.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover

three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdrawn its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modifications, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. Plaintiff is satisfied, however, that the divestiture contained in the proposed Final Judgment will preserve competition in the sale of school milk in South Central Kentucky as it was prior to the proposed acquisition, and that the proposed Final Judgment would achieve all the relief the government would have obtained through litigation, but merely avoids the time and expense of a trial.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

> (1) The competition impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [3]

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in U.S.C.C.A.N. 6535, 6538.*

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716 *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the reaches of the public interest'') (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determination Documents

There are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated April 28, 1999.

Respectfully submitted,

James K. Foster,

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW; Suite 4000, Washington, DC 20530, (202) 307–0001.

Certificate of Service

I, James K. Foster, hereby certify that, on April 28, 1999, I caused the foregoing document to be served on defendants Suiza Foods Corporation and Broughton Foods Company, by facsimile and first-class mail, postage prepaid, to:

Paul Denis, Esq.,

Arnold & Porter, 555 12th Street, NW, Washington DC 20004–1202, Counsel for Suiza Foods Corporation.

William Kolasky,

Wilmer, Cutler, & Pickering, 2445 M Street, NW, Washington, DC 20037, Counsel for Broughton Foods Company.

James K. Foster

[FR Doc. 99–12340 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implication Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Tuesday, June 8, 1999, in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to take testimony on the federal legal framework on the subject.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, D.C. this 11th day of May, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–12378 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, June 8, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retire health benefits.

The session will take place in Room N–3437 A–B U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 4:00 p.m., is for working group members to explore current accessibility of surplus assets in defined benefit pension plans with a particular emphasis on Internal Revenue Code Section 420 provisions and the historic use of this provision. In addition, other approaches used by employers to benefit from the existence of surplus assets will be discussed.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, DC this 11th day of May 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–12379 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, June 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N–3437

A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for working group members to explore issues related to transition and employee disclosures when a traditional defined benefit plan is converted to a cash balance plan and to review the work group's progress, strategy and future plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, D.C. this 11th day of May 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–12380 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

106th Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 106th public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, June 9, 1999.

The purpose of the open meeting, which will run from 1:00 p.m. to approximately 2:30 p.m. in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for members to receive progress reports from the three working groups established for 1999 and a status report on the activities of the Pension and Welfare Benefits Administration, which staffs the Advisory Council for the Secretary of Labor.

Working Group topics and the chairs of those working groups are:

- Benefit Implications of a Contingent Workforce, Michael Fanning;
- Exploring the Possibility of Using Pension Surplus to Fund Retiree Health Benefits, Michael J. Gulotta, and
- The Trend in the Defined Benefit Plan Market with a Focus on Hybrid Plans, including Cash Balance Plans, Judith F. Mazo.

Members of the public are encouraged to file a written statement pertaining to any of these topics by submitting 20 copies on or before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the full Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, D.C. this 11th day of May 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–12381 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation for Grant Application: Local Veterans Employment Representative Funds, Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, DOL.

ACTION: Notice of Extension.

SUMMARY: This notice extends the ending due date of the SGA 99–01 published on April 5, 1999 from May 10, 1999 to May 26, 1999 for submitting an application for funds for the operation of the Federal Contractor Award Information System of the Federal Contractor Program, under Title 38 U.S.C., part 4212. An application package and instructions for completion is now available. The closing date for receipt of a completed application in response to this SGA, or a letter of intent to make a subsequent application, will be not later than 4:30 p.m., May 26, 1999. A copy of the application package and instructions can be obtained at the following address: U.S. Department of Labor, 200 Constitution Ave., N.W., Room N5416, Washington, D.C. 20210. No FAXed or telephone requests will be accepted.

Eligibility

This grant solicitation is open to any State or Local agency or commercial entity or non-profit entity 401(c)(4) entities are not eligible to apply as they are lobbying organizations.

Signed at Washington, D.C., this 10th day of May 1999.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 99–12382 Filed 5–14–99; 8:45 am]

BILLING CODE 4510–19–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Meetings

TIME AND DATE: 10:00 a.m., Wednesday, May 19, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request for a Waiver for Corporate Credit Unions under Part 704 of NCUA's Rules and Regulations.

2. Appeal from a Federal Credit Union of Regional Director's Denial of Conversion to a Community Charter.

3. Proposed Rule: Amendment to Part 741, NCUA's Rules and Regulations, Insurance Premium and One Percent Deposit.

4. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Safe Deposit Box.

5. Final Rule: Amendment to Part 708a, NCUA's Rules and Regulations, Mergers/Conversions of Federally-Insured Credit Unions to Non Credit Union Status.

6. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Change in Credit Union Officials or Senior Staff.

7. Final Rule: Amendments to Parts 701, 713 and 741, NCUA's Rules and Regulations, Fidelity Bond.

8. Final Rule: Amendment to Part 723, NCUA's Rules and Regulations, Member Business Loans.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Wednesday, May 19, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 704, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Part 745, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Year 2000 Issues. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

4. CLF Y2K Plan. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

5. Three (3) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–12449 Filed 5–13–99; 11:06 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Arts Projects on Millennium Trails

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to conduct a project which will support 52 high quality, community-centered arts projects along the 52 Millennium Legacy Trails that the US Department of Transportation will designate in each of the 50 states, Puerto Rico, and the District of Columbia. Available funding is $520,000, which must be matched on a one-to-one basis. Responsibilities of the recipient of the Cooperative Agreement will include: preparation and distribution of application guidelines; overseeing the review and selection process; providing guidance and structure to each project; as well as monitoring all stages of each project. Eligibility to apply is limited to non-profit organizations [501(c)(3), college or university, or unit of state and local government]. Applicants for this Cooperative Agreements mut have previous experience in working with relevant organizations and agencies, such as national cultural service organizations, national trails organizations, state/local arts agencies, state departments of transportation, and state and local trails organizations. Those interested in receiving the solicitation package should reference Program Solicitation PS 99–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 99–04 is scheduled for release approximately June 4, 1999 with proposals due on July 12, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 99–12290 Filed 5–14–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company (Turkey Point Units 3 and 4); Revised Exemption

I

Florida Power and Light Company (the licensee or FPL) is the holder of Facility Operating Licenses Nos. DPR–31 and DPR–41, which authorize operation of Turkey Point Units 3 and 4 (the facility), respectively, at a steady-state reactor power level not in excess of 2300 megawatts thermal. The facility is a pressurized-water reactor located at the licensee's site in Dade County, Florida. The licenses require among other things that the facility comply with all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

By letter dated December 22, 1998, the NRC issued an exemption from certain requirements of 10 CFR Part 50, Appendix R, Section III.G.2.a, and a supporting safety evaluation (SE), for certain fire zones in the turbine building at Turkey Point Plant, Units 3 and 4. By letter dated March 8, 1999, FPL provided the NRC staff with its review comments regarding the issued exemption and SE.

The licensee's comments consisted primarily of clarifications, editorial corrections, and minor inconsistencies between FPL's submittals and the issued exemption and SE. Based on its review, the NRC staff has determined that these comments, which do not cause the conclusions made previously in the exemption and SE that were issued on December 22, 1998, to be altered, should be incorporated appropriately. Therefore, the staff is issuing this revised exemption and a revised SE to reflect FPL's comments. This revised exemption and the revised SE supersede those issued on December 22, 1998.

In exemptions dated March 27, 1984, and August 12, 1987, concerning the requirements of Section III.G, Appendix R to 10 CFR Part 50, the NRC staff approved the use of 1-hour-rated fire barriers in lieu of 3-hour-rated fire barriers in certain outdoor areas at Turkey Point Units 3 and 4. In addition, the staff found that, for certain outdoor areas not protected by automatic fire detection and suppression systems, separation of cables and equipment and associated circuits of redundant trains by a horizontal distance of 20 feet free of intervening combustibles provided an acceptable level of fire safety.

On the basis of the results of the industry's Thermo-Lag fire endurance testing program, the licensee concluded that the outdoor Thermo-Lag fire barrier designs cannot achieve a 1-hour fire-resistive rating but can achieve a 30-minute fire-resistive rating when exposed to a test fire that follows the American Society for Testing and Materials Standard E–119 time-

temperature curve. Because of these test results, the licensee in a letter dated June 15, 1994, requested an exemption to use 30-minute fire barriers for outdoor applications in lieu of the 1-hour-rated fire barriers previously approved; however, the licensee withdrew the exemption request by letter dated June 28, 1996.

In a letter dated July 31, 1997, as supplemented on July 2, October 27, and December 9, 1998, the licensee requested an exemption from the requirements pertaining to the 3-hour-rated fire barriers required by Section III.G.2.a, Appendix R to 10 CFR Part 50, for fire zones 79 (partial), 80 (partial), 82, 84 (partial), 85 (partial), 88 (partial), 89 (partial), 91, 92, 105, and 117 in the turbine building. The licensee requested that the NRC approve the following fire protection schemes as alternatives to the protection required by Section III.G.2 of Appendix R to 10 CFR Part 50: (1) Separation of cables and equipment and associated circuits of redundant post-fire safe-shutdown trains within the turbine building fire zones 79 (partial), 80 (partial), 82, 84 (partial), 85 (partial), 88 (partial), 91, 92, and 105 between column lines A and E–1[1] by a fire barrier having a minimum 1-hour fire resistive rating; (2) separation of cables and equipment and associated circuits of redundant post-fire safe-shutdown trains within the turbine building fire zones 79 (partial), 84 (partial), 88 (partial), and 89 (partial) between column lines E–1 and Jc by a fire barrier having a minimum 25-minute fire resistive rating; and (3) separation of cables and equipment and associated circuits of redundant post-fire safe-shutdown trains within the turbine building above the turbine operating deck, fire zone 117, by a fire barrier having a minimum 25-minute fire resistive rating. This request is based on the following: (1) for the turbine building between column lines A and E–1, automatic fixed water suppression systems would be provided for the major fire hazards (combustible sources) and the turbine lube oil equipment, and automatic wet pipe sprinkler protection would be provided for area coverage, including the turbine lube oil distribution piping locations as described in the enclosed safety evaluation; and (2) for the turbine building between column lines E–1 and J, an automatic wet pipe sprinkler protection would be provided.

[1] What is referred to as column line E–1 is actually a boundary plane formed by walls below grade. This boundary plane is defined by FPL's submittal dated July 2, 1998, Figures 4 and 5, and discussed on pages 3 and 4 of the attachment to the July 2, 1998, transmittal letter. In the submittal, column line E–1 is defined by those post-fire safe shutdown circuits located above the condensate pump pit, up to the underside of the 42′ elevation operating deck. This protection results in 1-hour rated fire barriers until a distance of over 20′ is obtained from the postulated pool fire at the 18′ elevation and a distance of approximately 9′-6″ from the edge of the checker plate flooring above the condensate pump pit. For those areas where the condensate pump pit extends to the east, the 1-hour fire barriers will follow the outline of the pit, augmenting the distance referenced above. The remainder of the post-fire shutdown circuits between column lines E and J will be protected by 25-minute rated fire barriers.

III

The underlying purpose of Section III.G.2.a, Appendix R to 10 CFR Part 50, is to provide reasonable assurance that one safe-shutdown train and associated circuits used to achieve and maintain safe-shutdown are free of fire damage.

On the basis of the staff's supporting safety evaluation of the licensee's submittals, the staff concludes that the exemption from the requirements of Section III.G.2.a of Appendix R to 10 CFR Part 50, for fire zones 79 (partial), 80 (partial), 82, 84 (partial), 85 (partial), 88 (partial), 89 (partial), 91, 92, 105, and 117 as requested by the licensee, provides an adequate level of fire safety and presents no undue risk to public health and safety. In addition, the staff concludes that the underlying purpose of the rule is achieved.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the Commission has determined that special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from the requirements of Section III.G.2.a of Appendix R to 10 CFR Part 50, as requested in its previously-referenced submittals, for fire zones 79 (partial), 80 (partial), 82, 84 (partial), 85 (partial), 88 (partial), 89 (partial), 91, 92, 105, and 117.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption for fire zones 79 (partial), 80 (partial), 82, 84 (partial), 85 (partial), 88 (partial), 89 (partial), 91, 92, 105, and 117, will not have a significant effect on the quality of the human environment (63 FR 65619).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–12319 Filed 5–14–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Office of Management and Budget.

ACTION: Notice of availability of the 1999 Circular A–133 Compliance Supplement.

SUMMARY: On June 10, 1998 (63 FR 31814), the Office of Management and Budget (OMB) issued a notice of availability of the 1998 Circular A–133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 1998 Circular A–133 Compliance Supplement. OMB received comments from 10 different respondents. These comments were very technical in nature and did not result in any substantive changes to the Supplement. The 1999 Supplement has been updated to add 35 additional programs, updated for program changes, makes technical corrections, and makes changes reflected in the public comment letters. A list of changes to the 1999 Supplement can be found at Appendix 5 of the supplement. Due to its length, the 1999 Supplement is not included in this Notice. See **ADDRESSES** for information about how to obtain a copy. OMB intends to annually review, revise and/or update this supplement.

This notice also offers interested parties an opportunity to comment on the 1999 Supplement.

DATES: The 1999 Supplement will apply to audits of fiscal years beginning after June 30, 1998 and supersedes the 1998 Supplement. All comments on the 1999 Supplement should be in writing and must be received by October 31, 1999. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 1999 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock no. 041–001–00522–6). The main GPO bookstore is located at 710 North Capitol Street, NW, Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the Grants Management heading from the OMB home page on the Internet which

is located at http://www.whitehouse.gov/OMB.

Comments on the 1999 Supplement should be mailed to the Office of Management and Budget, Office of Federal Financial Management, Financial Standards, Reporting and Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503. Where possible, comments should reference the applicable page numbers. When comments of five pages or less are sent in by facsimile (fax), they should be faxed to (202) 395–4915. Electronic mail comments may be submitted to tramsey@omb.eop.gov. Please include the full body of the electronic mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, phone number, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as may be appropriate in the circumstances. Subrecipients should contact their pass through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, Financial Standards, Reporting and Management Integrity Branch, telephone (202) 395–3993.

Jacob J. Lew,

Director.

[FR Doc. 99–12351 Filed 5–14–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27018]

Filings Under the Public Utility Holding company Act of 1935, as amended (''Act'')

May 10, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 2, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if offered, and will receive a copy of any notice or order issued in the matter. After June 2, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc. (70–9493)

New Century Energies, Inc. (''NCE''), a registered holding company, and its wholly owned nonutility subsidiary, NC Enterprises, Inc. (''Enterprises''), 1225 17th Street, Denver, Colorado 80202–5533, have filed an application under sections 9(a)(1) and 10 of the Act and rule 54 under the Act.

New Century Energies has three public-utility subsidiaries, Public Service Company of Colorado (''PSC''), Southwestern Public Service Company and Cheyenne Light, Fuel and Power Company. Together, these subsidiaries serve approximately 1.6 million electric customers in parts of Colorado, Texas, New Mexico, Wyoming, Oklahoma and Kansas and approximately one million gas customers in parts of Colorado and Wyoming.

NCE also engages through subsidiaries in various nonutility businesses. Enterprises serves as the intermediate holding company for most of NCE's nonutility interests.

Enterprises, through a new wholly owned subsidiary to be named New Century O&M Services, Inc. (''NCO&M''), or one or more additional subsidiaries of either Enterprises or NCO&M, requests authorization to bid on and acquire facilities, systems and related equipment, tools and inventories owned by the Federal government on military enclaves which are used exclusively in connection with the delivery and distribution of electricity, natural gas, water (including potable water and hot and chilled water), steam and other energy products; and to collect, treat, process and dispose of solid and liquid wastes (collectively, ''Military Base Assets''). NCO&M proposes to bid on assets when offered for sale by the federal government in accordance with military base privatization efforts of the Department of Defense ''(DOD'').[1]

NCO&M requests authorization to invest up to $150 million in Military Base Assets in one or more transactions from time to time through December 31, 2003. NCE and, to the extent not exempt by rules 52 and/or 45(b), as applicable, Enterprises and NCO&M, will issue debt and equity securities and guarantees for the purpose of financing the acquisition and operation of any Military Base Assets in accordance with the order of the Commission dated April 7, 1999.[2]

Generally, NCO&M would acquire Military Base Assets for cash or under the terms of a long-term services agreement with DOD (or a military department of DOD). Under the services agreements, NCO&M may agree to credit some or all of the stated purchase price for any Military Base Assets against future payments for essential services provided by NCO&M.

Initially, NCO&M proposes to bid on and, if successful, acquire the particular Military Base Assets described below. The applicants request the Commission to reserve jurisdiction over the acquisition of any additional Military Base Assets by NCO&M pending completion of the record in this proceeding.[3]

Specifically, NCO&M proposes to submit a bid in response to a request for proposals by the U.s. department of the Army to acquire the elctrical and natural gas distribution facilities that are located at Fort Carson Post (''Fort Carson''), near Colorado Springs, Colorado (Fort Carson Military Base Assets).[4] Fort Carson covers an area of more than 137,000 acres and includes approximately 1,860 buildings. The total daytime population of the base (active military personnel, their dependents and civilian workers) is estimated at 25,000. The electrical

[1] DOD has undertaken its current efforts in response to legislation, 10 U.S.C.A. § 2688 (1998), granting the Secretary of a military department authority to sell electric, gas, water and other military base distribution systems to private parties, with a view to achieving cost reductions in essential services on military bases and a significant improvement and upgrading of the systems by qualified parties.

[2] *New Century Energies, Inc.*, Holding Co. Act Release No. 27000. The order authorizes NCE to issue common stock, short-term and long-term debt and guarantees in specified amounts and, to the extent not exempt, to engage in intra-system financing, from time to time through December 31, 2001.

[3] The applicants undertake to file a post-effective amendment in this proceeding describing other Military Base Assets that NCO&M may seek to acquire in the future.

[4] The Department of the Army also invited proposals or the purchase of the water system at Fort Carson. NCO&M's bid does not cover the water system.

distribution system of Fort Carson is served through two substations with roughly 129 circuit miles of overhead primary distribution, approximately 18 circuit miles of underground primary distribution, and approximately 2,300 street lights. The natural gas distribution system serves aprpoximately 1,300 buildings throughout the base and consists of approximately 306,214 feet of pipe ranging from ¾″ to 10″ diameter, and includes associated metering and pressure reduction facilities.

If its bid is successful, NCO&M will enter into a services agreement with the federal government having a minimum term of ten years, under which NCO&M would provide natural gas and electric distribution services at Fort Carson. A part of the agreement, NCO&M would agree to provide all necessary labor, materials, tools and equipment necessary to operate, maintain, repair, upgrade and improve the distribution systems. The agreement contemplates that NCO&M would be obligated to conduct a complete physical inspection and survey of the systems within the first six months of the term of the contract, with a view to identifying those components that require repair, replacement or upgrade in order to ensure safety and quality service. Subsequently, inspections and surveys would be conducted annually during the term of the agreement.

NCO&M would not be able to sell the distribution systems without first offering the federal government the option to repurchase them. NCO&M may not use the Fort Carson Military Base Assets to serve customers outside Fort Carson without the permission of the federal government. NCO&M represents that it will not offer electric or gas service to customers outside Fort Carson without first obtaining a further order of the Commission in this proceeding.

NCO&M will hire and maintain a permanent on-site staff at Fort Carson of approximately nine individuals and will utilize subcontractors as needed, including PSC. NCO&M will also purchase administrative and management services from New Century Services, Inc., the service company subsidary of NCE, under the system Services Agreement.

NCO&M intends to enter into a support services agreement with PSC, under which the utility may provide personnel and other resources, from time to time, to assist in such activities as the physical inspections and surveys of the Fort Carson distribution systems and maintenance, repair and improvement. NCO&M will utilize a standard work order procedure to request support services from PSC. PSC will be reimbursed promptly for its costs incurred in connection with rendering any services to NCO&M or its subsidiaries. PSC will utilize cost accounting procedures designed to identify promptly all direct and indirect costs, including overheads, which are applicable to the work being performed by or with PSC personnel, material or other assets. The application states that all transactions between NCO&M and PSC will be performed at cost in compliance with section 13 of the Act and rules 90 and 91. Finally, NCO&M will indemnify and hold PSC harmless against all claims or liabilities that may be incurred in connection with providing any services to NCO&M.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12354 Filed 5–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED:

CHANGE IN THE MEETING: Additional Item.

The following item will be added to the closed meeting scheduled for Thursday, May 13, 1999, at 11:00 a.m.:

Settlement of administrative proceedings of an enforcement nature.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 13, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12405 Filed 5–12–99; 4:10 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41384; International Series Release No. 1196]

List of Foreign Issuers Which Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

May 10, 1999.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the ''Act'').[2]

Rule 12g3–2(b) [3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it has: (1) made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or (3) distributed or is required to distribute to its securities holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system—including the Nasdaq stock market.[4] The Commission grandfathered indefinitely securities of non-Canadian issuers that were in compliance with the Rule as of October 6, 1983 and quoted on Nasdaq on that date.[5]

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[1] 15 U.S.C. 78a *et seq.*

[2] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12g3–2(b)

[4] Exchange Act Release No. 20264 (Oct. 6, 1983).

[5] If, however, the securities are delisted from an automated inter-dealer quotation system or if the issuer fails to meet the requirements of the Rule, the grandfather provision will cease to apply. In addition, effective April 1, 1998, the securities of foreign private issuers that claim the Rule 12g3–2(b)

Continued

When the Commission adopted Rule 12g3–2(b) and other rules[6] relating to foreign securities, it indicated that from time to time it would publish lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[7] The purpose of this release is to call to the attention of brokers, dealers and investors, that some form of relatively current information concerning the issuers included in this list is available in the Commission's public files.[8] the Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[9] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[10]

Direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Elliot Staffin, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, Mail-Stop 3–2 ((202) 942–2990). This release is available on the Commission's Web site: www.sec.gov. Requests for copies may also be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Issuer name	Country	File No.
A&B Geoscience Corp.	Canada	82–4254
ABB AB	Sweden	82–736
ABB AG	Switzerland	82–2871
ACOM Co. Ltd	Japan	82–4121
AEM SpA	Italy	82–4911
AERO Vodochody A S	Czechoslovakia	82–4902
AGA AB	Sweden	82–800
AGC Americas Gold Corp	Canada	82–2622
AIFUL Corp	Japan	82–4802
AME Resource Capital Corp	Canada	82–3435
AMRAD Corp Ltd	Australia	82–4867
AO Kazanorgsintez	Russia	82–4744
AO Novgorodtelecom	Russia	82–4840
AO Siberian Oil Company	Russia	82–4882
APAC Telecommunications Corp	Canada	82–4157
ATOS	France	82–4323
AUR Resources Inc	Canada	82–4624
AVL Information Systems Inc	Canada	82–4010
Abitibi Mining Corp	Canada	82–4321
Accor S.A	France	82–4672
Adamas Resources Corp	Canada	82–4355
Agau Resources Inc	Canada	82–4769
Agora SA	Poland	82–4941
Agritek Bio Ingredients Corp	Canada	82–4869
Albert Fisher Group PLC	United Kingdom	82–1020
Aldeasa S.A	Spain	82–4774
Allied Domecq plc	United Kingdom	82–878
Allied Zurich PLC	United Kingdom	82–4874
Alpargatas, S.A.I.C	Argentina	82–3122
Alpha Airports Group PLC	United Kingdom	82–3694
Alpha Sensors	Australia	82–4819
Alpha Ventures Inc	Canada	82–4877
Altai Resources, Inc	Canada	82–2950
Altair International Gold Inc	Canada	82–1770
AmSteel Corp Berhad	Malaysia	82–3318
Amalgamated Banks of S.A. Ltd.	South Africa	82–4569
Amera Industries Corp	Canada	82–3263
American Comstock Exploration Ltd	Canada	82–3283
American Manor Corp	Canada	82–4158
Amoy Properties Ltd	Hong Kong	82–3410
Anderson Exploration Ltd	Canada	82–4169
Andhra Valley Power Supply Co	India	82–3732
Angkasa Marketing Berhad	Malaysia	82–3319
Anglo American Corp of S. Africa	South Africa	82–97
Anglos Irish Bank Corp PLC	Ireland	82–3791
Antares Mining and Exploration Inc	Canada	82–3858
Anthian Resource Corp	Canada	82–4096
Apasco, S.A. de C.V	Mexico	82–3103

are no longer able to be quoted on the OTC bulletin Board Service. See Exchange Act Release No. 39456 (March 31, 1997).

[6] Exchange Act Release No. 8066 (Apr. 28, 1967).

[7] Exchange Act Release No. 39681 (Feb. 19, 1998) was the last such list.

[8] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule 12g3–2(b). The list does identify those issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of March 31, 1999.

[9] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[10] See, *e.g.*, *Hanley* v. *SEC*, 415 f.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Issuer name	Country	File No.
Applied Gaming Solutions of Canada	Canada	82–4832
Applied High Technology AHT	Canada	82–4562
Applied Terravision Systems	Canada	82–4763
Aqua Pure Ventures Inc	Canada	82–4623
Archon Minerals Ltd	Canada	82–4171
Arcon International Resources	Ireland	82–4803
Arcoplate Holdings	United Kingdom	82–4898
Argenta Systems, Inc	Canada	82–1320
Arisawa Manufacturing Co	Japan	82–4620
Arisco Produtos Alimenticos	Brazil	82–4651
Arizona Star Resource Corp	Canada	82–1491
Arjo Wiggins Appleton	United Kingdom	82–4185
Arvind Mills Ltd. (The)	India	82–3708
Asia Fiber plc	Thailand	82–2842
Assurances Generales de France	France	82–4517
Astra Compania de Argentina Petroleo S.A	Argentina	82–3930
Athabaska Gold Res. Ltd	Canada	82–1906
Auckland International Airport Ltd	New Zealand	82–4866
Augen Capital Corp	Canada	82–4712
Auridiam Consolidated N.L	Australia	82–3452
Australian Gas Light	Australia	82–4797
Australian National Industries Ltd	Australia	82–3351
Australian Oil & Gas Corp	Canada	82–4576
Autoliv AB	Sweden	82–3810
Autonomy Corp PLC	United Kingdom	82–4851
Autopistas del Sol S.A	Argentina	82–4875
Autumn Industries Inc	Canada	82–3219
Avalon Ventures Ltd	Canada	82–4427
Avonmore Waterford Group PLC	Ireland	82–4734
BAA PLC	United Kingdom	82–3372
B.A.T. Industries	United Kingdom	82–33
B.Y.G. Natural Resources Inc	Canada	82–2038
BC Gas Inc	Canada	82–3909
BCB Holdings Inc	Canada	82–4871
BCS Technology Inc.	Canada	82–4558
BHF Bank	Germany	82–3404
BT Industries AB	Sweden	82–4212
BTR PLC	United Kingdom	82–898
BWI Resources Ltd	Canada	82–2914
Banca Carige SPA	Italy	82–4758
Banca Poplare de Brescia	Italy	82–4662
Banca Popolare de Milano	Italy	82–4879
Banca Popolare di Lodi	Italy	82–4855
Banco Bansud SA	Argentina	82–3830
Banco La Previsora S.A.	Equador	82–4133
Banco Mercantil S.A.	Bolivia	82–4296
Banco Nacional de Bolivia	Bolivia	82–4301
Banco Santander Mexicano	Mexico	82–3508
Bandai Co	Japan	82–3919
Bangkok Bank Public Co. Ltd	Thailand	82–4835
Bank Handlowy w Warszawie	Poland	82–4613
Bank Vozrozhdeniye	Russia	82–4257
Bank of East Asia Ltd	Hong Kong	82–3443
Bank of Nova Scotia	Canada	82–132
Bank of Scotland	United Kingdom	82–3240
BankInter, S.A	Spain	82–2972
Bargold Resources Ltd	Canada	82–4833
Barry Callebaut AG	Switzerland	82–4825
Bayerische Hypotheken-und Wechsel-Bank	Germany	82–3777
Bellevue Capital Corp	Canada	82–4687
Bespak plc	United Kingdom	82–3349
Beststar International Group	Canada	82–4736
Beta Systems Software A.G	Germany	82–4631
Bice Ventures Corp	Canada	82–4827
Bigsky Resources Corp	Canada	82–4826
Billiton Plc	United Kingdom	82–4647
Blue Circle Industries PLC	United Kingdom	82–927
Blue Power Energy Corp	Canada	82–2213
Blue Range Resource Corp	Canada	82–3302
Bohler Uddenholm AG	Austria	82–4089
Boliden Limited	Canada	82–4707
Bombardier Inc	Canada	82–3123
Borealis Exploration Ltd	Canada	82–1656
Borneo Gold Corp	Canada	82–4702

Issuer name	Country	File No.
Bowthorpe PLC	United Kingdom	82–4934
Braddick Resources Ltd	Canada	82–4414
Breckenridge Resources Ltd	Canada	82–1647
Bren Mar Resources Ltd	Canada	82–2143
Bridgestone Corp	Japan	82–1264
British Aerospace Public	United Kingdom	82–3138
British Energy	United Kingdom	82–4426
Burmah Castrol PLC	United Kingdom	82–5
Burns Philip & Company Ltd	Australia	82–1565
Bus Berzelius Umwelt Service AG	Germany	82–4838
C.A. La Elecricidad de Caracas S.A	Venezuela	82–4896
C.A. Venezolana de Pulpa y Papel SACA	Venezuela	82–3202
CAPEX S.A	Argentina	82–3862
CSK Corp	Japan	82–781
CTM Citrus S.A	Brazil	82–3555
CVL Resources Ltd	Canada	82–1991
Cambridge Minerals Ltd	Canada	82–4669
Camelot Resources Ltd	Australia	82–4550
CanBaikal Resources Inc	Canada	82–4694
Canadian Airlines Corp	Canada	82–3203
Canadian Hydro Developers	Canada	82–3347
Canadian Oil Sands Trust	Canada	82–4726
Canadian Western Bank	Canada	82–4478
Caradon Plc	United Kingdom	82–4542
Caribgold Resources Inc	Canada	82–4104
Carribean Cement Co. Ltd	Jamaica	82–3715
Carta Resources Ltd	Canada	82–4553
Cascade Metals Inc	Canada	82–4794
Castello Casino Corp	Canada	82–1918
Castellum A.B	Sweden	82–4683
Cathay Pacific Airlines Ltd	Hong Kong	82–1390
Cathedral Gold Corp	Canada	82–1990
Celanese Canada Inc	Canada	82–171
Cementos Lima S.A	Peru	82–3911
Cemex SA de CV	Mexico	82–2744
Centrais Geradoras do Sul do Brasil	Brazil	82–4760
Central Costanera S.A.	Argentina	82–3868
Central Pacific Minerals N.L.	Australia	82–354
Centrica PLC	United Kingdom	82–4518
Cerveceria Nacional S.A	Panama	82–4704
Ceska Sporitelna A.S	United Kingdom	82–4384
Ceske Radiokomunikace AS	Czechoslovakia	82–4848
Ceval Alimentos S.A	Brazil	82–3855
Challenger Minerals Ltd	Canada	82–3666
Champion Gold Resources	Canada	82–4485
Champion Resources Inc	Canada	82–4286
Chen Hsong Holding Ltd	Bermuda	82–3953
Chengdu Telecommunications	China	82–4573
Chesbar Resources Inc	Canada	82–4756
Cheung Kong (Holdings) Ltd	Hong Kong	82–4138
Cheung Kong Infrastructure	Bermuda	82–4830
China Pharmaceutical Enter. and Inv. Co	Hong Kong	82–4135
China Resources Enterprise Ltd	Hong Kong	82–4177
China Steel Corporation	China	82–3296
China Strategic Holdings Ltd	Hong Kong	82–3596
Chinese Estates Holding	Hong Kong	82–3954
Cho Hung Bank	Korea	82–4506
Christiana Bank OG Kredithasso	Norway	82–3018
Christies International PLC	United Kingdom	82–1180
Ciba Specialty Chemicals	Switzerland	82–4541
Cifra S.A. de C.V.	Mexico	82–4609
Circle Energy Inc	Canada	82–4586
Circumpacific Energy Corp.	Canada	82–3102
Claude Resources Inc	Canada	82–1742
Coats Viyella PLC	United Kingdom	82–1751
Coca-Cola Amatil Ltd	Australia	82–2994
Coca-Cola Beverages PLC	United Kingdom	82–4945
Colony Pacific Explorations Ltd	Canada	82–1115
Columbia Yukon Resources Ltd	Canada	82–4290
Commonwealth Energy Corp	Canada	82–4805
Compagnie Des Machines Bull	France	82–4847
Companhia Acos Especiais Itabira Acesita	Brazil	82–3769
Companhia Energetica de Sao Paulo	Brazil	82–3691
Companhia Siderurgica Belgo Mineira	Brazil	82–3771

Issuer name	Country	File No.
Companhia Siderurgica de Tubarao	Brazil	82–3842
Companhia Suzano De Papel E Celulose	Brazil	82–3550
Compania de Transporte de Energia	Argentina	82–4878
Companion Building Material (Holding)	Hong Kong	82–3982
Computacenter PLC	United Kingdom	82–4863
Concept Industries Inc	Canada	82–4003
Concert Industries Ltd	Canada	82–1003
Consolidated Pine Channel Gold Corp	Canada	82–2583
Consolidated Van City Marble Ltd	Canada	82–3052
Consolidated Westview Mining	Canada	82–2601
Continental AG	Germany	82–1357
Continental Precious Minerals Inc	Canada	82–3358
Cora Resources Ltd	Canada	82–4571
Corner Bay Minerals	Canada	82–4698
Corporacion EDC	Venezuela	82–4914
Corporacion Financiera Reunida	Spain	82–4780
Corporacion Financiera del Valle S.A.	Columbia	82–3437
Corriente Resources Inc	Canada	82–3775
Credit Communai Holding Dexia Belgium	Belgium	82–4606
Credit Lyonnais	France	82–3662
Credit Suisse First Boston	Switzerland	82–4705
Credit Suisse Group	Switzerland	82–3477
Crestar Energy Inc	Canada	82–3641
Cross Lake Minerals Ltd	Canada	82–2636
Crown Limited	Australia	82–4498
Cultor Ltd	Finland	82–1643
Curion Venture Corp	Canada	82–3602
Curlew Lake Resources Inc	Canada	82–1978
D Link Corp	China	82–4849
DBS Land Ltd	Singapore	82–4507
DSM N.V.	Netherlands	82–3120
Dah Sing Financial Holdings Ltd	Hong Kong	82–4272
Dai'ei Inc	Japan	82–230
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Daiwa Associate Holding Limited	Bermuda	82–4402
Datacapital SA	Mexico	82–4899
David Jones Limited	Australia	82–4230
De Beers Centenary AG	Switzerland	82–3069
De Beers Consolidated Mines, Ltd	South Africa	82–91
Debenhams Plc	United Kingdom	82–4747
Debonair Holdings Plc	United Kingdom	82–4634
Delpet Resources Ltd	Canada	82–1535
Delphi Group Public Ltd Co	United Kingdom	82–4424
Delta Electronics Public Co	Thailand	82–4770
Den Danske Bank af 1871 AG	Denmark	82–1263
Den Norske Bank AS	Norway	82–3967
Deutsche Bank AG	Germany	82–334
Deutsche Lufthansa AG	Germany	82–4691
Deutsche Pfandbrief	Germany	82–4822
Development Bank of Singapore	Singapore	82–3172
Devine Entertainment Corp.	Canada	82–4118
Dis Deutscher Industrie	Germany	82–4716
Ditek Software Corp	Canada	82–4782
Dixons Group PLC	United Kingdom	82–3331
Dofasco Ltd	Canada	82–3226
Dorel Industries Inc	Canada	82–2800
Dresdner Bank AG	Germany	82–229
Driefontein Consolidated Ltd	South Africa	82–124
Drott AB	Sweden	82–4779
E.D. & F. Man Group PLC	United Kingdom	82–4214
EI Environmental Engineering Concepts	Canada	82–1598
EMI Group PLC	United Kingdom	82–373
EMR Microwave Technology	Canada	82–4143
ERG S.P.A	Italy	82–4745
East Daggafontein Mines Ltd	South Africa	82–42
East India Hotels Ltd	India	82–3921
East Rand Gold & Uranium Co	South Africa	82–289
East Rand Proprietary Mines Ltd	United Kingdom	82–239
Eastman Resources Inc	Canada	82–4421
Eisai Co. Ltd	Japan	82–4015
Elandstrand Gold Mining Co	South Africa	82–266
El Callao Mining Corp	Canada	82–4308
Elcoteq Network Corp	Finland	82–4795
Elektrim S.A	Poland	82–4665

Issuer name	Country	File No.
Elektro-Eletricdade	Brazil	82–4886
Elevadores Atlas S.A	Brazil	82–4409
Elite Industries Ltd	Israel	82–2958
Email Limited	Australia	82–2951
Emgold Mining Corp	Canada	82–3003
Empire Alliance Properties Inc	Canada	82–2215
Energy Africa Limited	South Africa	82–4306
Engil Sociedade Gestora de Participacoes	Portugal	82–4246
Enviro Ex Inc	Canada	82–4857
Essex Resource Corp	Canada	82–4410
Evergreen International Technology	Canada	82–4525
Evergreen Marine Corp. Ltd. Taiwan	China	82–4420
Exbud SA	Poland	82–4815
Eybl International AG	Austria	82–4820
F.H. Faulding & Company Ltd	Australia	82–2882
F.V.I. Fondo de Valores	Venezuela	82–4695
Falcon Point Resources Ltd	Canada	82–1713
Fancamp Resources Ltd	Canada	82–3929
Far-Ben S.A de C.V	Mexico	82–3600
Fastighets AB Balder	Sweden	82–4800
Fedsure Holdings Ltd	South Africa	82–3839
Fenway Resources Ltd	Canada	82–2303
Finance One Public Co. Ltd	Thailand	82–3536
Findore Minerals Inc	Canada	82–4163
First Australian Resources N.L	Australia	82–3494
First Gold Resources Corp	Canada	82–4778
First Pacific Co. Ltd	Hong Kong	82–836
First Quantum Minerals	Canada	82–4461
First Silver Reserve Inc	Canada	82–3449
First Tractor Company Ltd	China	82–4772
Forbes Medi Tech, Inc	Canada	82–3139
Forbio Limited	Australia	82–4821
Fortis Amev	Belgium	82–3118
Foschini Ltd	South Africa	82–4044
Free State Consolidated Gold Mines	South Africa	82–44
Frutarom Industries 1995 Ltd	Israel	82–4357
Fubon Insurance Co. Ltd	China	82–4768
Fuji Bank Limited	Japan	82–4492
Fuji Photo Film Co., Ltd	Japan	82–78
Fujitsu Support and Service	Japan	82–4885
Future Media Technologies Corp	Canada	82–2406
G. Accion S.A. de C.V	Mexico	82–4590
GHP Exploration Corp	Canada	82–4600
GMD Resource Corp	Canada	82–4071
Gallery Resources Ltd	Canada	82–2877
Garban PLC	United Kingdom	82–4904
Genbel South Africa	South Africa	82–235
Gencor Ltd	South Africa	82–311
Geo 2 Limited	Australia	82–4499
Gerdav S.A	Brazil	82–4663
Gerle Gold Ltd	Canada	82–1209
Giordano Holdings Ltd	Hong Kong	82–3780
Gitenne Exploration Inc	Canada	82–4170
Glencar Explorations PLC	Ireland	82–1421
Globex Mining Enterprises Inc	Canada	82–4025
Glorius Sun Enterprises Ltd	Bermuda	82–4581
Gold Fields Ltd	South Africa	82–4742
Gold Fields of South Africa Ltd	South Africa	82–204
Gold Peak Industries (Holdings) Ltd	Canada	82–3604
Gold Ridge Resources Inc	Canada	82–1903
Goldcliff Resources Corp	Canada	82–2748
Golden Kootenay Resources Inc	Canada	82–2546
Golden Peaks Resources	Canada	82–3343
Golden Thunder Resources Ltd	Canada	82–1052
Goldhill Industries Inc	Canada	82–4162
Goldnev Resources	Canada	82–1080
Goodman Fielder Ltd	Australia	82–2009
Govett Strategic Investment Trust PLC	United Kingdom	82–287
Grama Y Montero SAA	Peru	82–4923
Gran Cadena de Almacenes Colombianos	Colombia	82–3974
Grand Hotel Holdings Ltd	Hong Kong	82–3408
Grand Vision S.A	France	82–4710
Granges A.B	Sweden	82–4589
Grasim Industries Ltd	India	82–3332

Issuer name	Country	File No.
Great Eagle Holdings Ltd	Bermuda	82–3940
Green River Petroleum	Canada	82–4858
Greencore Group	Ireland	82–4908
Gresham Resources Inc	Canada	82–3625
Gretag Imaging Holding AG	Switzerland	82–4841
Grupo Financiero Banamex Accival	Mexico	82–3325
Grupo Financiero Bancomer S.A. de C.V.	Mexico	82–3273
Grupo Financiero Invermexico S.A. de C.V.	Mexico	82–3447
Grupo Gigante, S.A. de C.V.	Mexico	82–3142
Grupo Melo S.A.	Panama	82–4893
Grupo Mexico S.A. de C.V.	Mexico	82–4582
Grupo Posadas S.A. de C.V.	Mexico	82–3274
Guangzhou Investment Co. Ltd	Hong Kong	82–4274
Guangzhou Shipyard Int'l	China	82–4036
Guongdong Investment Ltd	Hong Kong	82–3772
HB International Holdings Ltd	Bermuda	82–3949
HSBC Holdings PLC	United Kingdom	82–683
Hagemeyer N.V.	Netherlands	82–4865
Hang Lung Development Co. Ltd	Hong Kong	82–1439
Hang Seng Bank Ltd	Hong Kong	82–1747
Hannover Ruckversicherunge	Germany	82–4627
Hanny Holdings Ltd	Bermuda	82–3638
Harbour Petroleum Company Ltd	Canada	82–3427
Harmac Pacific Inc	Canada	82–4122
Hartstone Group PLC	United Kingdom	82–3022
Havas S.A	France	82–2879
Henderson Investment Ltd	Hong Kong	82–3964
Henderson Land Development Co. Ltd	Hong Kong	82–1561
Henkel KGAA	Germany	82–4437
Hera Resources Inc	Canada	82–3656
Herald Resources Ltd	Australia	82–4295
Highgrade Ventures Ltd	Canada	82–2257
Highveld Steel & Vanadium Corp Ltd	South Africa	82–596
Hilasal Mexicana S.A. de C.V	Mexico	82–4743
Hillsdown Holdings PLC	United Kingdom	82–1407
Hilton Petroleum Ltd	Canada	82–4709
Hindalco Industries Ltd	India	82–3428
Hino Motors Ltd	Japan	82–1388
Hoganas AB	Sweden	82–3754
Hokuriku Bank Ltd	Japan	82–1045
Hong Kong & China Gas Co. Ltd	Hong Kong	82–1543
Hopewell Holdings Ltd	Hong Kong	82–1547
Hornbach-Baumarkt AG	Germany	82–3729
Howard Smith Ltd	Australia	82–4538
Hoyts Cinemas Ltd	Australia	82–4809
Hualing Holdings Limited	Hong Kong	82–4195
Hunter Douglas NV	Netherlands	82–3741
Hyatt Financial Corp	Canada	82–4656
Hymex Diamond Corp	Canada	82–2090
Hypothekenbank in Essen AG	Germany	82–4883
Hysan Development Co	Hong Kong	82–1617
Hyundai Motor Company	Korea	82–3423
I.T.C. Limited	India	82–3470
ICI Australia Ltd	Australia	82–4625
Image Processing Systems Inc	Canada	82–4244
Imasco Ltd	United Kingdom	82–118
Impala Platinum Holdings Ltd	South Africa	82–359
Imperial Metals Corp	Canada	82–1032
Inapa Investimentos Particpacoes e Gesta	Portugal	82–4864
Inca Pacific Resources Inc	Canada	82–1665
Indian Oil Corp Ltd	India	82–4894
Industrial Bank of Japan	Japan	82–4752
Insular Explorations Ltd	Canada	82–1827
Insulpro Industries Inc	Canada	82–3281
International Chargold Resources Ltd	Canada	82–4385
International Damascus Resources	Canada	82–521
International PBX Ventures Ltd	Canada	82–2635
International Parkside Prod. Inc	Canada	82–2794
International Pipe Ltd	Hong Kong	82–3850
International Road Dynamics Inc	Canada	82–3899
International Rochester Energy Corp	Canada	82–2206
International Roraima Gold Corp	Canada	82–3988
International Tower Hill Mines Ltd	Canada	82–3248
Interpump Group S.p.A	Italy	82–4511

Issuer name	Country	File No.
Interstar Mining Group Inc	Canada	82–3759
Iron Carbide Australia Ltd	Australia	82–1386
Iscor Limited	South Africa	82–3826
Iwais International Holdings	Bermuda	82–4765
J. Sainsbury PLC	United Kingdom	82–913
JD Group Limited	South Africa	82–4401
JD Wetherspoon plc	England	82–4416
JG Summit Holdings Inc	Philippines	82–3572
JNR Resources Inc	Canada	82–4720
JSC Azovstal	Ukraine	82–4846
JSC Kazanskaya Gorodskaya Telefonnaya	Russia	82–4754
JSC Khantymansiyskokrtelecom	Russia	82–4823
JSC Nizhegorodsvyasinform	Russia	82–4642
JSC Nizhnekamskneftekhim	Russia	82–4791
JSC Nizhnekamskshina	Russia	82–4792
JSC Primorsk Shipping Corp	Russia	82–4717
JSC Samaraenergo	Russia	82–4708
JSC Vralsvyasinform	Russia	82–4545
Jamaica Broilers Group Ltd	Jamaica	82–3720
Japan Airlines Company Ltd	Japan	82–122
Japan Telecom Co	Japan	82–3943
Jardine Matheson Holdings Ltd	Hong Kong	82–2963
Jardine Strategic Holdings Ltd	Bermuda	82–3085
Jasmine International PLC	Thailand	82–4876
Jinhui Holdings Co	Hong Kong	82–3765
Jinhui Shipping and Transportation Ltd	Bermuda	82–4054
John Keells Holdings Ltd	Sri Lanka	82–3854
Johnson Matthey PLC	United Kingdom	82–2272
Joint Stock Co. Buryatzoloto	Russia	82–4619
Joint Stock Co. Aeroflot	Russia	82–4592
Jordex Resources Inc	Canada	82–3200
Joutel Resources Ltd	Canada	82–502
Julius Meinl International AG	Austria	82–4554
Justsystem Corp	Japan	82–4732
K. Wah International Holdings Ltd	Bermuda	82–3853
KGHM Polska Miedz S.A.	Poland	82–4639
Kamps AG	Germany	82–4793
Kap Resources Ltd	Canada	82–2319
Kawasaki Heavy Industries Ltd	Japan	82–4389
Kelso Technologies Inc	Canada	82–2441
Kettle River Resources Ltd	Canada	82–666
Key Anacon Mines Ltd	Canada	82–23
Kidston Gold Mines Ltd	Australia	82–2351
Kimberly Clark de Mexico	Mexico	82–3308
Kinetic Power Ltd	Australia	82–4746
Kingboard Chemical Holdings Ltd	Caymen Islands	82–4082
Kingfisher PLC	United Kingdom	82–968
Kirin Brewery Co	Japan	82–188
Klondike Gold Corp	Canada	82–3017
Kobe Steel Ltd	Japan	82–3371
Komercni Banka A.S	Czech Republic	82–4154
Koninklijke Hoogovens NV	Netherlands	82–4481
Koninklijke Wessanen N.V	Netherlands	82–1306
Kookaburra Resources Ltd	Canada	82–2740
Kookmin Bank	Korea	82–4447
Krones AG	Germany	82–3871
Kumagai Gumi (H.K.) Ltd	Hong Kong	82–4029
LG Electronics Inc	Korea	82–3857
LIC Care AB	Sweden	82–4773
Ladbroke Group PLC	United Kingdom	82–1571
Lai Sun Development Company	Hong Kong	82–3878
Landesbank Rheinland-Pfalz	Germany	82–4930
Latas de Aluminos S.A	Brazil	82–4598
Laura Ashley Holdings PLC	United Kingdom	82–1356
Leader Mining International Inc	Canada	82–2467
Legend Holding Ltd	Hong Kong	82–3950
Lend Lease Corp Ltd	Australia	82–3498
Lenzing AG	Austria	82–3207
Liberty Life Association of South Africa	South Africa	82–3924
Lion Land Berhad	Malaysia	82–3342
Lloyds Group PLC	United Kingdom	82–4235
Loblau Companies Ltd	Canada	82–4918
Lojas Arapua S.A	Brazil	82–4512
Lonrho Africa PLC	United Kingdom	82–4753

Issuer name	Country	File No.
Lonrho PLC	United Kingdom	82–191
Louis Dreyfus Citrus S.A	France	82–4505
Lucero Resource Corp	Canada	82–1756
Lukoil Co	Russia	82–4006
MCK Mining Corp	Canada	82–3938
MIM Holdings Ltd	Australia	82–173
Magician Industries Holdings Inc	Bermuda	82–4358
Mahindra & Mahindra	India	82–4479
Makro Atacadista SA	Brazil	82–4095
Malbak Ltd	South Africa	82–3751
Mandamus Fastigheter AB	Sweden	82–4771
Mandarin Oriental International Ltd	Hong Kong	82–2955
Mannesmann Aktiengesellschaft	Germany	82–4232
Maple Minerals Inc	Canada	82–3650
Marks and Spencer PLC	United Kingdom	82–1961
Marubeni Corp	Japan	82–616
Maximum Resources Inc	Canada	82–3923
Mayr Melnhof Karton	Austria	82–4052
Mega Chips Corp	Japan	82–4861
Menatep Bank	Russia	82–4155
Menora Resources Inc	Canada	82–4289
Menzies Gold N.L	Australia	82–4536
Merita Ltd	Finland	82–4365
Metsa Serla OY	Finland	82–3696
Midya Holding AS	Turkey	82–4843
Mill City Gold Mining Corp	Canada	82–3076
Minebea Co. Ltd	Japan	82–4551
Minera Rayrock Inc	Canada	82–3471
Minorco SA	Luxembourg	82–206
Minto Explorations Ltd	Canada	82–4119
Mishibishu Gold Corp	Canada	82–2682
Mispec Resources Inc	Canada	82–4661
Misr International Bank SAF	Egypt	82–4629
Mitsubishi Corp	Japan	82–3784
Mitsui Marine and Fire Insurance Co. Ltd	Japan	82–4755
Molson Companies Ltd	Canada	82–2954
Mosaic Technologies Corp	Canada	82–4787
Moulin International Holding Ltd	Bermuda	82–3970
Mount Burgess Gold Mining Co	Australia	82–1235
Mount Real Corp	Canada	82–4689
Mt. Leyshon Gold Mines Ltd	Canada	82–1753
Multivision Communications Corp	Canada	82–2260
Mustang Gold Corp	Canada	82–4724
NABI North American Bus Industries RT	Hungary	82–4925
NTS Computer Systems Ltd	Canada	82–4354
NTT Mobile Communications	Japan	82–4884
NTT Resources Ltd	Canada	82–3786
NV Verenigd Bezit VNU	Netherlands	82–2876
Nadro S.A. de C.V	Mexico	82–4611
Nampak Limited	South Africa	82–3714
National Bank of Canada	Canada	82–3764
National Grid Holding PLC	United Kingdom	82–4207
National Mutual Holdings Ltd	Australia	82–4438
Nestle S.A	Switzerland	82–1252
New World Infrastructure	Hong Kong	82–4218
NewCoast Silver Mines Ltd	Canada	82–4123
Newport Petroleum Corp	Canada	82–4557
Newsquest Plc	United Kingdom	82–4735
Nissan Motor Co	Japan	82–207
Niugini Mining	Papua New Guinea	82–1230
Nomura Securities Co. Ltd	Japan	82–3872
Nora Exploration Inc	Canada	82–3329
Norilsk Nickel	Russia	82–4270
Normandy Mining Ltd	Australia	82–1975
North Ltd	Australia	82–2531
Northern Abitibi Mining Corp	Canada	82–4749
North Light Communications	Iceland	82–4799
North Orion Explorations Ltd	Canada	82–3153
Northpoint Resources Ltd	Canada	82–4645
Northstar Energy Corp	Canada	82–4577
Nu-Apex Energy Corp	British Columbia	82–4425
Nuinsco Resources Ltd	Canada	82–1846
Nutreco Holding N.V	Netherlands	82–4927
OJS Bashinformsvyaz	Russia	82–4836

Issuer name	Country	File No.
OJS Concern Stirol	Ukraine	82–4905
OJS Electrosvyaz	Russia	82–4740
OJS Kazakhtelecom	Kazakhstan	82–4921
OJS Nyzhniodniprovsky Pipe Rolling Plant	Ukraine	82–4814
OJS Svyazinform	Russia	82–4768
OJS Svyazinform of Samara	Russia	82–4889
OJS Ukrnafta	Ukraine	82–4859
OJSC Dniproenergo	Ukraine	82–4844
OJSC Rostevenergo	Russia	82–4839
OMV AG	Austria	82–3209
Ocean Diamond Mining Holdings	South Africa	82–4046
Ocean Resources N.L	Australia	82–4872
Olympus Optical Co	Japan	82–3326
Onfem Holdings Ltd	Bermuda	82–3735
Osterreichische Elcktrizitatswirtschafts	Austria	82–4381
Oxiteno S.A	Brazil	82–4148
PAE (Thailand) Public Co. Ltd	Thailand	82–4775
Pacific Andes Int'l Holdings Ltd	Bermuda	82–4031
Pacific Galleon Mining Ltd	Canada	82–3258
Pacific Northwest Capital	Canada	82–4828
Pacific Vista Industries Inc	Canada	82–2829
Pannonplast RT	Hungary	82–4548
Panterra Minerals Inc	Canada	82–3597
Paramount Ventures & Finance Inc	Canada	82–2207
Paribas	France	82–4559
Parkcrest Exploration Ltd	Canada	82–4090
Parkland Industries Ltd	Canada	82–4644
Patimas Computers Berhad	Malaysia	82–4891
Paul Y ITC Construction Holdings Ltd	Hong Kong	82–4217
Pearl Oriental Holdings Ltd	Bermuda	82–4350
Pearson PLC	United Kingdom	82–4019
Pelorus Navigation Systems Inc	Canada	82–4393
Peninnsula & Oriental Steam Navigation	United Kingdom	82–2083
Pentland Industries PLC	United Kingdom	82–1219
Pepkor Ltd	South Africa	82–3925
Perdigao S.A	Brazil	82–4628
Perdigao S.A. Comercio e Industria	Brazil	82–4431
Perez Companc S.A	Argentina	82–3295
Perfect Fry Corp	Canada	82–1609
Petrolem Brasileiro S.A.-Petrobras	Brazil	82–4448
Pharmex Industries Inc	Canada	82–4834
Phoenix Canada Oil Co. Ltd	Canada	82–3936
Pioneer International Ltd	Australia	82–2701
Platexco Inc	Canada	82–4679
Pokphand C.P. Co. Ltd	Bermuda	82–3260
Polyphalt Inc	Canada	82–4585
Position Inc	Canada	82–4536
Power Corp of Canada	Canada	82–137
Power Financial Corp	Canada	82–1716
Premier Oil PLC	United Kingdom	82–2617
President Enterprises Co.	Taiwan	82–3424
Pricer AB	Sweden	82–4723
Prime Resources Group, Inc	Canada	82–1503
Private Equity Holding AG	Germany	82–4929
Prokom Software S.A	Poland	82–4700
Promatek Industries Ltd	Canada	82–1351
Promise Co. Ltd	Japan	82–4837
Prosieben Media AG	Germany	82–4621
Prudential Corporation PLC	United Kingdom	82–1477
P.T. Jakarta Int'l Hotels & Dev	Indonesia	82–4397
PTT Exploration Production PLC	Thailand	82–3827
Puma AG Rudolf Dassler Sport	Germany	82–4369
Q P Corporation	Japan	82–4750
QNI Limited	Australia	82–3834
RAO Gazprom	Russia	82–4670
RAO Unified Energy Systems	Russia	82–4077
RBS Participacoes S.A	Brazil	82–4338
RBS RV de Florianopolis S.A	Brazil	82–4340
RWE AG	Germany	82–4018
Radio Gaucha S.A	Brazil	82–4341
Raffles Medical Group	Singapore	82–4926
Railtrack Group PLC	United Kingdom	82–4282
Rampton Resource Corp	Canada	82–4579
Randfontein Estates Gold Mining	South Africa	82–267

Issuer name	Country	File No.
Randsburg International Gold Corp	Canada	82–4854
Raptor Capital Corporation	Canada	82–4599
Ravenhead Recovery Corp	Canada	82–521
Rayrock Yellowknife Resources Inc	Canada	82–378
Raytec Capital Corp	Canada	82–3553
Redwood Energy Ltd	Canada	82–4349
Rembrandt Group Ltd	South Africa	82–3760
Renong Berhad	Malaysia	82–4166
Rentokil Group PLC	United Kingdom	82–3806
Resorts World Berhad	Malaysia	82–3229
Rheinische Hypothekenbank	Germany	82–4915
Rhodia-Ster S.A	Argentina	82–3942
Rich Minerals Corp	Canada	82–2832
Rivera Explorations Inc	Canada	82–2945
Rock Resources Inc	Canada	82–4504
Rolls-Royce PLC	United Kingdom	82–2821
Roly International Holdings Ltd	Bermuda	82–4364
Rossi Residencial S.A	Brazil	82–4638
Royal Nedlloyd Group NV	Netherlands	82–1056
Royal and Sun Alliance Insurance	England	82–4860
Royaledge Resources Inc	Canada	82–4388
Roycefield Resources Ltd	Canada	82–4149
S.A. Fabrica de Productos Alimenticios	Brazil	82–4870
SAIA-Burgess Electronics	Switzerland	82–4810
SGS Societe Generale de Surveillance	Switzerland	82–4856
Sage Group Limited	South Africa	82–4241
Saipem SPA	Italy	82–4776
Sakura Bank Ltd	Japan	82–3055
Salhus Brandon Gold Corp	Canada	82–842
Samsung Heavy Industries Co. Ltd	Korea	82–4091
San Miguel Corp	Philippines	82–306
Sancor Cooperatives Unidas Ltd	Argentina	82–4476
Sandvik AB	Sweden	82–1463
San Luis Corporacion SA de CV	Mexico	82–2867
Santos Ltd	Australia	82–34
Sanwa Bank Ltd	Japan	82–4711
Sanyo Electric Co.	Japan	82–264
Sasol Ltd	South Africa	82–631
Scottish Power PLC	United Kingdom	82–3100
Sears PLC	United Kingdom	82–4817
Security Capital U.S. Realty	Luxembourg	82–4757
Sedex Mining Corp	Canada	82–3587
Seine River Resources, Inc	Canada	82–2942
Selecta Group	Switzerland	82–4594
Selfridges PLC	United Kingdom	82–4818
Senco Sensors Inc	Canada	82–3711
Senetek PLC	United Kingdom	82–875
Sennen Resources	Canada	82–2238
Seversky Tube Works	Russia	82–4101
Sharp Corp	Japan	82–1116
Sheffield Resources Inc	United Kingdom	82–4777
Shinawata Satellite Public Co. Ltd	Thailand	82–4527
Shiseido Company Ltd	Japan	82–3311
Shun Tak Holdings	Hong Kong	82–3357
Siam Commercial Bank Public Co Ltd	Thailand	82–4345
Sidel	France	82–4396
Siderar S.A.I.C	Argentina	82–4328
Siderurgica Venezolana Sivensa	Venezuela	82–3080
Siebe Plc	United Kingdom	82–2142
Sikaman Gold Resources Ltd	Canada	82–1651
Simsmetal Ltd	Australia	82–3838
Singapore Telecommunications Ltd	Singapore	82–3622
Singulus Technologies AG	Germany	82–4764
Slovnaft, A.S	Russia	82–3721
Smartire Systems Inc	Canada	82–2787
Smedvig A.S	Norway	82–3551
Smit Internationale N.V	Netherlands	82–4892
Societe Generale	France	82–3501
Societe Generale d'Entreprises SGE	France	82–4781
Solaia Ventures Inc	Canada	82–4850
Solvay SA	Belgium	82–2691
Sonera Group	Finland	82–4912
Sons of Gwalia N.L	Australia	82–1039
South African Breweries Ltd	South Africa	82–303

Issuer name	Country	File No.
South African Breweries PLC	United Kingdom	82–4938
South Aftican Land & Exploration Co	South Africa	82–59
South China Morning Post	Hong Kong	82–3327
Southcorp Holdings Ltd	Australia	82–2692
Southern Cross Resources	Canada	82–4831
Southern Pacific Petroleum N.L	Australia	82–353
Southvaal Holdings Ltd	South Africa	82–197
St. Dupont S.A	France	82–4552
St. George Bank Ltd	Australia	82–3809
St. Jude Resources Ltd	Canada	82–4014
Stampede Oils Inc	Canada	82–3605
Star Telecom International Holding Ltd	Bermuda	82–3654
Strlight International Holdings Ltd	Bermuda	82–3594
Starrex Mining Corp	Canada	82–3755
State Bank of India	India	82–4524
Statoil Den Norske Stats Oljeselskap AS	Norway	82–3444
Stilfontein Gold Mining Co	South Africa	82–301
Stina Resources Ltd	Canada	82–2062
Stratabound Minerals Corp	Canada	82–3284
Sumitomo Bank Ltd	Japan	82–4395
Sumitomo Metal Industries Ltd	Japan	82–3507
Sumitomo Trust & Banking	Japan	82–4617
Summit Resources Ltd	Canada	82–2922
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Sur American Gold Corp	Canada	82–4783
Sevdala Industri A.B	Sweden	82–3593
Swire Pacific Ltd	Hong Kong	82–2184
Synex International Inc	Canada	82–862
TAB Limited	Australia	82–4801
TMP Industrial Mineral Park Mining	Canada	82–4887
Tabcorp Holdings Ltd	Australia	82–3841
Tai Cheung Holdings Ltd	Bermuda	82–3528
Takefuji Corporation	Japan	82–4622
Tapajos Gold Inc	Canada	82–4496
Tata Hydro-Electric Power Supply Co	India	82–3704
Tata Power Company	India	82–3733
Taylor Nelson AGB PLC	England	82–4668
Techtronic Industries Co	Hong Kong	82–3648
Telebackup Systems Inc	Canada	82–4701
Televisao Gaucha S.A	Brazil	82–4339
Television Broadcasts Ltd	Hong Kong	82–1072
Tenaga Nasional Berhod	Malaysia	82–3677
Terra Mannix Inc	Canada	82–4829
Tessenderlo Chemic	Belgium	82–4785
Thai Farmers Bank Public Company Ltd	Thailand	82–4922
Thai Telephone and Telecommunications	Thailand	82–3744
Thyssen Avtiengesellschaft	Germany	82–4681
Tofas Turk Otomobil Fabrikasi A.S	Turkey	82–3699
Tokai Bank Ltd	Japan	82–4811
Tomorrow International Holdings Ltd	Bermuda	82–4256
Tomra Systems A/S	Norway	82–3334
Topcall International AG	Austria	82–4786
Topper Gold Corporation	Canada	82–2694
Toscana Resources Ltd	Canada	82–4434
Total Access Communications	Thailand	82–4314
Toyobo Co	Japan	82–1172
Toyota Motor Co. Ltd	Japan	82–208
Transportadora de Gas del Norte S.A	Argentina	82–3845
Trimin Resources Inc	Canada	82–1833
Trincana Resources Ltd	Canada	82–4796
Trio Gold Corp	Canada	82–2127
Troymin Resources Ltd	Canada	82–3503
Truly International Holdings	Cayman Islands	82–3700
Trust Company of Australia Ltd	Australia	82–1443
Tsingtao Brewery Company Ltd	China	82–4021
Tung Fong Hung Holdings Limited	Cayman Islands	82–4152
Tusk Energy Inc	Canada	82–3297
Tyumen Air Company	Russia	82–4789
UBS AG	Switzerland	82–4853
USA Video Corporation	Canada	82–1601
Ungava Minerals Corp	Canada	82–4436
Unione Immobiliare SPA	Italy	82–4903
United Bank for Africa	Nigeria	82–4804
United Biscuits PLC	United Kingdom	82–3079

Issuer name	Country	File No.
United Film & Video Holdings Ltd	Canada	82–3859
Univa Inc	Canada	82–2570
Universal S.A	Poland	82–4502
Unuk Gold Corp	Canada	82–4653
Upland Global Corp	Canada	82–4346
Usinas Siderurgicas de Minas Gerais S.A.	Brazil	82–3902
VF Capital Corp	Canada	82–4868
Vaal Reefs Exploration & Mining Co	South Africa	82–56
Valerie Gold Resources Ltd	Canada	82–3339
Vannessa Ventures Ltd	Canada	82–4473
Vedior N.V	Netherlands	82–4654
Velcro Industries, N.V	Neth. Ant.	82–145
Ventures Resources Corp	Canada	82–4575
Viag Ag	Germany	82–4343
Viceroy Resource Corp	Canada	82–1193
Victoria Resource Corp	Canada	82–2888
Viking Gold Corporation	Canada	82–4560
Village Roadshow Limited	Australia	82–4513
Visualabs Inc	Canada	82–4767
Voice-It Solutions Inc	Canada	82–1743
Volkswagen AG	Germany	82–2188
Vortex Energy & Minerals Ltd	Canada	82–3462
Votorantim Celulose E Papel S.A	Brazil	82–3383
Voyageur Film Capital	Canada	82–4816
Vtech Holdings Ltd	Bermuda	82–3565
WMP Bank AG	Austria	82–4845
Wace Group PLC	United Kingdom	82–2369
Wayburn Resources Inc	Canada	82–3740
West Rand Consolidated Mines Ltd	South Africa	82–314
Westaim Corporation	Canada	82–4784
Western Deep Levels Ltd	South Africa	82–58
Western Pacific Gold Inc	Canada	82–4521
Westfalsche Hypothekenbank	Germany	82–4940
Westley Mines International Inc	Canada	82–1088
Westone Ventures Inc	Canada	82–4890
Westpine Metals Ltd	Canada	82–3116
Wesumat Holding AG	Germany	82–4888
Wienerberger Baustoffindustrie AG	Austria	82–4316
Wiggins Group	United Kingdom	82–4812
Williams Creek Explorations Ltd	Canada	82–3146
Willow Resources Ltd	Canada	82–3843
Windarra Minerals Ltd	Canada	82–561
Wing Lee International	Bermuda	82–4916
Wing Tai Holdings Limited	Singapore	82–4632
Wolford AG	Austria	82–4403
Woodside Petroleum Ltd	Australia	82–2280
Woolworths Holdings Ltd	South Africa	82–4900
Wrightson Ltd	New Zealand	82–3646
X-Cal Resources Ltd	Canada	82–1655
Yaletown Entertainment Corp	Canada	82–4336
Yasuda Trust & Banking Co	Japan	82–4583
Yeebo International Holdings Ltd	Bermuda	82–3869
Yiu Wing International Holdings Ltd	Bermuda	82–3655
Yukong Limited	Korea	82–3901
Yukos	Russia	82–4209
Zero Hora-Editora Jornalistica S.A	Brazil	82–4337
Zodiac Technologies Inc	Canada	82–1281
Ztest Electronics Inc	Canada	82–4637
Zurich Allied AG	Switzerland	82–4901
Zurich Insurance Company	Switzerland	82–4319

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41389; File No. SR–CBOE–99–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, To Terminate its Lease Deposit Fee Program

May 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 1999, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to terminate its $500 lease deposit fee requirement. The requirement is currently set forth in CBOE's Membership Fee Circular and would be deleted from that Circular under this proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to terminate CBOE's lease deposit fee program. Under this program, every CBOE member that is a lessee of a CBOE membership, a member organization nominee on a leased CBOE membership, or a Chicago Board of Trade (''CBOT'') Exerciser member of CBOE who is leasing a CBOT membership (a CBOT delegate) is required to submit a $500 lease deposit fee to the Exchange. The Exchange uses this lease deposit fee to satisfy any debts owed by the member to the Exchange upon the member's termination from membership. Upon the completion of the membership termination process, the Exchange returns to the lessee, nominee, or delegate, without interest, any portion of the lease deposit fee remaining after payment of any Exchange debts owed by the lessee, nominee, or delegate.

The original purpose of the lease deposit fee program was to provide the Exchange with a source of collateral in the event a lessee, nominee, or delegate owed money to the Exchange. The Exchange is now proposing to eliminate the program because the costs of administering the program have been exceeding the benefits derived from the program. Additionally, the Exchange has other means of collecting monies owed to the Exchange by members, including lessees, nominees, and delegates. These include CBOE's Integrated Billing System under CBOE Rule 3.23 pursuant to which a member's Exchange fees are drafted by the Exchange against a CBOE Clearing Member designated by the member, the requirement under CBOE Rule 3.8(a)(2) that a member organization guarantee its nominees' obligations to the Exchange, and the authority of the Chairman of the Exchange's Executive Committee to suspend a current member (or bar a former member) until payment of past due amounts owed to the Exchange is made.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, furthers the objectives of Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate such rule change if it appears to the Commission that such action is necessary or appropriate in the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–18 and should be submitted by June 7, 1999.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12355 Filed 5–14–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41386; File No. SR–NYSE–99–09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 79A.15

May 10, 1999.

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 March 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 79A.15, to provide that deactivation of Quote Assist will require that the specialist review that decision with a Floor Official as soon as practicable, and no later than three minutes from the time of deactivation. The text of the proposed rule change is available at the Exchange 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 III below and is set forth in Sections A, B, and C below.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 1997, Commission Rule 11Ac1–4 under the Act (''Display Rule'')[3] became effective. The Display Rule requires specialists to display immediately, *i.e.*, as soon as practicable, which under normal market conditions means no later than 30 seconds from the time of receipt, the price and full size of customer limit orders that would improve the bid or offer in a security. On January 7, 1997, the Exchange implemented a Display Book[4] enhancement known as ''Quote Assist'' to compute and disseminate a quote within the 30-second timeframe. Quote Assist is designed to help specialists comply with the Display Rule.

Quote Assist monitors the limit order book for new orders and compares those orders with the published quotation. When a new order would improve the quote or increase the size at a quoted price, Quote Assist publishes a new quote at the improved price or increased size 30 seconds after the order arrives if the specialist has not already done so. Quote Assist is always active at the beginning of the trading day. A specialist has the ability to deactivate Quote Assist as to a particular stock or stocks.

The Exchange proposes to amend Exchange Rule 79A.15 to provide that deactivation of Quote Assist will require that the specialist obtain approval of that decision from a Floor Official. Floor Official approval would only be granted in instances when there is an influx of orders resulting in gap pricing, an ITS outgoing commitment, or other unusual circumstances. Approval of a Floor Official to deactivate Quote Assist should be obtained as soon as practicable, and must be obtained no later than three minutes from the time of deactivation. If approval is not obtained within three minutes from the time of deactivation, the matter will be reviewed as a market surveillance issue by the Exchange.

[3] 17 CFR 240.11Ac1–4.

[4] The specialist's Display Book is an electronic workstation at the trading post that keeps track of limit orders and incoming market orders. Various window-like screen applications allow the specialist to view one or more issues at a time at various levels of detail. Incoming SuperDOT limit orders automatically enter the Display Book. When a floor broker gives the specialist a limit order, the specialist's clerk can enter the order into the Display Book using the keyboard. The Display Book sorts the limit orders and displays them in price/time priority.

As an interim measure, Floor Official approvals will be documented on the Exchange's electronic Floor Official approval forms. After mid-year, the Exchange expects to modify the Display Book so that Floor Official approval will be documented within that system.

The requirement to keep Quote Assist active is not meant to serve as a substitute for the actual posting of quotes by specialists. Specialists will be reminded that they are not to rely solely on Quote Assist to generate quotes, because this would not comply with the Commission's requirements for limit order display. Rather, specialists should always attempt to reflect a limit order by manually quoting the stock as soon as practicable, even though the Quote Assist feature is active.

The Exchange believes that Quote Assist provides valuable help to enable specialists to comply with their responsibilities under the Commission's Display rule. The requirement that Quote Assist generally remain active throughout the day will ensure that specialists avail themselves of the tools provided for managing order flow and updating quotes.

2. Statutory Basis

Section 6(b)(5) of the Act[5] requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will help perfect the mechanism of a free and open market by facilitating compliance with the Commission's Display Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions

[5] 15 U.S.C. 78f(b)(5).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file No. SR–NYSE–99–09 and should submitted by June 7, 1999.

IV. Commissions Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change [6] and believes, for the reasons set forth below, the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) and (iv) of the Act.[7] Section 6(b)(5) requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system. With respect to Section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposed rule change will help to ensure the availability if information with respect quotations by assisting specialists in providing information regarding orders to the market.[8]

In addition, the Commission believes the proposal is consistent with Section 6(b)(5) of the act because it requires specialists to obtain approval of a decision to deactivate Quote Assist from a Floor Official as soon as practicable, and no later than three minutes from the time of deactivation. This requirement should improve member handling of customer limit orders.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**, because the proposal facilitates compliance with the Display Rule. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–99–09) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5), 78k-1(a)(1)(C)(iii) and (iv).

[8] The Commission, in approving the proposed rule change, notes that the requirement to keep Quote Assist active does not relieve specialists of their responsibility to reflect limit orders by manually quoting the stock as soon as practicable.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41375; File No. SR–NYSE–99–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listed Company Fees

May 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual (''Manual''). Paragraph 902.02 contains the schedule of current listing fees for companies listing securities on the Exchange.

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 NYSE 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 III below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the NYSE's listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business transactions. First, the Exchange seeks to adopt a $500,000 fee cap for companies that split the stock more than once over a rolling three calendar year period. Currently, additional securities issued in conjunction with a split are billed initial listing fees and capped at $250,000 per split. The new cap is intended to provide pricing consideration for companies that frequently split their securities.

Second, the Exchange seeks to adopt a $500,000 initial fee cap for shares issued in conjunction with a merger or acquisition. Currently, shares issued in conjunction with a merger or acquisition are billed initial listing fees. This fee cap is intended to provide pricing consideration for listed companies involved in mergers and acquisitions.

2. Statutory Basis

The NYSE represents that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(4) [4] in particular, which requires an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

Exchange to have rules providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–15 and should be submitted by June 7, 1999.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder.[6] Section 6(b)(4) of the Act [7] requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. By capping issuer listing fees under certain circumstances, the proposal should help to ensure that issuers that split their securities frequently or that participate in mergers or acquisitions are not charged disproportionately high listing fees.

Pursuant to Section 19(b)(2) of the Act,[8] the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing of the proposal in the **Federal Register** because the proposed rule change will allow companies to benefit from the fee caps as soon as possible.

It is therefore ordered, pursuant to Section 19(b)(2) [9] of the Act, that the proposed rule change (File No. SR–NYSE–99–15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12357 Filed 5–14–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f.

[6] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f). This proposal should facilitate capital formation by reducing listing fees.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Free Trade Area of the Americas: Request for Public Comment on Identification of a Private Sector Expert on Consumer Issues Related to Electronic Commerce

AGENCY: Office of the United States Trade Representative.

ACTION: Free Trade Area of the Americas (FTAA) Joint Government-Private Sector Experts Committee on Electronic Commerce (Joint Committee) request for public comment on the identification of a private sector expert on consumer issues related to electronic commerce who may wish to participate in the work of the Joint Committee.

SUMMARY: The Joint Committee on Electronic Commerce was established by the 34 countries in the Western Hemisphere participating in the Free Trade Area of the Americas. The Trade Policy Staff Committee (TPSC) seeks to identify a U.S. private sector expert on consumer issues related to electronic commerce who may be interested in participating in the work of the Joint Committee. Interested members of the public are invited to submit written notice of their interest and their qualifications.

DATES: Written expressions of interest in participating in the work of the Joint Committee should be submitted no later than May 28, 1999.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. All questions concerning the Joint Committee may be directed to Regina Vargo, Deputy Assistant Secretary for the Western Hemisphere, U.S. Department of Commerce (202) 482–5324, Regina__Vargo@ita.doc.gov.

SUPPLEMENTARY INFORMATION: At the Second Summit of the Americas in April 1998, in Santiago, Chile, the 34 democratically elected Western Hemisphere countries initiated negotiations to create the FTAA by the year 2005 and to achieve concrete progress toward that objective by the end of the century. They established nine initial negotiating groups, a consultative group, and two committees, one of which is the Joint Committee. The Joint Committee is chaired by Mr. Dale Marshall of the Government of Barbados. Ms. Regina Vargo, Deputy Assistant Secretary for the Western Hemisphere, U.S. Department of Commerce, leads the joint U.S. government—private sector delegation to the Joint Committee.

Joint Committee Terms of Reference: The objective of the Committee is to make recommendations to Ministers on how to increase and broaden the benefits of electronic commerce and how electronic commerce should be dealt with in the context of the FTAA negotiations. The Joint Committee is to provide recommendations to the Vice-Ministerial Trade Negotiations Committee (TNC) four weeks before the November 3–4, 1999 Trade Ministerial meeting. In order to develop its recommendations, the Joint Committee is focusing on:

- Increasing understanding of the potential benefits of electronic commerce to countries in the hemisphere;

• Identifying the environment that will allow electronic commerce to flourish;

• Discussing infrastructure questions; and

• Identifying how electronic commerce can facilitate the operation of trade obligations.

Joint Committee Update: The Joint Committee is not a negotiating group; rather it is examining a broad range of electronic commerce issues relevant to identifying the environment that will extend the advantages of ecommerce throughout the Western Hemisphere, in part by keeping itself apprised of related developments in other international fora.

A meeting of Joint Committee government representatives addressed organizational issues in Miami in October 1998. They scheduled four additional meetings in Miami for 1999. At the meeting on January 6–8, the topics covered included small business, smaller economies, governments as model users, business-to-business applications, raising skills and awareness, network access and reliability and standards for forms of transmissions. The meeting on April 24–26 covered trade, tax and selected legal issues related to electronic commerce and included expert presentations by World Trade Organization (WTO) personnel and World Intellectual Property Organization (WIPO) personnel. The meeting on June 14–16 is scheduled to discuss issues related to jurisdiction and contract law, privacy, security and reliability, authentication, and consumer protection, and to include expert presentations by Internet Corporation for Assigned Names and Numbers (ICANN) personnel and United Nations Commission on International Trade Law (UNCITRAL) personnel. The fourth meeting on August 30-September 1, will focus on other issues and on the report to Ministers.

Joint Committee Private Sector Representation: FTAA governments decided that the Joint Committee would include private sector representatives, which is consistent with President Clinton's principle that the private sector should take the lead in developing the rules for global electronic commerce. FTAA Vice Ministers for trade determined that individual governments would identify private sector participants, with a view toward balanced hemispheric representation in terms of geography and electronic commerce issue expertise. On August 6, 1998, a **Federal Register** notice (63 FR 42090) was published inviting expressions of interest and qualifications to participate in the work of the Joint Committee. Based on responses, U.S. private sector representatives were selected to reflect a balance of interests and electronic commerce issue expertise. At that time, however, no submissions were received from interested consumer groups. The TPSC is now seeking to expand private sector participation on the Joint Committee to include an expert on consumer issues related to electronic commerce.

Public Comments

In order to assist the TPSC in identifying a U.S. private sector expert on consumer issues related to electronic commerce, which are scheduled to be discussed at the June 14–16 meeting, members of the public are invited to submit written notice of their interest and describe their qualifications. Qualifications of interest include: demonstrated expertise in one or more aspects of electronic commerce and consumer protection; an ability and willingness to broadly solicit views from and disseminate information to consumer groups; and familiarity with U.S. and foreign trade and investment policies and obligations. Knowledge of the Western Hemisphere, including established contacts with foreign private sector interests in the region, would be helpful.

Those persons wishing to make written submissions should provide twenty (20) typed copies (in English) no later than noon, Friday, May 28, 1999 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW, Washington, D.C. 20508.

Written submissions in connection with this request will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th St., NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–12377 Filed 5–14–99; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 7, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5618.

Date Filed: May 3, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0246 dated 4 May 1999

PTC2 EUR–ME 0075 dated 4 May 1999

Mail Vote 001–Resolution 010g

TC2 Special Passenger Amending Resolution from Malta

to Europe and from Malta to Middle East

Intended effective date: 01 June 1999.

Docket Number: OST–99–5665.

Date Filed: May 7, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0248 dated 4 May 1999 r1–r6

PTC2 EUR 0249 dated 7 May 1999 r7–r18

PTC2 EUR 0250 dated 7 May 1999 r19

PTC2 EUR 0251 dated 7 May 1999 r20

PTC2 EUR 0252 dated 7 May 1999 r21

TC2 Within Europe Expedited Resolutions r1–r21

Minutes—PTC2 EUR 0247 dated 4 May 1999

Tables—None

Intended effective dates: 14 June through 1 November 1999.

Docket Number: OST–99–5668.

Date Filed: May 7, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC3 0333 dated 11 May 1999

Mail Vote 004—Resolution 010j

TC3 Special Passenger Amending Resolution between Korea

and Japan (Seoul/Fukushima)

Intended effective date: 1 June 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–12323 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 7, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5619.

Date Filed: May 3, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 31, 1999.

Description: Application of Atlantic Air Transport Limited pursuant to 49 U.S.C. Section 41301 and Subpart Q, applies for a foreign air carrier permit to engage in the charter foreign air transportation of freight and cargo between any point or points in the United Kingdom and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers; between any point or points in the United States and any point or points not in the United Kingdom or the United States; and any other charter flights authorized pursuant to Part 212 of the Department's regulations.

Docket Number: OST–99–5633.

Date Filed: May 4, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 1, 1999.

Description: Application of Turkish Airlines (Turk Hava Yollari, A.O.) pursuant to 14 C.F.R. Part 211 and Subpart Q, applies to amend its existing foreign air carrier permit in order to include the authority to engage in the scheduled foreign air transportation of persons, property and mail between a point or points in Turkey and the U.S. coterminal point Miami, Florida, on a nonstop basis or via the intermediate points Amsterdam and Brussels. Turkish Airlines also requests that Miami be coterminalized with its existing authority to serve New York and Chicago.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–12322 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 5, 1999 [64 FR 5853–5854].

DATES: Comments must be submitted on or before June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Philip Roke, Project Manager, (202) 366–5884, Federal Highway Administration, Office of Motor Carrier and Highway Safety, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Scheduling Practices and Their Influence on Driver Fatigue.

Type of Request: Approval of a new information collection.

Affected Public: Interstate motor carrier executives, dispatchers, safety directors, and drivers of commercial motor vehicles carrying passengers and property.

Abstract: The Federal Highway Administration's (FHWA) Office of Motor Carrier and Highway Safety, at the direction and intent of Congress, is conducting this study as a part of applied research that will address a number of safety issues of concern, such as: driver fatigue and alertness; the application of emerging technologies to ensure safety, productivity and regulatory compliance; commercial driver licensing, training and education. This particular study focuses on the identification of causes of commercial motor vehicle driver fatigue and the development of effective countermeasures. Prior research has indicated that developing an understanding of current operational scheduling requirements is fundamental to any attempt to facilitate change toward better shift systems that take into account the needs of drivers, while at the same time account for the economic realities of their employers and their customers—shippers and receivers. Therefore, this study has two objectives: (1) to assess the operational scheduling requirements of interstate motor carriers of passengers and property; and (2) to identify motor carrier scheduling requirements that have a positive effect on safety performance. Data will be gathered from industry focus groups and a mail survey to randomly-selected participants in the motor carrier and motor coach industries, including upper-level management, safety directors, dispatchers and drivers of passengers and property. Additionally, the data generated from representative samples of the interstate motor carrier industry will be analyzed to develop causal inferences about or relationships between scheduling and related practices and safety performance.

Frequency: The survey will be conducted once.

Estimated Burden: The estimated total annual burden is 1,225 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: May 11, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–12362 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Seventeenth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the seventeenth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC) and a tentative agenda. The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. Discussions at this meeting will include specific topics in NHTSA's Vehicle Safety and Human-Centered Research Programs.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 4 p.m. on May 26, 1999.

ADDRESSES: The meeting will be held in Room 6244–48 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: In May l987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting agenda will include progress reports from the MVSRAC working groups on Airbags, Biomechanics, Vehicle Aggressivity and Compatibility, Event Data Recorder, and Crash Avoidance Research.

The meeting is open to the public; but, attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairperson.

The summary minutes of the meeting and copies of materials handed out at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The summary minutes and handouts will also be available on NHTSA's Web site at Announcements/Public Meetings/at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Room 6206, Washington, DC 20590, telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Raymond P. Owings,

Acting Chairperson, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 99–12321 Filed 5–14–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Advisory Committee to the National Center for State, Local, and International Law Enforcement Training Meeting

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes remarks by the Committee co-chairs, Karen Wehner, Deputy Assistant Secretary (LE), Department of the Treasury, and Laurie Robinson, Assistant Attorney General, Office of Justice Programs, Department of Justice; updates on Small Town and Rural Training Series (STAR) and the profiling videotape project for the Office of Community Oriented Policing Services, and an overview by the Office for State and Local Domestic Preparedness Support of the training programs for county and municipal fire and emergency medical personnel.

DATES: May 19, 1999.

ADDRESSES: Office of Justice Programs, Department of Justice, Conference Room #3500, 810 Seventh Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center For State, Local and International Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524, 1–800–74FLETC.

Hobart M. Henson,

Director, National Center for State, Local, and International Law Enforcement Training.

[FR Doc. 99–12436 Filed 5–13–99; 12:24 pm]

BILLING CODE 4810–32–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of public meeting.

SUMMARY: On November 23, 1998, the Department of the Treasury (Treasury) published for comment in the **Federal Register** a notice setting forth proposed terms, conditions, and attributes of the Electronic Transfer Account (''ETA℠''), a Treasury-designated account to which Federal payments will be made electronically, As a next step in the process, Treasury is conducting an informational briefing, open to the public, to present an overview of the Financial Agency Agreement (''FAA''). The FAA delineates the terms and conditions under which a financial institution will operate the ETA℠ and must be entered into with Treasury before such services can be provided.

DATES: May 26, 1999. 1:30 p.m. to 3:30 p.m.

ADDRESSES: International Trade Center, Ronald Reagan Building, Polaris Room. 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004. Metro stop: Federal Triangle.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend this meeting are requested to notify Treasury of their intent by completing an Internet webform at http://www.fms.treas.gov/eta/index.html, by sending an Internet e-mail to Martha.Thomas-Mitchell@fms.spring.com or Matthew.Helfrich@fms.sprint.com, or by calling Martha Thomas-Mitchell at (202) 874–6757 or Matt Helfrich at (202) 874–6754 by May 24, 1999. Persons notifying Treasury by Internet e-mail should include their name and telephone number. Organizations should provide the name of the organization and the name(s), title(s), and telephone number(s) of the person(s) attending on behalf of the organization.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 (the ''Act'') requires, subject to the authority of the Secretary of Treasury to grant waivers, that all Federal payments (other than payments under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer (''EFT'').

The Treasury regulation implementing the requirements of the Act, 31 CFR Part 208, was published on September 25, 1998, and provides, in part, that any individual who receives a Federal benefit, wage, salary, or

retirement payment is eligible to open an account called an ETA℠ at any Federally-insured financial institution that offers the ETA℠. 63 FR 51490. The ETA℠ is being developed to maximize opportunities for individuals receiving Federal payments electronically to have access to an account at a reasonable cost and with the same consumer protections available to other account holders at the same financial institution.

On November 23, 1998, Treasury published a Notice of Proposed ETA℠ Features in the **Federal Register** for a 45-day comment period. 63 FR 64820. The Notice proposed specific ETA℠ attributes. Treasury also sought comment on whether financial institutions should be permitted to offer three additional features, at the option of the financial institution and at additional cost, if any, to the recipient. Treasury received, and has reviewed, a total of 198 comment letters from financial institutions, consumer organizations, Federal agencies, and others.

Treasury is conducting this briefing to present an overview of the ETA℠ FAA. Those persons unable to attend the briefing in person will be able to obtain a copy of the FAA and any other handouts on the EFT website at http://www.fms.treas.gov/eft/eta. The FAA and any other handouts will be posted on the website shortly following the meeting.

Treasury will subsequently publish a final notice in the **Federal Register** that describes the prescribed features of the ETA℠ and includes the ETA℠ FAA.

Dated: May 12, 1999.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–12404 Filed 5–14–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 5713 and Schedules A, B, and C (Form 5713)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5713, and Schedules A, B, and C (Form 5713), International Boycott Report.

DATES: Written comments should be received on or before July 16, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott, it may lose a portion of the following benefits: the foreign tax credit, deferral of income of a controlled foreign corporation, deferral of income of a domestic international sales corporation, or deferral of income of a foreign sales corporation. The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,875.

Estimated Time Per Respondent: 25 hours, 51 minutes.

Estimated Total Annual Burden Hours: 100,178.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–12383 Filed 5–14–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–52–88]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–52–88 (TD 8455), Election to Expense Certain Depreciable Business Assets. (§§ 1.179–2, 1.179–3).

DATES: Written comments should be received on or before July 16, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election to Expense Certain Depreciable Business Assets.

OMB Number: 1545–1201.

Regulation Project Number: PS–52–88 Final.

Abstract: The regulations provide rules on the election described in Internal Revenue Code section 179(b)(4); the apportionment of the dollar limitation among component members of a controlled group; and the proper order for deducting the carryover of disallowed deduction. The recordkeeping and reporting requirements are necessary to monitor compliance with the section 179 rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, farms, and business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 45 min.

Estimated Total Annual Burden Hours: 15,000 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–12384 Filed 5–14–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–111–90]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final and temporary regulation, CO–111–90 (TD 8515), Revision of Section 338 Consistency Rules, (Regulation §§ 1.338–1, 1.338(b)–1, 1.338(h)(10)–1.)

DATES: Written comments should be received on or before July 16, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revision of Section 338 Consistency Rules.

OMB Number: 1545–1295.

Regulation Project Number: CO–111–90 Final and Temporary.

Abstract: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a deemed asset acquisition) when an appropriate election is made. The collection of information in this regulation is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 34 min.

Estimated Total Annual Burden Hours: 25 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–12385 Filed 5–14–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–4: OTS No. 6519]

Douglas Federal Bank, a Federal Savings Bank, Douglasville, GA; Approval of Conversion Application

Notice is hereby given that on May 6, 1999, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Douglas Federal Bank, a Federal Savings Bank, Douglasville, Georgia, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: May 11, 1999.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–12371 Filed 5–14–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Azores and Cape Verde School Partnership Program

ACTION: Request for proposals.

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Azores and Cape Verde School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for a project in which three American high schools will be paired with two schools in the Azores and one in Cape Verde for the purpose of exchanges of students and teachers and to develop joint projects on themes relating to areas of common interest between the United States and the Azores/Cape Verde.

Program Information

Overview

One grant of up to $100,000 will be awarded to sponsor a one-year secondary school partnership program involving activities during academic year 1999–2000. If successful, one or two follow-on grants may be possible, subject to the availability of funding. The basic model for the program is the information of a one-to-one partnership in which the participating student bodies and faculties in the partner schools engage in joint thematic projects throughout the academic year. During the year, there will be a non-simultaneous exchange, each school sending and hosting ten students and one or two teachers for a minimum three-week period. Once the linkages are established, the partner schools could decide on any variations, involving longer stays for individuals or small groups.

Guidelines

Although the project seeks to target communities in the U.S. that have concentrations of immigrants from the Azores and Cape Verde, the goal is to include a broad spectrum of the population of those communities. The areas of greatest interest are eastern Rhode Island and east central and southeastern Massachusetts. The American Consulate in Ponta Delgada will choose the communities and schools in the Azores, and the American Embassy in Praia will do the same for Cape Verde. The American administering organization, chosen through this competition, will select the American partner schools. Once the linkage is established, each school pair will choose a project on a theme of interest to the participating countries and U.S. regions. Possible themes include civic education and comparative political systems, the environment (with special focus on the oceans), agriculture and aquaculture, health education, preparation for careers or vocations, and international security issues. In each school, students and teachers would work on aspects of these projects throughout the academic year, corresponding with their counterparts in the partner schools, exchanging materials, and working toward a culmination when the exchange participants get together. This ensures that the program has a didactic purpose and that it involves the general populace in the schools. Each side will also introduce its school communities to the language, culture, and geography of the partner country. A merit-based selection process would be worked out by the partner schools to ensure that the participants in the exchange phase are well qualified, prepared and motivated and will represent their communities well. Exchanges should take place while schools are in session so that the participants can attend classes and experience scholastic activities. All participants would live with host families and would have excursions to important historic and cultural sites in the host communities. Ideally, the schools on both sides would have Internet access so that they can maintain regular communication via E mail and use the Internet to develop their joint projects. If they lack this, funding for the program might include some support to bring the schools online. Please refer to Solicitation Package for further information.

Eligibility

USIA will award a grant to one organization, which will coordinate the whole program. Eligible applicants include: non-profit, community-based organizations with exchange experience, a school system or network of schools, and universities with established ties to secondary schools. Criteria for selection include: (1) experience conducting high school exchanges; (2) some familiarity with the Azores and Cape Verde; (3) ability and commitment to supplement the grant funds with private sector contributions; and (4) low administrative overhead costs. Applicant organizations with less than four years of experience in conducting international exchange programs will be ineligible for this competition. For complete judging criteria, see below. J–1 visa regulations and USIA policy require that the students participating in the exchange component be between the ages of 14 and 18.5 years of age and that those who represent US schools be American citizens.

Budget Guidelines

The grant is intended to subsidize international and in-country airfare, program enhancements, and participant stipends. Host communities are expected to cover many local expenses and participants should be lodged with volunteer host families (compensation for host families is not allowable). Participants are expected to contribute to their travel and living expenses. Administrative (indirect) expenses over 20% will be judged less competitive. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. The grant award will not likely be available before September 1. For the successful applicant organization, grant-funded activity may not begin until after that date and should conclude by December 31, 2000.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/PY–99–58.*

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, 202–619–6299; fax 619–5311; Internet address RPersiko@usia. gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer, Robert Persiko on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive A Solicitation Package via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, June 28, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–99–58*, Office of Grants Management, E/XE, Room 568, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Diversity should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, socio-economic status, and physical challenges, as well as location of activities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

Year 2000 Compliance Requirement (Y2K Requirement)

The year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K complaint systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA area offices and the relevant USIA posts overseas. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, and substance, relevance to the Agency's goals as outlined above, accuracy and clarity.

2. Program planning: Detailed agenda and work plan should demonstrate organizational competency and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be expressed in terms that are quantifiable, measurable, and achievable. Proposals should clearly demonstrate how the institution will meet the program's stated objectives.

4. Multiplier effect/impact: The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should indicate how the projects will serve to demonstrate the diversity of American society. Applicants should focus both on program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program activities, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to implement the program efficiently and effectively.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of relevant successful exchange activities, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will review the past performance of prior recipients or consider the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for maintaining

the linkages without US Government support and facilitating ongoing communication between the partners.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success in terms of achieving the stated objectives, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit one interim and a final program and financial report.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through participant contributions and other private sector support, as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposals will be assessed by USIA's geographic areas offices and officers in USIS missions/American embassies in the two countries in terms of the adequacy of program plan.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

Term terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 11, 1999.

Judith S. Siegel,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–12374 Filed 5–14–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
May 17, 1999

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Alternative Fuel Transportation Program; P-series Fuels; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–98–PURE]

RIN 1904–AA99

Alternative Fuel Transportation Program; P-Series Fuels

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of final rulemaking.

SUMMARY: In response to a petition filed by Pure Energy Corporation, DOE is amending the rules for the statutory program that requires certain alternative fuel providers and State government fleets to acquire alternative fueled vehicles. The regulatory amendments add three specific blends of methyltetrahydrofuran, ethanol and hydrocarbons (known as ''P-series'' fuels) to the definition of ''alternative fuel.''

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Office of Energy Efficiency and Renewable Energy, (EE–34), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9171.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Fuel Characteristics

On June 30, 1997, Pure Energy Corporation petitioned DOE for a rulemaking to add its proprietary fuel products to the definition of ''alternative fuel'' under the Alternative Fuel Transportation Program (Program) regulations (10 CFR part 490). DOE published in the **Federal Register** the proposed rulemaking on July 28, 1998, 63 FR 40202. Pure Energy Corporation's P-series fuels are blends of ethanol, methyltetrahydrofuran (MTHF), and pentanes plus, with butane added to blends that would be used in severe cold-weather conditions to meet engine cold start requirements. Pure Energy Corporation has represented that both the ethanol and the MTHF will be derived from renewable resources, such as cellulosic biomass from waste paper, agricultural waste and urban/industrial wood waste. Pure Energy Corporation plans to use pentanes plus derived from the processing and production of natural gas, as opposed to those derived from petroleum refining processes. Pure Energy Corporation holds the exclusive worldwide license to manufacture and distribute the P-series fuels, which were developed by Dr. Stephen Paul of Princeton University. The P-series fuels were awarded Patent number 5,697,987 by the United States Patent and Trademark Office on December 16, 1997. DOE's evaluation of Pure Energy Corporation's petition is restricted to three of the formulations covered under this patent.

To make the P-series fuels, Pure Energy Corporation will be producing ethanol and MTHF through an integrated process. The company expects to use commercially proven concentrated acid hydrolysis as its base technology for this integrated production process. MTHF is currently produced in limited quantities from furfural (derived from both biomass and petroleum feedstocks) for use as a specialty chemical in consumer products and/or process industries. Pure Energy Corporation has developed a thermochemical technology to produce MTHF from cellulosic feedstocks through a levulinic acid pathway. Levulinic acid is a crystalline keto acid obtained by action of dilute acids on hexoses (six-carbon sugars like glucose or fructose) and on substances, such as starch or sucrose, that yield hexoses on hydrolysis. The company integrates this process with an ethanol production system to achieve technical and economic efficiencies. In this process, the lignocellulosic feedstock is converted into both five- and six-carbon sugars, which are then bifurcated into fermentation and thermochemical pathways to produce ethanol and MTHF, respectively.

Pure Energy Corporation has developed several formulations of the P-series fuels. The company proposes to vary the components of its P-series fuels to meet particular market demands. The three formulations described in Table 1 (Pure Regular, Pure Premium and Pure Cold Weather) are those for which Pure Energy Corporation, in its petition, provided specific energy and emissions data. The company claims that the volumetric percentages of each of the components of the P-series fuels can range from 10 percent to 50 percent for pentanes plus; from 15 percent to 55 percent for MTHF; from 25 percent to 55 percent for ethanol; and from zero to 15 percent for normal butane. Table 1 provides the compositions, by volume, of the three specific P-series fuel formulations which are the subject of this rulemaking.

TABLE 1—VOLUME COMPOSITION OF THE P-SERIES FUELS

Constituent	Regular	Premium (percent)	Cold weather (percent)
Pentanes plus	32.5	27.5	16.0
MTHF	32.5	17.5	26.0
ethanol	35.0	55.0	47.0
normal butane	0.0	0.0	11.0

Based on the data supplied in the petition, the composition of P-series fuels varies from 60 to 100 percent non-petroleum, on an energy basis, depending on the source of the pentanes plus and n-butane components of the blends.

Pure Energy Corporation intends to market the P-series fuels to owners of flexible fuel vehicles (FFVs) designed to operate on E–85 (85 percent ethanol/15 percent gasoline), on gasoline, or on any blend of those two fuels. Flexible fuel vehicles are currently available from two major domestic auto manufacturers as mid-size sedans, minivans and compact pickup trucks.

B. Patent

On December 16, 1997, the United States Patent and Trademark Office issued U.S. Patent No. 5,697,987, titled Alternative Fuel, to Princeton University on a new non-petroleum fuel, for spark-ignition engines, called the P-series. The United States Patent and Trademark Office's abstract for this patent reads:

> A spark ignition motor fuel composition consisting essentially of: a hydrocarbon component containing one or more hydrocarbons selected from five to eight carbon atoms straight-chained or branched alkanes essentially free of olefins, aromatics, benzene and sulfur, wherein the hydrocarbon component has a minimum anti-knock index of 65 as measured by ASTM D–2699 and D–2700 and a maximum DVPE of 15 psi as measured by ASTM D–5191; a fuel grade

alcohol; and a co-solvent for the hydrocarbon component and the fuel grade alcohol; wherein the hydrocarbon component, the fuel grade alcohol and the co-solvent are present in amounts selected to provide a motor fuel with a minimum anti-knock index of 87 as measured by ASTM D–2699 and D–2700, and a maximum DVPE of 15 psi as measured by ASTM D–5191. A method for lowering the vapor pressure of a hydrocarbon-alcohol blend by adding a co-solvent for the hydrocarbon and the alcohol to the blend is also disclosed.

C. Background

10 CFR part 490 implements, in part, title V of the Energy Policy Act of 1992 (EPACT) (Public Law 102–486) which mandates alternative fueled vehicle acquisition requirements for certain alternative fuel providers and State government fleets. Part 490 is one of a variety of EPACT programs to promote alternative and replacement fuels that reduce reliance on imported oil, reduce criteria pollutant and greenhouse gas emissions, increase energy efficiency, and help displace 10 percent of conventional motor fuels by 2000 and 30 percent by 2010.

Title III of EPACT requires Federal fleet acquisitions of alternative fueled vehicles. Title IV includes specific authority for a financial incentive program for States, a public information program, and a program for certifying alternative fueled vehicle technician training programs. In addition to the mandates for the purchase of alternative fueled vehicles by certain alternative fuel providers and State government fleets, title V provides for a possible similar mandate for certain private and municipal fleets. Title VI provides for a program to promote electric motor vehicles.

The types of vehicles that satisfy the alternative fuel provider and State government fleet mandates in title V are determined in part by the definition of ''alternative fuel'' in section 301(2). That definition provides: ''Alternative fuel' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); *and any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits.*'' [Emphasis added.] 42 U.S.C. 13211(2). The emphasized phrase in the definition of ''alternative fuel'' states the minimum procedural and substantive requirements for adding a new fuel blend to the list of fuels enumerated or implicitly covered by the provisions of section 301(2).

For reasons set forth in detail below, DOE determines that the three P-series fuels described in Pure Energy Corporation's petition (Pure Regular, Pure Premium and Pure Cold Weather) and by United States Patent number 5,697,987, which contain at least 60 percent non-petroleum energy content derived from MTHF, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials, are substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits, and thus are hereby added to the definition of ''alternative fuel'' in 10 CFR 490.2.

II. Discussion of Public Comments

A. Pure Energy Corporation Comments

Pure Energy Corporation, the petitioner, was among those submitting comments to DOE in response to the Notice of Proposed Rulemaking (NOPR) (63 FR 40202). In the NOPR, DOE noted that neither the Energy Policy Act of 1992 (the Act), nor the language of legislative committee reports, provides any guidance on how to measure whether a fuel is ''substantially non-petroleum.'' The word ''substantially,'' DOE observed, ''* * * is sometimes used as a synonym for the word 'mainly' '' and ''* * * at other times as a synonym for the words 'considerably' or 'importantly.' '' Whether to construe ''substantially'' in the first, narrower sense or in the latter, broader one, DOE said, was a policy question. DOE further said, ''Obviously, a fuel that is more than 50 percent non-petroleum in energy-equivalent terms is 'mainly' and therefore 'substantially non-petroleum.' '' (63 FR 40204). Fuels of less than 50 percent non-petroleum content could still be regarded as ''substantially non-petroleum'' if ''substantially'' were construed in the broader sense, DOE reasoned, since such fuels could be regarded as ''considerably'' or ''importantly'' non-petroleum. Because all three of the P-series fuel formulations Pure Energy Corporation described in its petition are more than 60 percent non-petroleum in energy terms, DOE elected not to address the policy question of whether to construe ''substantially'' in the narrow or broad sense. DOE proposed to designate P-series fuel blends as alternative fuels if, like the three P-series blends described in Pure's petition, they are at least 60 percent non-petroleum in energy terms.

In its comments, Pure Energy Corporation endorsed DOE's statement regarding fuels of 50 percent or greater non-petroleum content. The company went on to state its belief that ''* * * 50 percent minimum non-petroleum energy content is the right standard as a matter of law and public policy * * *'' The company submitted data on a fourth P-series formulation it claimed meets the standards for ''substantial energy security benefits'' and ''substantial environmental benefits,'' but which is 52.3 percent non-petroleum in energy content. Pure Energy Corporation requested that DOE, in its final rulemaking, set a minimum non-petroleum energy content for P-series fuels at 50 percent, rather than at the 60 percent level proposed in the NOPR.

The vehicle emissions test data for the fourth P-series blend submitted by Pure Energy Corporation with its comments were inconclusive. Therefore, DOE asked the company to submit additional data. In order to proceed in an expeditious manner, DOE is electing to proceed with the final rule on the three P-series blends described in Pure Energy Corporation's original petition, and will address the fourth formulation when we receive the additional data.

B. Other Public Comments

In addition to Pure Energy Corporation, forty-two other firms, organizations and individuals submitted comments in response to the NOPR. The majority of these spoke in favor of granting Pure Energy Corporation's petition, with none of their comments raising a significant issue regarding the rule. Three commenters, however, raised objections to DOE's granting the petition. Their comments and DOE's responses to them are summarized below.

One commenter raised the possibility that reactions could occur between the methyltetrahydrofuran (MTHF) component of P-series fuels and metallic engine components containing molybdenum. (For example, molybdenum is sometimes used as a ''facing'' material on engine piston rings.) The commenter expressed concern that such reactions could degrade those components and lead to the formation of hydrogen which could in turn lead to hydrogen embrittlement of engine parts. This commenter cited work reported in the Bulletin of the

Korean Chemical Society in which molybdenum atoms were observed to break apart the chemical bonds in MTHF, among other compounds.

DOE's examination of the work cited revealed that the Korean researchers had vaporized a molybdenum wire with very high electric currents to produce free molybdenum atoms. Molybdenum's melting point is over 4750 °F. and its boiling point is over 8380 °F. These temperatures are far higher than any actually experienced by any part of an internal combustion engine. Thus, there is little likelihood that free molybdenum atoms could be liberated from molybdenum-bearing engine parts to react in the gas phase with MTHF. Moreover, hydrogen embrittlement is not a problem in current engines, despite the fact that free hydrogen may be produced as a combustion intermediate whenever any hydrogen-bearing fuel is used. Therefore, there is no reason to expect that P-series fuels will engender hydrogen embrittlement problems.

The commenter raised the possibility that molybdenum could also lead to similar hydrogen-related problems in fuel storage systems. Molybdenum is a key ingredient in hydro treating catalysts. These catalysts are used in refining processes which remove sulfur from petroleum and natural gas liquids and otherwise improve their properties. The commenter suggested that molybdenum would be carried over from these catalysts in the pentanes plus and subsequently react with other P-series fuel components to generate hydrogen by the same reactions the commenter had proposed would occur in engines. This problem does not exist with other fuels that have undergone hydro treatment, so it is unlikely it will exist with P-series fuels. In hydro treating catalyst formulations, molybdenum exists in the form of molybdenum disulfide, not as metallic molybdenum. The Korean research that the commenter cited indicates that metallic molybdenum and extremely high temperatures are needed to promote the reactions the commenter fears will lead to hydrogen formation.

Finally, noting the high ethanol content of P-series fuels, this commenter expressed the concern that contamination of the fuels by water would lead to fuel phase separation. DOE believes the fuels industry has accumulated ample experience in handling and distributing fuels containing varying proportions of ethanol over the past 20 or more years to prevent this from being a concern.

A second commenter, citing P-series' ''wide variation in petroleum content (the butane and pentanes plus),'' urged DOE to resolve the issue of ''* * * whether P-series fuel meets the definition of 'substantially non-petroleum.' '' As DOE noted in the NOPR, the P-series fuels that are the subject of this rulemaking are a minimum of 63.8 percent non-petroleum on an energy basis, and DOE regards this as sufficient to qualify them as ''substantially non-petroleum.'' Further, the butane and pentanes plus may as easily be derived from natural gas processing as from petroleum refining, and hence may also be non-petroleum. In that case, P-series fuels would be 100 percent non-petroleum.

The commenter also pointed out that, ''Fuels must also have tightly controlled specifications for proper combustion and vehicle operation. It is critical that performance-based fuel specifications be established and enforced.'' Lack of such specifications, the commenter said, would increase the difficulty vehicle manufacturers would encounter in meeting increasingly stringent emissions standards and permit wide variations of in-use fuel properties. This in turn would ''limit vehicle manufacturer and consumer interest in these fuels.'' DOE recognizes the validity of this concern, but the establishment of practical, detailed fuel specifications lies outside DOE's authority. Traditionally, such specifications are arrived at through a consensus of fuel producers and users, based on economics and performance. The American Society for Testing and Materials (ASTM) provides one example of an appropriate forum for achieving such a consensus. DOE will be available to assist those organizations with the establishment of detailed fuel specifications for the P-series fuels.

Finally, the commenter pointed out that existing flexible fuel vehicle products have not been designed to operate on P-series fuels and have not been validated for operation on these fuels, notwithstanding the emissions testing carried out by Pure Energy Corporation. ''It would be inappropriate to state or imply such a capability,'' the commenter said. The commenter added that use of P-series fuels in existing flexible fuel vehicles or in future vehicles not certified with P-series fuels could void the manufacturers' warranties. DOE also acknowledges the validity of these comments. DOE has not stated or implied, by granting alternative fuel status to P-series fuels, that available vehicles were manufactured to operate on the fuels or that use of the fuels will not void vehicle warranties. How and under what circumstances to honor product warranties is the responsibility of the vehicle manufacturers, and DOE's decision to grant the P-series fuels alternative fuel status in no way limits manufacturers' prerogatives in this regard. Ultimately, it will be up to vehicle manufacturers to determine the effects of fuels on their products and to decide whether they wish to test or certify their vehicles on those fuels.

A third commenter opposed the designation of P-series fuels as alternative fuels under the Act. This commenter stated the belief ''* * * that a fuel mixture that contains only 60 percent non-petroleum fuel should not be classified as an alternative fuel.'' DOE disagrees with this statement and stands by the reasoning that led to its initial affirmative determination to proceed with a rulemaking, as explained in the NOPR. ''Furthermore,'' the commenter went on, ''there is no assurance that the fuels under consideration actually will have even this level of non-petroleum content, since some of the components of the fuels can come from petroleum or non-petroleum feedstocks.'' This comment appears to arise from a misreading of the NOPR. In fact, the minimum non-petroleum content of the P-series fuels that are the subject of this rulemaking is 63.8 percent (on an energy basis). If the balance of the blend constituents are from natural gas processing, the blend will be wholly (100 percent) from non-petroleum sources.

In evaluating the P-series fuels, and in light of feedback received that expressed concerns similar to those of the above commenter, DOE became concerned that Pure Energy Corporation would have the ability to utilize ethanol that is not manufactured from biomass or biological materials. It is possible to manufacture ethanol from petroleum, for example, by the hydration of ethylene. DOE believes that Pure Energy Corporation fully intends to manufacture the ethanol included in the P-series fuels from biological materials. However, because DOE has some concerns about the availability of biologically derived ethanol, it was decided to limit the ethanol feedstock for the P-series fuels to biological materials. Therefore, the parenthetical phrase ''manufactured solely from biological materials'' has been added to the regulatory language as a qualifier for the ethanol feedstock.

The commenter also raised several procedural objections to DOE's proposed granting of alternative fuel status to Pure's P-series fuels. The first of these is the commenter's contention that ''DOE must define new alternative fuel blends in the same way existing

blends are defined.'' According to the commenter, ''In attempting to expand the list of alternative fuels, DOE has improperly construed the statute's requirement that new fuels must be 'substantially non-petroleum.' Moreover, in interpreting the term 'substantially,' DOE has completely ignored the guidelines established for fuel blends/mixtures explicitly recognized in the Act.'' The commenter's reference is to section 301(2) of the Act, which says (in part): ''the term 'alternative fuel' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels * * *''

The commenter claims that in identifying specific fuels and fuel blends deemed to be alternative fuels, the Act established guidelines that DOE must adhere to in making subsequent determinations. In particular, the commenter believes section 301(2) of the Act ''* * * explicitly forbid[s] the inclusion of ethanol fuel blends where the ethanol component of the mixture is less than 85 percent,'' and that, ''[t]here is no statutory basis for designating as alternative fuels blends that contain considerably more petroleum than the blends listed in the statute.''

DOE believes that the commenter has misinterpreted the Act. In conferring explicit alternative fuel status on ethanol blends of 85 volume percent and above, DOE does not believe Congress intended implicitly to reject all ethanol blends of less than 85 volume percent. Indeed, the Secretary of Energy is granted discretion under certain circumstances to approve ethanol blends containing as little as 70 percent ethanol. Nor does DOE believe that the Congress, by providing a list of alternative fuels, was enunciating overarching principles that it intended DOE to follow in future determinations. Rather, Congress delineated such principles explicitly in section 301(2) when it said that the definition of ''alternative fuel'' could include ''* * * *any other fuel* the Secretary determines, by rule, is substantially non-petroleum and would yield substantial energy security benefits and substantial environmental benefits'' [Emphasis added]. The commenter's inferences regarding Congressional intent cannot be reconciled with this explicit language. Finally, as noted above, the P-series blends do not necessarily or always contain any petroleum component.

The three criteria enumerated in section 301(2), which DOE has used in making this determination (and, as directed by Congress, will be used in making future determinations) represent a rigorous standard by which to measure the efficacy of potential alternative fuels in achieving the overall goals of the Energy Policy Act. DOE believes that analysis of potential alternative fuels by these criteria is appropriate and statutorily required.

The commenter also expressed the view that DOE erred in making its determination of whether a fuel is substantially non-petroleum on the basis of the fuel's energy content, rather than on the basis of the volume of the fuel that is non-petroleum. The commenter said, ''DOE's notice [the NOPR] indicates that, since the energy displacement goals contained in EPACT are measured in terms of energy equivalent units, DOE also may evaluate a fuel's non-petroleum content based on energy displacement rather than volume displacement.'' The commenter went on, ''Section 301(2) actually dictates that the blended fuels recognized in the Act must contain at least 70 percent *by volume* of ethanol, methanol or alcohol. Looking at the statute and the specific section under review reveals that Congress intended these fuels to be compared based on volume not energy displacement.'' [Emphasis in original] Here again, DOE believes the inferences the commenter draws from section 301(2) of the Act regarding Congressional intent are incorrect. Nothing in the portion of section 301(2) that lists fuels Congress designated as alternative fuels at the time of the Act's passage can be read as establishing rigorous standards DOE is obliged to apply in future alternative fuel determinations. In addition to the neat and blended alcohol fuels, Section 301(2) lists natural gas and hydrogen. These alternative fuels are gases whose volume depends on the pressure and temperature under which they are stored. Energy content (energy displacement potential) is the only reasonable basis on which to compare them to the liquid fuels. This is also an appropriate basis of comparison since all transportation prime movers which might use any of these fuels are dependent on fuel energy content, rather than fuel volume.

III. Statutory Criteria for Designating Additional Alternative Fuels

Neither section 301(2) nor any other provision of the Act states specifically or indicates how to measure whether a new fuel: (1) is ''substantially not petroleum'' and (2) would yield ''substantial energy security benefits;'' and (3) would yield ''substantial environmental benefits.'' Moreover, the Act does not state that these criteria are exclusive; in appropriate circumstances, DOE could consider other criteria related to achievement of the purposes of the Program.

Legislative committee report language likewise does not identify specifically what numbers and measures Congress viewed as defining the minimums that would qualify as substantially not petroleum, and that would satisfy the substantial energy security and substantial environmental benefits criteria. However, the report of the House Committee on Energy and Commerce described the pertinent language in section 301(2) as providing ''* * * the Secretary with the *opportunity* to add alternative and replacement fuels that are not now being marketed to those specifically identified in the legislation.'' [Emphasis added.] H.R. Rep. No. 474(1), 102nd Cong., 2nd Sess., 182, reprinted in 1992 U.S. Code Cong. & Admin. News 2005. The word ''opportunity'' suggests that the authority to add fuels to the definition of ''alternative fuel'' is largely discretionary.

In evaluating the P-series fuels, DOE asked the National Renewable Energy Laboratory and Argonne National Laboratory to review the data presented in Pure Energy Corporation's petition against the statutory criteria for designating an ''alternative fuel.'' Copies of these evaluations, written comments received, technical reference materials mentioned in the notice, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–090, 1000 Independence Ave., S.W., Washington, DC 20585, telephone (202) 586–3142, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The docket file material will be filed under ''EE–RM–98–PURE.''

A. Substantially Not Petroleum

Any standard dictionary or thesaurus indicates that ''substantially'' is an adverb that can be used to convey a variety of subtly different meanings. ''Substantially'' is sometimes used as a synonym for the word ''mainly.'' At other times, it is used as a synonym for the words ''considerably'' or ''importantly.'' See, e.g., Webster's New World Thesaurus 725 (Simon & Schuster, 1985). Since this rulemaking does not involve fuels that are less than

50 percent non-petroleum, in terms of energy content, it is unnecessary to address this policy question.

Section 502(b) of the Act establishes goals for replacing the projected consumption of motor fuel in the U.S. on an energy equivalent basis. The goals provided by this section are that 10% of the motor fuel consumed by 2000 and 30% of the motor fuel consumed by 2010 will be replacement fuels. These goals are the driving force for all the alternative and replacement fuel provisions in the Act. Because the achievement of these goals is to be measured on an energy equivalent basis, DOE believes that, when evaluating a fuel, the determination of whether it is ''substantially not petroleum'' should be based on an analysis of the fuel's non-petroleum energy content, rather than a volumetric analysis of the fuel's non-petroleum content.

Pure Energy Corporation claims that, on an energy basis, its three P-series fuels will be at least 60 percent derived, and may be up to 100 percent derived, from non-petroleum sources, depending on the source of the light hydrocarbons in the blends. In its petition, the Pure Energy Corporation provided DOE with information and analysis to substantiate these claims. DOE confirms the accuracy of Pure Energy Corporation's claim regarding the energy-based non-petroleum content of the P-series fuels. Table 2 summarizes the worst-case (lowest non-petroleum) makeup of the three P-series fuel formulations, based on the net (lower) heating value of all constituents.

TABLE 2—VERIFIED NON-PETROLEUM ENERGY CONTENT OF THE P-SERIES FUELS

Constituent	Regular	Premium	Cold weather (percent)
Pentanes plus	36.2	33.3	19.1
MTHF	37.7	22.1	32.3
ethanol	26.1	44.6	37.5
normal butane	0.0	0.0	11.2
Non-petroleum (excluding pentanes plus, butane)	63.8	66.7	69.8

It is evident to DOE that the MTHF and ethanol components of the P-series fuels, as described in Pure Energy Corporation's petition, will be non-petroleum, because they will be manufactured from biological materials. However it is less clear whether the pentanes plus component is non-petroleum. DOE's Energy Information Administration (EIA), in its publication Annual Energy Review 1996, 386 ((DOE/EIA–0384(96)) defines ''pentanes plus'' as ''a mixture of hydrocarbons, mostly pentanes and heavier, extracted from natural gas. [This] includes isopentane, natural gasoline, and plant condensate.'' This same publication also defines petroleum products as including ''unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products.'' However, it is unnecessary to determine whether to restrict pentanes plus on the basis of source because the MTHF and ethanol, which must be manufactured solely from biological materials, are present in all three fuel blends, result in a non-petroleum energy content for the P-series formulations of at least 63.8 percent. That percentage is the main or predominant portion of the fuel, and even under the narrow definition of ''substantially,'' the three fuel blends are ''substantially not petroleum.''

Because U.S. Patent number 5,697,987 does not specifically define the composition of the three P-series fuels, DOE has determined that the fuels need to be more specifically described before they can be added to the regulatory definition of ''alternative fuel.'' Given that the petition shows that the three P-series fuels will be at least 60 percent derived from non-petroleum sources, and the fact that Pure Energy Corporation claims that, on an energy basis, its three P-series fuels will be at least 60 percent derived from non-petroleum sources, DOE is using that percentage in the rule as a way of more narrowly defining the three P-series fuels. DOE believes that the amount of MTHF and ethanol in the fuel blends will result in a non-petroleum content of at least 60 percent for the three P-series fuels, absent any other non-petroleum component, if the MTHF and the ethanol are manufactured solely from biological materials. Although, based on our evaluation, DOE could have established a non-petroleum content of 63.8 percent for the P-series fuels, establishing the minimum percentage of 60 percent provides the company with some processing flexibility.

On the basis of the foregoing, DOE has concluded that the three P-series fuels, as described by United States Patent number 5,697,987, which contain at least 60 percent non-petroleum energy content derived from MTHF, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials, are ''substantially not petroleum'' as that phrase is used in section 301(2) of the Act.

B. Substantial Energy Security Benefits

Pure Energy Corporation claims in its petition that the three P-series fuels are 100 percent domestic and capable of displacing gasoline on essentially a gallon-for-gallon basis. Pure Energy Corporation notes that each gallon of the P-series fuel directly displaces 0.88 gallons of RFG in vehicle use. Pure Energy Corporation also states that the energy required to produce a one-gallon-equivalent of the fuel is approximately 13,800 BTU less than that required to produce one gallon of RFG.

The petition provides information to support a claim that production of the P-series fuels results in a positive energy balance. The process efficiency (BTUs produced per BTU of input) of the P-series fuels is approximately 2.25 when the ethanol is produced from renewable resources such as biomass. If, however, the ethanol is produced from corn, the process efficiency is slightly lower, with a value between 1.75 and 1.88. Although the process efficiency is slightly lower when the ethanol is derived from corn, production of ethanol from either feedstock represents a significant energy savings for the life cycle of the fuel.

DOE analyses support Pure Energy Corporation's claim of significant petroleum displacement, although the company's claim of 100 percent domestic content appears to be slightly high.

It is estimated that the P-series fuels (regular grade) with pentanes plus derived from natural gas would be 96 percent derived from domestic resources. It is believed that the

feedstock for ethanol and MTHF production will almost certainly be wholly domestic. Since the feedstock for the pentanes plus and the butane will be either natural gas or petroleum, and because a portion of these feedstocks is currently and will continue to be imported, it is debatable whether the P-series fuels will ever be wholly derived from domestic resources. If the pentanes plus were derived from refining petroleum, at oil import levels projected by EIA for 2015, the regular grade P-series fuel would still be 80 percent derived from domestic resources.

DOE also estimates that the P-series fuels could reduce fossil energy use by 49 to 57 percent, relative to RFG, and that the P-series fuels could reduce petroleum use by 79 to 81 percent, relative to RFG.

On the basis of the foregoing, DOE has concluded that the three P-series fuels, as described by United States Patent number 5,697,987, which contain at least 60 percent non-petroleum energy content derived from MTHF, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials, would yield ''substantial energy security benefits'' as that phrase is used in section 301(2) of the Act.

C. Substantial Environmental Benefits

Pure Energy Corporation had vehicle tailpipe and evaporative emissions tests conducted by an Environmental Protection Agency (EPA) contract automotive test laboratory using both the current Federal Test Procedure (FTP) and the US06 test. (A description of the US06 test can be found in the NOPR at 63 FR 40205 and in the Code of Federal Regulations at 40 CFR part 86.)

Pure Energy Corporation's test vehicles, two 1997 Ford Taurus E–85 flexible-fuel vehicles, were operated on eight fuels: three P-series fuels (regular, premium and cold weather), E–85, Federal Certification gasoline, California Phase II RFG and two commercial gasolines (a summer and a winter blend). The results were submitted to DOE as part of the company's petition. Pure Energy Corporation also provided an analysis of greenhouse gas emissions associated with production, distribution and use of the three P-series fuels and compared them to those of gasoline and E–85.

Both the criteria pollutant emissions test results and the greenhouse gas analysis support Pure Energy Corporation's claim of substantial environmental benefits arising from the use of the P-series fuels. Criteria pollutant emissions from the P-series fuels were consistently among the lowest of all test fuels, met Federal Tier 1 standards and statutorily provided Federal Tier 2 standards in every case, and compared favorably with those from E–85. The premium P-series fuel had better emission characteristics than the regular P-series fuel. The P-series fuels reduced emissions of non-methane hydrocarbons (NMHC) and total hydrocarbons by almost a third compared to Phase 2 RFG. It is worth noting that all of the fuels tested had evaporative emissions well below the evaporative emissions standard for Federal Tier 1. Table 3 summarizes the results of the FTP emissions results (all results in grams per mile). The numbers are averages over both cars tested and all FTP tests performed, as presented in Pure Energy Corporation's petition.

TABLE 3—Comparison of Federal Test Procedure Emission Results

[gram/mile]

	NMHC	Carbon monoxide	Nitrogen oxides
Pure Regular	0.074	1.081	0.064
Pure Premium	0.064	1.062	0.059
Phase II RFG	0.115	1.247	0.039
Tier 1 standards	0.250	3.4	0.4
Tier 2 standards	0.125	1.7	0.2

The Tier 2 standards referenced in Table 3 are the pending standards identified by Congress in section 202(i) of the Clean Air Act (CAA). A discussion of the process EPA is undertaking to establish Tier 2 standards can be found in the NOPR.

As noted in Table 4, the P-series fuels had reduced ozone-forming potential (OFP), carbon monoxide and air toxics emissions. Table 4 compares the emission results of the P-series fuels, Indolene, Phase II RFG and commercial gasoline to EPA's National Ambient Air Quality Standards (NAAQS). [40 CFR part 63]

The OFP is a measure of the performance of the fuel-vehicle combination, calculated by multiplying the fraction of each emissions compound by its reactivity. The specific reactivity is calculated by dividing the OFP by the mass of the non-methane organic gaseous emissions. It is considered a better gauge of the reactivity of the fuels' emissions profiles. The numbers are averages of both cars tested and all FTP and US06 tests performed, as presented in Pure Energy Corporation's petition.

TABLE 4.—COMPARISON OF EMISSION RESULTS RELATED TO NAAQS

[gram/mile]

	CO		NO_X		OFP		Spec. React.	
	FTP	USO6	FTP	USO6	FTP	USO6	FTP	USO6
Indol	1.421	11.99	0.056	0.040	0.488	0.470	3.248	3.092
RFG II	1.247	10.56	0.039	0.049	0.469	0.379	3.640	3.059
Comm. Gas	1.427	12.07	0.095	0.077	0.522	0.501	3.334	3.070
E85	1.218	5.15	0.056	0.079	0.494	0.087	2.410	3.633
Pure Reg	1.081	6.15	0.064	0.057	0.305	0.161	3.360	3.460
Pure Prem	1.062	6.23	0.059	0.081	0.282	0.158	2.849	3.568

The petition stated that the total emissions resulting from the production of a gallon of P-series fuels are 71 percent lower than those associated with production of one gallon of Phase II RFG. Of note are the claims that emissions are reduced, relative to Phase II RFG, by more than 99 percent for methane, by 85 percent for SO_X, by 71 percent for carbon dioxide and by 68 percent for nitrogen oxides.

The petition claims that the P-series fuels perform better than Phase II RFG or Indolene in terms of direct carbon dioxide emissions and that P-series fuels will result in significant reductions in carbon dioxide emissions when considered on a life-cycle basis. If the P-series fuels are produced from biomass, as Pure Energy Corporation plans to do, it is claimed that a significant percent of the carbon emissions associated with the gasoline life-cycle will be avoided. Specifically, the company estimates that the P-series regular fuel, on a life-cycle basis, will reduce carbon dioxide emissions by at least 63 percent.

DOE assessed the emissions test results and analyzed the full fuel cycle greenhouse gas emissions of the P-series fuels. DOE confirmed that regular and premium formulations of the P-series fuels displayed carbon monoxide, nitrogen oxides and non-methane hydrocarbon equivalent emissions that met the Tier 1 and statutorily provided Tier 2 standards, and that their evaporative emissions were well below the Tier 1 standards. DOE notes that the emissions of air toxics from the P-series fuels were lower than those from all other test fuels, both in terms of total mass emissions and in terms of their potency weighted toxics (PWT) emissions. The PWT weighs each individual component by a factor that represents its relative toxicity.

DOE's evaluation of the full fuel cycle greenhouse gas emissions of the P-series fuels confirmed that, over their entire production, distribution and end-use cycle, the P-series fuels will result in greenhouse gas emissions 45 to 50 percent below those of reformulated gasoline. These reductions in greenhouse gas emissions are possible if both the ethanol and the MTHF components of the P-series fuels are made from biological materials, which is Pure Energy Corporation's intention.

On the basis of the foregoing, DOE has concluded that the three P-series fuels, as described in Pure Energy Corporation's petition and by United States Patent number 5,697,987, which contain at least 60 percent non-petroleum energy content derived from MTHF, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials, would yield ''substantial environmental'' benefits as that phrase is used in section 301(2) of the Act.

IV. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation and other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. The rule promulgated today would simply allow an additional fuel to qualify as an alternative fuel for the purposes of the Energy Policy Act of 1992. The rule would not have a substantial direct effect on States, the relationship between the States and Federal Government, or the distribution of power and responsibilities among various levels of government.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's rule would provide an additional fuel choice for organizations which must comply with the requirements of the Alternative Fuel Transportation Program (10 CFR part 490) and the requirements for Federal fleets under Title III of EPACT. There is no reason to anticipate any adverse impact. DOE certified in the notice of proposed rulemaking that the rule will not have a significant economic impact on a substantial number of small entities. DOE received no comments on that certification.

D. Review Under the National Environmental Policy Act

The rule identifies the P-series fuels as ''alternative fuel'' as that term is defined in the Alternative Fuel Transportation Program regulations (10 CFR 490.2) and section 301(2) of the Energy Policy Act (42 U.S.C. 13211(2)). The rule interprets statutory and regulatory definitions and does not change the environmental effect of the Alternative Fuel Transportation Program regulations. DOE, therefore, has determined that the rule is covered under the Categorical Exclusion in paragraph A5 to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under the Paperwork Reduction Act

No new collection of information will be imposed by this rulemaking. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency 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 in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 490

Administrative practice and procedure, Energy conservation, Fuel, Motor vehicles.

Issued in Washington, DC on 16 April, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Part 490 of Title 10, Chapter II, Subchapter D, of the Code of Federal Regulations is amended as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

1. The authority citation for Part 490 continues to read as follows:

Authority: 42 U.S.C. 7191, 13211, 13235, 13251, 13257, 13258, 13260–3.

2. Section 490.2, Definitions, is amended by revising the definition of ''Alternative Fuel,'' to read as follows:

§ 490.2 Definitions.

* * * * *

Alternative Fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); three P-series fuels (specifically known as Pure Regular, Pure Premium and Pure Cold Weather) as described by United States Patent number 5,697,987, dated December 16, 1997, and containing at least 60 percent non-petroleum energy content derived from methyltetrahydrofuran, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials; and electricity (including electricity from solar energy).

* * * * *

[FR Doc. 99–12250 Filed 5–14–99; 8:45 am]

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LIST OF PUBLIC LAWS

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S. 531/P.L. 106–26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
*500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
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
41 Chapters:			
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
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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, 1997 to June 30, 1998. The volume issued July 1, 1997, 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.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
*700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
*1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
*200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
*500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
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
41 Chapters:			
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
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
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80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
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1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
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49 Parts:			
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186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
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50 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, 1997 to June 30, 1998. The volume issued July 1, 1997, 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.