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Tuesday
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 94–68]

Realignment of Tampa and Miami Districts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing the Customs field organization by changing the boundaries of the Tampa District and the Miami District, which lie in the Southeast Region. The boundaries of these two districts are being altered to reflect the established judicial districts within the state. This is being accomplished by transferring the counties of Collier and Hendry to the Tampa Customs District from the Miami Customs District. The realignment will allow a more efficient use of Customs employees and facilitate operations for many of the users of Customs services.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, (202) 927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing effort to utilize its personnel, facilities and resources more efficiently, and to provide better service to the public, importers and carriers, Customs is realigning the boundaries of its Tampa and Miami Districts. The realignment gives jurisdiction over all cities and counties along the west coast of Florida to the Tampa District. This is being accomplished by removing the counties of Collier and Hendry from the Miami District and adding them to the Tampa District.

The realignment will permit personnel from the Tampa District to serve the areas of Collier and Hendry Counties which are currently under the jurisdiction of the Miami District. Currently, aircraft inspection clearances from Naples, which is in Collier County, must be coordinated by personnel from the Miami District which is headquartered approximately 120 miles away while personnel from the Tampa District are stationed at the Southwest Regional Airport in Fort Myers, only 20 miles distant.

An additional reason supporting the change is that the new District boundaries will also conform to the current jurisdictional boundaries of the Customs Office of Enforcement. The enforcement boundaries were realigned in 1989 so that they would coincide with the jurisdictional boundaries of the 0U.S. Attorney's office and provide for a uniformity of treatment for all liquidated damage, penalty and seizure cases instituted in the state. After this change, all Customs transactions can be handled within the same District offices.

Support for this realignment has been voiced by several elements of the regional importing community who anticipate improved service from a local headquarters.

It is not anticipated that this amendment will have any impact on the staffing level in either District.

Boundaries of Tampa

The new boundaries of the Tampa, Florida, District are as follows:

The North shore of the St. Marys River and the city of St. Marys, Ga., and all the State of Florida except the counties of Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Broward, Monroe, Dade.

Boundaries of Miami

The new boundaries of the Miami, Florida, District are as follows:

The counties of Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Broward, Monroe, and Dade.

Comments

Customs published a Notice of Proposed Rulemaking in the **Federal Register** on March 18, 1994 (59 FR 12879) which invited the public to comment on the above described realignment of the Tampa and Miami District boundaries. No comments were received in response to this invitation. Accordingly, the amendment is being published in final as it was proposed.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes the boundaries of the various districts throughout the United States to enable it to best perform its mission and to serve the public as efficiently as possible. Although this document is being issued after notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 101.3(b) is amended by removing the words "Hendry," and "Collier," from the list in the Column headed "Area" opposite the entry for Miami, Fla. in the Southeast Region and also from the listing in the "Area" column opposite the entry for Tampa, Fla. in the Southeast Region.

George J. Weise,

Commissioner of Customs.

Approved: August 4, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–20030 Filed 8–15–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AD94

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration issues listings of impairments to evaluate disability and blindness under the Social Security and supplemental-security income (SSI) programs. This rule extends the expiration date for the adult mental disorders listings. We have made no revisions to the medical criteria in the listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on mental impairments at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On August 28, 1985, we published revised adult mental disorders listings (50 FR 35038) in part A of appendix 1 (Listing of Impairments) to subpart P of part 404. We use the listings to evaluate disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security and SSI programs. The listings describe impairments considered severe enough to prevent a person from doing any gainful activity, or, for a child under age 18 applying for SSI benefits based on disability, from functioning independently, appropriately, and effectively in an age-appropriate manner. We use the criteria in part A mainly to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of children under age 18. If those criteria do not apply, we may use the criteria in part A.

When we published the revised adult mental disorders listings in August 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established a date of August 28, 1988, on which the listings would no longer be effective unless extended by the Secretary or revised and promulgated again. Subsequently, we issued a number of final rules extending the expiration date of the adult mental disorders listings. The last was published on August 23, 1993 (58 FR 44444) and provided that the listings for adult mental disorders would no longer be effective on August 28, 1994. Also, on July 18, 1991, we published a notice of proposed rulemaking (NPRM) (56 FR 33130) that included proposed revisions to those listings. We will publish any changes to the listings based on that NPRM in a subsequent final rule.

In this final regulation, we are extending for one year, to August 28, 1995, the date on which the adult mental disorders listings will no longer be effective. We believe that the requirements in these listings are still valid for our program purposes. As noted above, we use the listings at the third step of the sequential evaluation process. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is equivalent in severity to an impairment in the listings, we will find that the individual is disabled without completing the remaining steps of the sequential evaluation process. We do not use the listings to find that an individual is not disabled. Individuals whose impairments do not meet or equal the criteria of the listings receive individualized assessments at the subsequent steps of the sequential evaluation process.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the NPRM and public comment procedures in this case. Good cause exists because this regulation only extends the date on which the adult mental disorders listings will no longer be effective and makes no substantive changes to those listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing these changes to our regulations as a final rule.

Executive Order (E.O.) 12866

The Office of Management and Budget has reviewed this rule and determined it does not meet the criteria for a significant regulatory action under E.O. 12866.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

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

Dated: June 27, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 25, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

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

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising item 13 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

13. Mental Disorders (12.00): August 28, 1995.

* * * * *

3. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the first paragraph of 12.00 Mental Disorders to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1995, unless extended by the Secretary or revised and promulgated again.

* * * * *

[FR Doc. 94–19891 Filed 8–15–94: 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Tiamulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of a supplemental new animal drug application (NADA) filed by Fermenta Animal Health Co. The supplemental NADA provides for the use of tiamulin (Denagard®) Type A medicated article to make a Type C medicated feed used for the treatment of swine dysentery.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, is the sponsor of NADA 139–472, which was approved on July 17, 1987 (52 FR 26955), for the use of tiamulin Type A medicated articles in the preparation of Type C medicated swine feeds. As first approved, the Type C medicated feed containing 35 grams per ton (g/t) of tiamulin could be used to control swine dysentery. The Type C medicated feed containing 10 g of tiamulin per ton could be used for increased rate of weight gain from weaning to 56.70 kilograms (kg) (125 pounds (lb)), which was later approved to 113.40 kg (250 lb) on October 6, 1988 (53 FR 39257). The sponsor has submitted a supplemental application providing for the use of tiamulin Type A medicated article containing 5, 10, or 113.4 g/lb of tiamulin hydrogen fumarate to make a Type C medicated swine feed containing 200 g/t of tiamulin for the treatment of swine dysentery.

The supplemental NADA is approved as of July 7, 1994, and the regulations are amended by modifying § 558.600 (21 CFR 558.600) to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, the regulation is amended by modifying the genera "*Treponema*" to include the currently scientifically accepted genera name "*Serpulina.*"

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years exclusivity beginning July 7, 1994, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted by the applicant. The 3 years of marketing exclusivity applies only to the new claim "for treatment of swine dysentery" for which the supplemental application was approved.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 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, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.600 Tiamulin is amended in paragraph (c)(1)(i) by removing the word "*Treponema*" and adding in its place the words "*Serpulina (Treponema)*" and by adding new paragraph (c)(3) to read as follows:

§ 558.600 Tiamulin.

* * * * *

(c) * * *

(3) *Amount.* 200 grams of tiamulin per ton.

(i) *Indications for use.* Treatment of swine dysentery associated with *Serpulina (Treponema) hyodysenteriae* susceptible to tiamulin.

(ii) *Limitations.* Feed continuously as the sole feed for 14 consecutive days. Withdraw feed 7 days before slaughter. Not for use in swine over 113.40 kilograms (250 pounds) body weight. Use as the only source of tiamulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., monensin, lasalocid, narasin, semduramicin, or salinomycin) as adverse reactions may occur.

Dated: August 8, 1994.

Robert C. Livingston,

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

[FR Doc. 94–19935 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Ketamine Hydrochloride Injection, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by American Veterinary Products, Inc. The ANADA provides for intramuscular use of ketamine hydrochloride injection in cats for restraint, or as the sole anesthetic agent for diagnostic or minor, brief, surgical procedures that do not require skeletal muscle relaxation, and in subhuman primates for restraint.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Charles W. Francis, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: American Veterinary Products, Inc., 749 South Lemay, suite A3–231, Fort Collins, CO 80524, filed ANADA 200–073 which provides for intramuscular use of Ketamine Hydrochloride Injection, USP, in cats for restraint, or as the sole anesthetic agent for diagnostic or minor, brief, surgical procedures that do not require skeletal muscle relaxation, and in subhuman primates for restraint. The drug is limited to use by or on the order of a licensed veterinarian.

American Veterinary Products' ANADA 200–073 for Ketamine Hydrochloride Injection, USP, is approved as a generic copy of Fort Dodge's NADA 045–290 for Vetalar®/ Ketaset® (ketamine hydrochloride injection, USP). The ANADA is approved as of July 21, 1994, and the regulations are amended by revising 21 CFR 522.1222a(c)(1) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, American Veterinary Products, Inc., has not previously been listed in 21 CFR 510.600(c)(1) and (c)(2) as sponsor of an approved application. That section is amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 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, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20855, between 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects

21 CFR Part 510

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

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 parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by adding alphabetically a new entry for American Vetrinary Products, Inc., and in the table in paragraph (c)(2) by adding numerically a new entry for "045984" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	*
American Veterinary Products, Inc., 749 South Lemay, Suite A3–231, Fort Collins, CO 80524	045984
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
*	* * * *
045984	American Veterinary Products, Inc., 749 South Lemay, Suite A3–231, Fort Collins, CO 80524.
*	* * * *

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: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1222a is amended by revising paragraph (c) to read as follows:

§ 522.1222a Ketamine hydrochloride injection.

* * * * *

(c) Sponsors. (1) See Nos. 000856, 057319, and 045984 in § 510.600(c) of this chapter.

* * * * *

Dated: August 8, 1994.

Richard H. Teske,

Deputy Director, Premarket Review, Center for Veterinary Medicine.

[FR Doc. 94–20066 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Dihydrostreptomycin

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 Pfizer, Inc. The supplement provides for revised tolerances for residues of dihydrostreptomycin in edible animal tissues.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 65–483 that provides for revising tolerances for residues of dihydrostreptomycin in uncooked, edible tissues of cattle and swine, in milk from dairy animals, and in any food in which such milk is used. A zero tolerance level was established when the drug was originally approved on February 18, 1954. A zero tolerance affirmed that no detectable residues of the new animal drug were permissible in edible tissues of treated animals when the tissues were assayed using available analytical methods.

As analytical technology improved, advanced methods were developed that

were more sensitive and capable of measuring progressively smaller amounts of residues in tissues. FDA adopted the concept of maximum negligible residues to reflect the lower level of quantitative sensitivity of the official regulatory analytical method. This concept was later modified to consider the consumption levels of various edible tissues.

In addition, dihydrostreptomycin has been approved for use in several injectable and intramammary products used for treating bovine, porcine, equine, and canine species. Where tolerances for use in food animals would have been appropriate, those tolerances were not established because of the existing zero level. At this time, tolerances for residues in those species are established.

FDA has determined that a revision of the tolerance from zero to 0.125 parts per million (ppm) in milk, and 2.0 ppm in kidney and 0.5 ppm in all other tissues of cattle and swine is appropriate. The new tolerance reflects the levels that would have been established when the drug was originally approved if the analytical methods had been more sensitive. No new toxicity data were submitted. Levels of 2.0 ppm in kidney, 0.5 ppm in all other edible tissues, and 0.125 ppm in milk reflect the levels that FDA considers to be safe and the residue levels that the U.S. Department of Agriculture has been monitoring for a number of years.

The supplement is approved as of July 20, 1994, and the regulations in 21 CFR 556.200 are amended to reflect the new tolerance levels.

The approval of this supplement did not require the submission of new data and information. Therefore, a freedom of information summary under 21 CFR part 20 and 21 CFR 514.11(e)(2) was not required. Approval of the supplement is based on the information submitted with the original NADA.

The agency has determined under 21 CFR 25.24(a)(9) 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 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 part 556 is 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: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.200 is revised to read as follows:

§ 556.200 Dihydrostreptomycin.

Tolerances are established for residues of dihydrostreptomycin in uncooked, edible tissues of cattle and swine of 2.0 parts per million (ppm) in kidney and 0.5 ppm in other tissues, and 0.125 ppm in milk.

Dated: August 9, 1994.

Robert C. Livingston,

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

[FR Doc. 94–19985 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

31 CFR Part 605

[T.D. BEP–3]

Regulations Governing Conduct in Bureau of Engraving and Printing Buildings and on the Grounds in Washington, DC and Fort Worth, TX

AGENCY: Bureau of Engraving and Printing (BEP), Treasury.

ACTION: Final rule.

SUMMARY: This final rule is amending the provisions of the regulations Governing Conduct on Bureau of Engraving and Printing Building and Grounds and Bureau of Engraving and Printing Annex Building and Grounds. The existing regulations apply only to the BEP Buildings and grounds in Washington, DC. On April 26, 1991, the Secretary of the Treasury dedicated and officially opened a new BEP facility in Fort Worth, Texas, which is hereinafter known as the Western Currency Facility. This final rule modifies the existing regulations to include the BEP Western Currency Facility Buildings and Grounds located in Fort Worth, Texas.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Troy Coggins, Office of Management Services, Bureau of Engraving and Printing, Room 321–7A, 14th and C Streets SW., Washington, DC 20228, (202) 874–3548.

SUPPLEMENTARY INFORMATION: The Bureau of Engraving and Printing's Western Currency Facility in Fort Worth, Texas is included in 31 CFR part 605 along with the BEP properties located in Washington, DC. Title 5 of the United States Code, Section 301; delegation of authority from the Administrator of the General Services Administration, dated December 3, 1992; and Treasury delegation of authority from the Assistant Secretary (Management), dated February 4, 1993, give the Director, BEP, overall authority to appoint special policemen and to make all needful rules and regulations for the protection of BEP's Buildings and grounds in Washington, DC, and Fort Worth, Texas. The language in 31 CFR part 605 now recognizes special police and not guards as specified in the former language of the regulations. Additionally, closed circuit television is used instead of video surveillance in the language of the regulations, and the language of the regulations related to access to BEP has been expanded to be more descriptive. Moreover, the provisions related to penalties and other law has been expanded to be more descriptive.

Executive Order 12866

Because this rule relates to agency organization and management, it is not subject to Executive Order 12866, section 3(d)(3).

Administrative Procedure Act

Because this Treasury decision relates to agency organization and management and is procedural in nature, notice and public procedure and a delayed effective date are inapplicable pursuant to 5 United States Code, Section 553(a)(2).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because no requirement to collect information is contemplated.

Drafting Information

The principal author of this document is Troy Coggins, Office of Management Services, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 605

Federal buildings and facilities.

31 CFR part 605 is revised to read as follows:

PART 605—REGULATIONS GOVERNING CONDUCT IN BUREAU OF ENGRAVING AND PRINTING BUILDINGS AND ON THE GROUNDS IN WASHINGTON, DC AND FORT WORTH, TEXAS

Authority: 5 U.S.C. 301; Delegation, Administrator, General Services, dated December 3, 1992; Treasury Delegation, Assistant Secretary (Management), dated February 4, 1993.

§ 605.1 Conduct on Bureau of Engraving and Printing property.

(a) *Applicability.* These regulations apply to the Buildings and grounds of the Bureau of Engraving and Printing located in Washington, DC at 14th and C Streets SW., and in Fort Worth, Texas, at 9000 Blue Mound Road, and to all persons entering in or on such property. Unless otherwise stated herein, the Bureau of Engraving and Printing Buildings and grounds shall be referred to in these regulations as the "property." It is the responsibility of the occupant agencies to require observance of the regulations in this part by their employees.

(b) *Limited access.* (1) The property shall, in general, be closed to the public. Except as specified in this subsection, access is limited to Bureau of Engraving and Printing (BEP) employees and those individuals having official business with the BEP.

(2) Public tours of the facilities are available during authorized hours, or during such other times as the Director may prescribe.

(3) Limited areas of the premises may be open to individuals, authorized by the Director, by prior arrangement on infrequent occasions that are announced in advance.

(4) All persons entering the property, except for the public areas specified in paragraph (b)(2) of this section, may be required to present suitable identification and may be required to sign entry logs or registers.

(5) All persons entering the property may be subjected to screening by weapons detection devices and shall submit to such screening upon request as a condition of entrance.

(6) All persons entering the property may be subjected to inspections of their personal handbags, briefcases, and other handheld articles.

(7) In the event of emergency situations, access to the property may be more tightly controlled and restricted.

(8) Any entrance onto the property without official permission is prohibited.

(c) *Recording presence.* All persons entering the property may be monitored by means of closed circuit television. Most internal areas of the property, especially production areas, are continuously monitored by closed circuit television. Any video image from the closed circuit television systems may be recorded for later use as needed.

(d) *Preservation of property.* It shall be unlawful for any person without proper authority to willfully destroy, damage, deface, or remove property or any part thereof or any furnishings therein.

(e) *Compliance with signs and directions.* Persons in and on the property shall comply with the instructions of BEP Special Police, other authorized officials, and posted signs or notices.

(f) *Nuisances.* The use of loud, abusive, or profane language, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or property, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other disorderly conduct on the property is prohibited. The throwing of any articles of any kind in, upon, or from the property and climbing upon any part thereof is prohibited.

(g) *Gambling.* (1) Participating in games for money or other property, the operation of gambling devices, the conduct of a lottery or pool, the selling or purchasing of numbers, tickets, or any other gambling in or on the property is prohibited.

(2) Possession in or on the property of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the Director or his delegate, shall be prima facie evidence that there is participation in an illegal form of gambling in or on such property.

(h) *Intoxicating beverages, narcotics, and drugs.* Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of intoxicating beverages, narcotics, hallucinogenic or dangerous drugs, or marijuana, or the consumption of such beverages or the use of such drugs or marijuana in or on the property is prohibited. Intoxicants, nonprescription narcotics, and other controlled substances (21 CFR part 1308) are prohibited on the property.

(i) *Soliciting, vending, debt collection, and distribution of handbills.* The unauthorized soliciting of alms and contributions, the commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts other than as provided by law, in or on the property is prohibited. This rule does not apply to BEP concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval from the Director or his delegate.

(j) *Photographs.* The taking of photographs on the property is prohibited, without the written permission of the Director. Title 18 United States Code, Section 474 provides, in part, that whoever photographs any obligation or other security of the United States, or any part thereof, shall be fined not more than $5,000 or imprisoned not more than 15 years, or both.

(k) *Dogs and other animals.* Dogs and other animals, except seeing-eye dogs, shall not be brought upon the property for other than official purposes.

(l) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of BEP Special Police and all posted traffic signs.

(2) The blocking of entrances, driveways, walks, loading platforms, fire hydrants, or standpipes in or on the property is prohibited.

(3) Parking in or on the property is not allowed without a permit or specific authority. Parking without authority, parking in unauthorized locations or in locations reserved for other persons or continuously in excess of 8 hours without permission, or contrary to the direction of BEP Special Police or of posted signs is prohibited.

(4) This subsection may be supplemented from time to time, with the approval of the Director or his delegate, by the issuance and posting of such specific traffic directives as may be required and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

(m) *Weapons and explosives.* No person while on the property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes. According to 18 United States Code, Section 930, "dangerous weapon" means "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or readily capable of, causing death or serious bodily injury . . ."

(n) *Penalties and other law.* (1) Violations of this part shall be punishable by a fine of not more than

$50 or imprisonment of not more than 30 days, or both in accordance with 40 United States Code, Section 318c.

(2) Violations of 18 United States Code, Section 930 (dangerous weapon clause) shall be punishable by a fine of $100,000 or imprisonment for not more than a year, or both, unless there is intent to commit a crime with the weapon, in which case the punishment shall be a fine of $250,000 or imprisonment for not more than five years, or both.

(3) Nothing contained in this part shall be construed to abrogate any other Federal, District of Columbia, or Texas law or regulations, or any Tarrant County ordinance applicable to the property.

Peter H. Daly,

Director.

Approved:

Mary Ellen Withrow,

Treasurer of the United States.

[FR Doc. 94–20059 Filed 8–15–94; 8:45 am]

BILLING CODE 4840–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5052–8]

Florida; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Florida's revisions consist of the provisions contained in the rules promulgated between July 1, 1990, and June 30, 1992, otherwise known as RCRA Cluster I & II. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that the Florida hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revisions is available for public review and comment.

DATES: Final authorization for Florida's program revisions shall be effective October 17, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business, September 15, 1994.

ADDRESSES: Written comments should be sent to A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Divison, USEPA, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, phone (904) 488–0300; USEPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. Florida

Florida initially received final authorization for its base RCRA program effective on February 12, 1985, (50 FR 3908, January 29, 1985). Florida received authorization for revisions to its program on April 6, 1992, for Non-HSWA III, IV, and V, and on January 10, 1994 for HSWA I without Corrective Action. Today, Florida is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until October 17, 1994. Copies of Florida's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Florida's program revisions shall become effective October 17, 1994. Unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the following Federal requirements.

Checklist	Description	FR date and page	Florida rule
80	Toxicity Characteristic; Hydrocarbon Recovery Operations	10/5/90, 55 FR 40834; 2/1/91, 56 FR 3978; 4/2/91, 56 FR 13406.	17–730.030(1) F.A.C. 403.72(1) F.S.
81	Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listing (FO37 and FO38).	11/2/90, 55 FR 46354; 12/17/90, 55 FR 51707.	17–730.030(1), F.A.C. 403.72(1) F.S.
82	Wood Preserving Listings	12/6/90, 55 FR 50450 ..	17–730.020, 030,160,180 & 220 F.A.C. 403.704,721, & 722 F.S.
83	Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments.	1/31/91, 56 FR 3864	17–730.030, 160, & 183 F.A.C. 403.72, & 721, F.S.
84	Toxicity Characteristic; Chlorofluorocarbon Refrigerants	2/13/91, 56 FR 5910	17–730.030(1) F.A.C. 403.72(1), F.S.
86	Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment.	2/25/91, 56 FR 7567	17–730.030(1) F.A.C. 403.72(1), F.S.
87	Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	4/26/91, 56 FR 19290 ..	17–730.180, & 220 F.A.C. 403.087, 721, & 722 F.S.
88	Administrative Stay for Portions of the KO69 Listing	5/1/91, 56 FR 19951	17–730.030 F.A.C. 403.71(1) F.S.
89	Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (FO37 and FO38).	5/13/91, 56 FR 21955 ..	17–730.030(1) F.A.C. 403.72(1) F.S.
90	Mining Waste Exclusion III	6/13/91, 56 FR 27300 ..	17–730.030(1), F.A.C. 403.72(1), F.S.
91	Administrative Stay for FO32, FO34, and FO35 Listings	6/13/91, 56 FR 27332 ..	17–730.030, 180, F.A.C. 403.72, & 721 F.S.
92	Wood Preserving Listings: Technical Corrections	7/1/91, 56 FR 30192	17–730.030, 160, 180, & 220 F.A.C. 403.72, 721, 704, & 722, F.S.
95	Land Disposal Restrictions for Electric Arc Furnace Dust (KO61)	8/19/91, 56 FR 41164 ..	17–730.030, & 183 F.A.C. 403.72, & 721 F.S.
97	Exports of Hazardous Waste; Technical Correction	9/4/91, 56 FR 43704	17–730.160 F.A.C. 403.721(3), F.S.
99	Amendments to Interim Status Standards for Downgradient Ground Water Monitoring Well Locations.	12/23/91, 56 FR 66365	17–730.020, & 180, F.A.C. 403.704, & 721, F.S.
100	Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units.	1/29/92, 57 FR 3462	17–730.020, 180, & 220, F.A.C. 403.721, & 722, F.S.
101	Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable.	2/18/92, 57 FR 5859	17–730.180 (1) F.A.C. 403.721 F.S.
102	Second Correction to the Third Third Land Disposal Restrictions	3/6/92, 57 FR 8086	17–730.180, & 183, F.A.C. 403.721, F.S.
103	Hazardous Debris Case-by-Case Capacity Variance	5/15/92, 57 FR 20766 ..	17–730.83, F.A.C. 403.721, F.S.
106	Lead-bearing Hazardous Materials Case-by-Case Capacity Variance	6/26/92, 57 FR 28628 ..	17–730.183, F.A.C. 403.721, F.S.
108	Toxicity Characteristics Revisions: Technical Corrections	7/10/92, 57 FR 30657 ..	17–730.030, & 180, F.A.C. 403.72, & 721 F.S.
117B	Toxicity Characteristic Amendment	6/1/92, 57 FR 23062	17–730.030, F.A.C. 403.72(1), F.S.
120	Wood Preserving; Amendments to Listings and Technical Requirements.	12/24/92, 57 FR 61492	17–730.030, & 180 F.A.C. 403.72, & 721, F.S.

Note: The January 31, 1991, and the July 8, 1987, optional amendments to 40 CFR 270.42 are not adopted by Florida. Rule 17–730.290(1)(d), F.A.C., states that the Department may require permit modifications for the causes set forth in 40 CFR 270.42.

C. Decision

I conclude that Florida's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised, except where otherwise noted.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this document. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: August 8, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–20040 Filed 8–15–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AC31

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention. The countries participating in this treaty, including the United States, have adopted species amendments to Appendices I and II. The United States did not enter a reservation on any of these listing amendments approved at the eighth meeting of the Conference of the Parties. This document incorporates these amendments into the U.S. Fish and Wildlife Service's regulations implementing the Convention.

DATES: The amendments set forth in this rule entered into effect and became enforceable on June 11, 1992, under the terms of the Convention. Therefore, this rule is effective August 16, 1994.

ADDRESSES: Please send correspondence concerning this document to Chief, Office of Scientific Authority; Mail stop: Room 725, Arlington Square Building; U.S. Fish and Wildlife Service; 1849 C St., NW.; Washington, DC 20240; fax number 703–358–2276. Express and messenger deliveries should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Materials received will be available for public inspection by appointment, from 8:00 a.m. to 4:00 p.m. Monday through Friday at the above address in Arlington, Virginia (room 750).

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, at telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Their inclusion in Appendix I or II is by agreement of CITES Party countries. Appendix I include species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (*e.g.*, because of difficulty in distinguishing specimens of the currently or potentially threatened species from the specimens of other species). Appendix III includes species that any Party country unilaterally designates as being subject to regulation within its jurisdiction for purposes of restricting or preventing exploitation, and for which cooperation of other Parties is needed to control trade.

Any CITES Party may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of proposals must be communicated to the CITES Secretariat at least 150 days before a meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate responses to all Parties no later than 30 days before the meeting. Amendments are adopted by consensus or a two-thirds majority of the Parties present and voting.

Actions of the Parties

The eighth meeting of the Conference of the Parties to CITES was held on March 2–13, 1992, in Kyoto, Japan. At the meeting (COP8), the Parties considered 81 different proposals to amend the appendices for animals and 27 different proposals for plants. The 108 proposals were described in earlier **Federal Register** notice; and addressed in the **Federal Register** on March 4, 1992, for proposals submitted by the United States (57 FR 7719) and by other Parties (57 FR 7713). the proposals that were approved by this Conference of the Parties were announced in a May 13, 1993, **Federal Register** notice (57 FR 20443); note this clarifying correction to 57 FR 20445, that the *Anthracoceros* spp. (hornbills) also were proposed for addition to Appendix II by the Netherlands (and approved). As also announced in that May 13, 1992, notice, some proposals were withdrawn by their proponents or rejected by the Parties.

That notice (57 FR 20443) requested comments from the public on whether the U.S. Fish and Wildlife Service (Service) should recommend that the United States enter reservations on any of the listing amendments. The effect of a reservation would be to exempt this country from completely implementing the Convention for the particular species. More comprehensive discussions of any practical effects of entering a reservation and reasons for or against entering reservations are contained in November 22, 1985, and December 15, 1989, **Federal Register** notices (50 FR 48212 and 54 FR 51432, respectively). Changes to the CITES appendices as a result of the eighth meeting of the Conference of the Parties that are incorporated into the U.S. *Code of Federal Regulations* are printed as the conclusion of this notice.

Related Considerations

Namibia and Zimbabwe proposed to transfer the cheetak (*Acinonyx jubatus*) populations of Botswana, Malawi, Namibia, Zambia, and Zimbabwe from Appendix I to Appendix II, with export quotas. In the March 4, 1992, **Federal Register** (57 FR 7713), the United States opposed this amendment, since the Service had not received the proponents' supporting statement from the CITES Secretariat prior to COP8. The proposal was redrafted at COP8 as a resolution [see Doc. 8.22 (Rev.)] retaining the species in Appendix I and establishing the following quotas (for trophies and skins: 2 per person): Botswana, 5; Namibia, 100; and Zimbabwe, 50. However, such a resolution was deemed to be unnecessary, and the quotas have been reflected in the Secretariat's annotations to the appendices.

The original proposal to transfer the sub-Saharana population of leopards (*Panthera pardus*) from Appendix I to appendix II, with export quotas, was redrafted as a revision of resolution Conf. 7.7, with the quotas (for trophies and skins: 2 per person) increased for Malawi (50) and South Africa (75), and initiated (new quota) for Namibia (100). the Service supports the continuation of this quota system for leopard trophies

and skins for personal use as previously provided for in resolution Conf. 7.7 and now in Conf. 8.10.

Resolution Conf. 8.18 adopted a nomenclatorial reference as a guideline for cacti (Cactaceae); therefore, several less familiar names are added to the existing listings. Also, by an amendment at COP5 and Resolution Conf. 6.18, the flasked artificially propagated seedlings of all Appendix II species are excluded from regulation. Resolution Conf. 8.17(c), by interpretation of CITES Article VII(4) and Article I(b)(iii), exempts the flasked artificially propagated seedlings of Appendix I orchid species (details are in the March 4, 1992, **Federal Register**; 57 FR 7774). A subsequent postal-procedures amendment also addresses this topic (details are in the November 6, 1992, **Federal Register**; 57 FR 53090). All the flasked artificially propagated orchid seedlings (Orchidaceae) thus are not regulated by CITES.

Comments Received and U.S. Decisions

The Service received 26 public comments in response to the May 13, 1992, **Federal Register** notice: one requested that the United States enter a reservation on the listing of the American black bear (*Ursus americanus*); one requested the entering of a reservation on the listing of the paddlefish (*Polyodon spathula*); and 24 expressed concern over the permitting consequence for pre-CITES specimens from the listing of Brazilian rosewood (*Dalbergia nigra*).

The International Association of Fish and Wildlife Agencies urged the United States to take a reservation on the listing of the American black bear in Appendix II, which had been for reasons of similarity of appearance [CITES Article II(2)(b)]. At the eighth meeting of the Conference of the Parties to CITES, the other Party countries recognized that the North American black bear populations are not threatened by trade, but the sale of undocumented gall bladders threatens the existence of Asian bear species that are listed in Appendix I. With either an Appendix II or Appendix III listing of the American black bear, all the parts of bears in international trade require CITES documentation, thus eliminating undocumented parts from legitimately entering the trade. Although the U.S. delegation felt that Canada's previous listing of this species in Appendix III was adequate, the action by the Parties in listing this black bear in Appendix II may help to reduce the illegal trade in the similar-appearing parts of endangered bears.

Former Congressman Ron Marlenee of Montana requested that the United States enter a reservation on the listing of the paddlefish in Appendix II. He contended that the listing would seriously jeopardize a non-profit paddlefish roe operation in Montana. The U.S. Fish and Wildlife Service's North Central Regional Office (Region 6) had prepared a proposal to add this species to Appendix I of CITES. The United States submitted the proposal to the CITES Secretariat to include the paddlefish in Appendix I, but with a notation that the Service was seeking additional information, and might revise the proposal to recommend listing in Appendix II. The United States ultimately did change to propose that the paddlefish be included in Appendix II, inasmuch as an Appendix II listing allows for legitimate exports determined not to be detrimental to the survival of the species, yet imposes the same penalties for violations of the requirements for export from the United States, and establishes the same trade-reporting conditions as an Appendix I listing.

The Service received 24 comments within the comment period about Brazilian rosewood (*Dalbergia nigra*). Nearly all supported the listing of this species in Appendix I, and none requested a reservation, but all expressed concern about CITES regulation of the already acquired wood of this tree presently embodied in musical instruments, especially guitars. The commenters were from the music industry (including associations, periodical publishers, a computer bulletin-board network, *etc.*); dealers especially in vintage guitars and including guitar-show producers; and manufacturers of stringed musical instruments (luthiers), especially of guitars.

CITES provides a personal-effects exemption for such items that an international traveler exports and then imports when returning home, although it may be useful to declare the item to U.S. Customs at export to facilitate its re-entry. First, as a precaution, travelers should determine whether the countries to which they are going allow this CITES exemption.

For international commercial trade (export and re-export), CITES requires certification that parts and derivatives of the species were acquired before June 11, 1992 (*i.e.*, that the wood is pre-Convention). Over the last several centuries and especially in this century (until 1970), most guitars (as well as several other fretted musical instruments such as banjos, basses, mandolins, and ukuleles) have been comprised of some to much Brazilian rosewood, and many of these musical instruments are in international commerce.

The Service reviewed Brazil's proposal to include *Dalbergia nigra* (the Brazilian rosewood) in Appendix I. The species occurs naturally only in fragmented populations in remnants of the Mata Atlântica (Atlantic Coast Tropical Rainforest) of Brazil. A substantial amount of new information and data on trade in the wood of this species were received from persons in the music industry. The United States continues to agree that the species in the wild needs strong conservation measures, and did not enter a reservation on the listing of the species in Appendix I. The United States has had experience in the pre-CITES certification of articles (including musical instruments) with elephant ivory, tortoise shell, or hard coral, and will continue to endeavor to make the pre-CITES certification process efficient.

Procedural Requirements

This **Federal Register** notice simply implements changes in the list of species in the Convention's appendices that have already been approved by the Conference of the Parties at their eighth meeting, and that the United States is bound to accept unless it entered reservations. The Service does not believe that implementation of any of these adopted amendments would be contrary to the interests or laws of the United States. The period of time during which the United States could have entered a reservation on any of these amendments ended on June 10, 1992. The Service did not recommend the entry of any reservations, and none were taken by the United States. Therefore, these amendments to the CITES Appendices have been in effect for the United States since June 11, 1992. This notice brings the information in 50 CFR 23.23(f) into agreement with the current species listings in the CITES appendices. Earlier **Federal Register** notices informed the public about these amendments and provided opportunity for comment on them, and they were included in a public meeting on May 26, 1992 (see the May 11, 1992, **Federal Register**, 57 FR 20126). Therefore, the Department of the Interior has determined that good cause exists for making this rule effective upon its date of publication [5 U.S.C. 553(d)]. Accordingly, paragraph (f) of § 23.23 of 50 CFR has been amended at the conclusion of this rule.

The Department has determined that amendments to the Convention's appendices, which result from actions of the Parties to the Convention, did not require the preparation of

Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601) does not apply to this listing process. This final rule does not contain information-collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

An editorial clarification for 50 CFR 23.23(f) under Class Aves (Birds) in the Order Psittaciformes (Parrots, *etc.*) emphasizes that *Psittacula krameri* (rose-ringed or ring-necked parakeet) remains in Appendix III and was not included in Appendix II in 1981 at the third meeting of the Conference of the Parties.

This document was prepared by Drs. Charles W. Dane, Richard M. Mitchell, and Bruce MacBryde, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Transportation, and Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, for the reasons set out in the preamble of this document, Part 23 of Title 50, *Code of Federal Regulations* is amended as follows:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 108; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

§ 23.23 [Amended]

2. Amend paragraph (f) of § 23.23 by adding to the list the following species or other groups of animals and plants, in alphabetical order under the appropriate taxonomic categories:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* * *		*
Order Carnivora:	Carnivores: Cats, Bears, *etc.*:		
* * *	* * *		*
Dusicyon (=*Cerdocyon*) *thous*	Crab-eating fox	II	6/11/92
* * *	* * *		*
Felis geoffroyi	Geoffroy's cat	I	2/4/77
* * *	* * *		*
Ursidae spp. (all species in family except those in App. I or with earlier date in App. II; includes *U. arctos* populations in former USSR countries.	Bears	II	6/11/92
* * *	* * *		*
U. arctos (populations of Bhutan, China, and Mongolia, except for subspecies with earlier date).	Asian brown bear	I	6/11/92
CLASS AVES:	BIRDS:		
* * *	* * *		*
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
* * *	* * *		*
Anas formosa	Baikal teal	II	6/11/92
* * *	* * *		*
Order Psitaciformes	Parrots, Parakeets, Macaws', Lories', etc.		
* * *	* * *		*
Cacatua goffini	Goffin's cockatoo	I	6/8/81
Cacatua haematuropygia	Red-vented cockatoo	I	6/8/81
* * *	* * *		*
Order Coraciiformes:	Hornbills, Kingfishers, Rollers, Bee-eaters, Motmots:		
Aceros spp. (except those in App. I or with earlier date in App. II).	Hornbills	II	6/11/92
* * *	* * *		*
Aceros nipalensis	Rufous-necked hornbill	I	6/11/92
Aceros subruficollis	Plain-pouched hornbill	I	6/11/92
Anorrhinus (includes *Ptilolaemus*) spp	Hornbills	II	6/11/92
Anthracoceros spp	Hornbills and Pied-hornbills	II	6/11/92
Buceros spp. (except those in App. I or with earlier dates in App. II).	Hornbills	II	6/11/92

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *		*
Penelopides spp	Hornbills	II	6/11/92
* * *	* * *		*
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets		
* * *	* * *		*
Pteroglossus aracari	Black-necked aracari	II	6/11/92
* * *	* * *		*
Pteroglossus viridis	Green aracari	II	6/11/92
* * *	* * *		*
Ramphastos toco	Toco toucan	II	6/11/92
Ramphastos tucanus	Red-billed toucan	II	6/11/92
Ramphastos vitellinus	Channel-billed toucan	II	6/11/92
* * *	* * *		*
CLASS REPTILIA:	REPTILES:		
* * *	* * *		*
Order Testudinata:	Turtles, Tortoises:		
* * *	* * *		*
Clemmys insculpta	Wood turtle	II	6/11/92
* * *	* * *		*
Order Squamata:	Lizards, Snakes:		
* * *	* * *		*
Corucia zebrata	Prehensile-tailed skink	II	6/11/92
* * *	* * *		*
Phrynosoma coronatum (except subspecies listed below)	Coastal horned lizard	II	6/11/92
* * *	* * *		*
Vipera wagneri	Wagner's viper	II	6/11/92
* * *	* * *		*
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
* * *	* * *		*
Polyodon spathula	Paddlefish	II	6/11/92
* * *	* * *		*
PHYLUM MOLLUSCA:	MOLLUSCS:		
* * *	* * *		*
CLASS Gastropoda:	Snails:		
* * *	* * *		*
Strombus gigas	Queen conch	II	6/11/92
* * *	* * *		*
PLANT KINGDOM:	PLANTS:		
* * *	* * *		*
Family Bromeliaceae:	Pineapple family:		
Tillandsia harrisii	Harris tillandsia	II	6/11/92
Tillandsia kammii	Kamm tillandsia	II	6/11/92
Tillandsia kautskyi	Kautsky tillandsia	II	6/11/92
Tillandsia mauryana	Maury tillandsia	II	6/11/92
Tillandsia sprengeliana	Sprengel tillandsia	II	6/11/92
Tillandsia sucrei	Sucre tillandsia	II	6/11/92
Tillandsia xerographica	Xeographic tillandsia	II	6/11/92
* * *	* * *		*
Family Cactaceae:	Cactus family:		
* * *	* * *		*
Ariocarpus spp. (includes *Neogomesia* sp. and *Roseocactus* spp.).	Living-rock cacti	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *	*	*
Discocactus spp	Discocacti	I	7/1/75
* * *	* * *	*	*
Melocactus conoideus	Conelike Turk's-cap cactus	I	7/1/75
Melocactus deinacanthus	Wonderfully bristled Turk's-cap cactus	I	7/1/75
Melocactus glaucescens	Wooly waxy-stemmed Turk's-cap cactus	I	7/1/75
Melocactus paucispinus	Few-spined Turk's-cap cactus	I	7/1/75
* * *	* * *	*	*
Turbinicarpus spp [includes *Gymnocactus* supp., most *Neolloydia* spp. (in sense of E.F. Anderson 1986), *Normanbokea* spp., and *Rapicatus* spp.].	Turbinicarps	I	7/1/75
* * *	* * *	*	*
Uebelmannia spp	Uebelmann cacti	I	7/1/75
* * *	* * *	*	*
Family Droseraceae:	Sundew family:		
* * *	* * *	*	*
Dionaea muscipula	Venus flytrap	II	6/11/92
* * *	* * *	*	*
Family Leguminosae (=Fabaceae):	Pea family:		
* * *	* * *	*	*
Dalbergia nigra	Brazilian rosewood	I	6/11/92
Pericopsis elata (including saw-logs, sawn wood, and veneers, but no other parts or derivatives —*i.e.*, products).	Afrormosia	II	6/11/92
* * *	* * *	*	*
Family Meliaceae:	Mahogany family:		
* * *	* * *	*	*
Swietenia mahagoni (including saw-logs, sawn wood, and veneers, but no other parts or derivatives—i.e., products).	Carribean mahogany	II	6/11/92
* * *	* * *	*	*
Family Zygophyllaceae:	Creosote-bush family:		
Guaiacum officinale	Commoner lignum vitae	II	6/11/92
* * *	* * *	*	*

3. Amend paragraph (f) of § 23.23 by revising the present entries for particular species or other groups of animals and plants in the list to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

(f) * * *

* * * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* * *	*	*
Order Carnivora:	Carnivores: Cats, Bears, *etc.*:		
* * *	* * *	*	*
Felidae spp. (all those in family except *Felis catus* or those in App. I or with earlier date in App. II).	Cats (not including House cat)	II	2/4/77
* * *	* * *	*	*
Felis (=Lynx) rufa escuinapae	Mexican bobcat	II	7/1/75
* * *	* * *	*	*
Ursus americanus	American black bear	II	9/18/91

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *		*
U. arctos (Asian populations, including populations of Iran, Iraq, Syria, and Turkey, except populations and subspecies in App. I, and populations in former USSR countries which were listed 6/11/92).	Brown bear	II	1/18/90
U. arctos (European populations except populations in former USSR countries which were listed 6/11/92).	European brown bear		7/29/83
U. arctos (Italian population)	Brown bear	II	7/1/78
* * *	* * *		*
Order Artiodactyla:	Even-toed ungulates:		
* * *	* * *		*
Capra falconeri	Markhor	I	7/1/75
* * *	* * *		*
CLASS AVES:	BIRDS:		
* * *	* * *		*
Order Rheiformes:	Rheas:		
* * *	* * *		*
Rhea americana (except subspecies listed below)	Greater rhea, Common rhea	II	7/14/76
* * *	* * *		*
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories, *etc.*:		
All species in order except those in App. I or with earlier date in App. II, or *Psittacula krameri* in App. III, and excluding *Melopsittacus undulatus* and *Nymphicus hollandicus.*	All parrots and their relatives, unless in App. I or already in App. II, and also not the Rose-ringed parakeet in App. III, Budgerigar or Cockatiel.	II	6/6/81
* * *	* * *		*
Psittacula echo (=*P. krameri echo*)	Mauritius parakeet	I	7/1/75
Psittacula krameri	Rose-ringed parakeet, Ring-necked parakeet	III (Ghana)	2/26/76
* * *	* * *		*
Order Coraciiformes:	Hornbills, Kingfishers, Rollers, Bee-eaters, Motmots:		
* * *	* * *		*
Buceros bicornis	Great hornbill	I	7/1/75
* * *	* * *		*
Buceros (=*Rhinoplax*) *vigil*	Helmeted hornbill	I	7/1/75
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets:		
* * *	* * *		*
Ramphastos sulfuratus	Keel-billed toucan	II	4/23/81
* * *	* * *		*
CLASS REPTILA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
* * *	* * *		*
Crocodylus niloticus (populations of Madagascar, Somalia, South Africa, and Uganda subject to export quotas described by the CITES Secretariat).	Nile crocodile	II	7/1/75
Crocodylus niloticus (populations of Botswana, Ethiopia, Kenya, Malawi, Mozambique, Tanzania, Zambia, and Zimbabwe subject to ranching).	Nile crocodile	II	7/1/75
* * *	* * *		*
Osteolaemus tetraspis (except subspecies listed below) ..	Dwarf crocodile	I	2/4/77
* * *	* * *		*
Order Testudinata:	Turtles, Tortoises:		
* * *	* * *		*
Clemmys muhlenbergii	Bog turtle	I	7/1/75
* * *	* * *		*
PLANT KINGDOM:	PLANTS:		

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *	*	*
Family Araceae:	Arum family:		
Alocasia sanderiana	Sander's alocasia	II	7/1/75
* * *	* * *	*	*
Family Juglandaceae:	Walnut family:		
Oreomunnea (=Engelhardia) pterocarpa	Gavilán	II	7/1/75
* * *	* * *	*	*
Family Zingiberaceae:	Ginger family:		
Hedychium philippinense	Philippine garland flower	II	7/1/75
* * *	* * *	*	*

4. Amend paragraph (f) of § 23.23 by removing the present entries that are listed below for particular species, subspecies, and populations of animals and plants, and remove "Order Tubulidentata," "Order Atheriniformes," "Family Fagaceae," "Family Humiriaceae," and "Family Moraceae."

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* * *	*	*
Order Edentata:	Anteaters, Sloths, Armadillos:		
* * *	* * *	*	*
Tamandua tetradactyla chapadensis	Tamandua, Collared anteater	II	7/1/75
* * *	* * *	*	*
Order Pinnipedia:	Seals, Sea lions:		
Mirounga angustirostris	Northern elephant seal	II	7/1/75
* * *	* * *	*	*
Order Tubulidentata:	Aardvarks:		
Orycteropus afer	Aardvark	II	7/1/75
* * *	* * *	*	*
Order Artiodactyla:	Even-toed ungulates:		
* * *	* * *	*	*
Antilocapra americana mexicana	Mexican pronghorn	II	7/1/75
Antilocapra americana peninsularis	Baja pronghorn	I	7/1/75
Antilocapra americana sonoriensis	Sonoran pronghorn	I	7/1/75
* * *	* * *	*	*
Capra falconeri chialtanensis	Chialtan markhor	I	7/1/75
Capra falconeri jerdoni	Straight-horned markhor	I	7/1/75
Capra falconeri megaceros	Kabul markhor, Straight-horned markhor	I	7/1/75
* * *	* * *	*	*
Hippotragus equinus	Roan antelope	II	2/26/76
* * *	* * *	*	*
CLASS AVES:	BIRDS:		
* * *	* * *	*	*
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
* * *	* * *	*	*
Cygnus columbianus (=bewickii) jankowskii	Jankowski's swan	II	7/1/75
* * *	* * *	*	*
Order Galliformes:	Pheasants, Curassows, Megapodes, Hoatzins:		
* * *	* * *	*	*
Cyrtonyx montezumae mearnsi (Mexican population)	Mearn's harlequin quail	II	7/1/75
Cyrtonyx montezumae montezumae	Harlequin quail	II	7/1/75
* * *	* * *	*	*
Order Coraciiformes:	Hornbill, Kingfishers, Rollers, Bee-eaters, Motmots:		

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *	*	*
Buceros bicornis homrai	Great Indian hornbill, Great pied hornbill	I	7/1/75
* * *	* * *	*	*
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
* * *	* * *	*	*
Crocodylus cataphractus (except Congo population)	African slender-snouted crocodile	I	7/1/75
Crocodylus cataphractus (Congo population)	African slender-snouted crocodile	II	7/1/75
* * *	* * *	*	*
Osteolaemus tetraspis (Congo population)	Dwarf crocodile	II	2/4/77
* * *	* * *	*	*
CLASS OSTEICHTHYES:	BONY FISHES:		
* * *	* * *	*	*
Order Atheriniformes:	Livebearers:		
Cynolebias constanciae	Annual tropical killfish	II	7/1/75
Cynolebias marmoratus	Annual tropical killfish	II pe	7/1/75
Cynolebias minimus	Annual tropical killfish	II	7/1/75
Cynolebias opalescens	Annual tropical killfish	II pe	7/1/75
Cynolebias splendens	Annual tropical	II	7/1/75
* * *	* * *	*	*
PLANT KINGDOM:	PLANTS:		
* * *	* * *	*	*
Family Cactaceae:	Cactus family:		
* * *	* * *	*	*
Ariocarpus agavoides	Agave living-rock cactus	I	7/1/75
Ariocarpus scaphorostrus	Living-rock cactus	I	7/1/75
Ariocarpus trigonus	Chaute	I	7/1/75
* * *	* * *	*	*
Backebergia militaris	Teddy-bear cactus, Military cap	I	7/1/75
* * *	* * *	*	*
Echinomastus (=*Neolloydia*) *erectocentrus*		I	7/1/75
E. (=*Neolloydia*) *mariposensis*	Mariposa cactus	I	7/1/75
* * *	* * *	*	*
Nopalxochia (=*Lobeira*) *macdougallii*	MacDougall's cactus	I	7/1/75
* * *	* * *	*	*
Pediocactus papyracanthus	Gamma-grass cactus	I	7/1/75
* * *	* * *	*	*
Turbinicarpus (=*Neolloydia*) *laui*	Turbinicarpus	I	7/1/75
Turbinicarpus (=*Neolloydia*) *lophophoroides*	Turbinicarpus	I	7/1/75
Turbinicarpus (=*Neolloydia*) *pseudomacrochele*	Turbinicarpus	I	7/1/75
Turbinicarpus (=*Neolloydia*) *pseudopectinatus*	Turbinicarpus	I	7/1/75
Turbinicarpus (=*Neolloydia*) *schmiedickeanus*	Turbinicarpus	I	7/1/75
Turbinicarpus (=*Neolloydia*) *valdezianus*	Turbinicarpus	I	7/1/75
* * *	* * *	*	*
Family Fagaceae:	Beech family:		
Quercus copeyensis	Roble, Copy oak	II	7/1/75
* * *	* * *	*	*
Family Humiriaceae:	Humiria family:		
Vantanea barbourii	Ira chiricana	II	7/1/75
* * *	* * *	*	*
Family Leguminosae (=Fabaceae):	Pea family:		
Cynometra hemitomophylla	Guapinol negro	II	7/1/75
* * *	* * *	*	*
Tachigali versicolor	Caña fístula	II	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
* * *	* * *	*	*
Family Moraceae:	Mulberry family:		
Batocarpus costaricensis	Ojoche macho, Níspero colorado	II	7/1/75
* * *	* * *	*	*
Family Palmae (=Arecaceae):	Palm family:		
Areca ipot		II	7/1/75
* * *	* * *	*	*

5. Amend paragraph (f) of § 23.23 by adding to the list the following species or other groups of animals and plants, in alphabetical order under the appropriate taxonomic categories:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
MAMMALIA	MAMMALS		
* * *	* * *	*	*
Order Artiodactyla	Even-toed ungulates:		
* * *	* * *	*	*
Antilocapra ameriana (Mexican population)	Mexican pronghorn	I	7/1/75
* * *	* * *	*	*
Order Crocodylia:	Crocodiles, Alligators Caimans, Gavials:		
* * *	* * *	*	*
Crocodylus cataphractus	African slender-snouted crocodile	I	7/1/75
* * *	* * *	*	*
Family Cactacea:	Cactus family:		
* * *	* * *	*	*
Disocactus (=Lobeira, =Nopalxochia) macdougallii	MacDougall's cactus	I	7/1/75
* * *	* * *	*	*
Pachycereus (=Backebergia) militaris	Teddy-bear cactus, Military cap	I	7/1/75
* * *	* * *	*	*
Pediocactus (=Sclerocactus, =Toumeya) papyracanthus	Grama-grass cactus	I	7/1/75
* * *	* * *	*	*
Sclerocactus (=Echinomastus, Neolloydia) erectocentrus	Needle-spined pineapple cactus		7/1/75
* * *	* * *	*	*
Sclerocactus (=Echinomastus, =Neolloydia) mariposensis	Mariposa cactus	I	7/1/75

Dated: May 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–20050 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 59, No. 157
Tuesday, August 16, 1994

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections To Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) proposes to amend its regulations that describe the periods within which employees may make certain elections in regard to contributions to the Thrift Savings Plan (TSP) This amendment will establish a permanent schedule of TSP open seasons, thereby eliminating the regulatory requirement that the Board publish an advance notice in the **Federal Register** announcing the beginning and ending dates of each open season.

DATES: Written comments must be received on or before October 17, 1994.

ADDRESSES: Comments may be sent to David L. Hutner, Assistant General Counsel (Programs), Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: David L. Hutner at (202) 942–1661.

SUPPLEMENTARY INFORMATION: Each year, there are two open seasons during which participants may elect to commence contributions to the TSP, change the amount of their contributions or the allocation of their contributions among the TSP investment funds, or terminate contributions without forfeiting the ability to resume contributing during the next open season. The regulatory notice requirement for open seasons was established by the Board in 1987 shortly after the Thrift Savings Plan came into existence. At that time, it was not clear whether open seasons would occur at the same time and for the same duration each year. However, since then, there have been two open seasons each year: May 15–July 31 and November 15–January 31. The last month of each open season has been designated the "election period", which is defined in 5 CFR § 1600.1. Since the open seasons have not varied since 1988, the Board is now amending its regulations to establish a permanent schedule for the beginning and ending dates and to eliminate the requirement that an advance notice of each open season be published in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect Board procedures relating to the requirement to publish advance notice of each open season.

EO 12291

I certify that this is not a major rule.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1600

Employment benefit plans, Government employees, Retirement, Pensions.

Dated: August 10, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, part 1600 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1600—[AMENDED]

1. The authority citation for 5 CFR part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

2. Section 1600.2 is amended by revising paragraph (b) to read as follows:

§ 1600.2 Periods for making elections.

* * * * *

(b) *Subsequent open season.* An open season will begin on November 15 of each year and end on January 31 of the following year and another open will begin on May 15 of each year and end on July 31 of the same year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season shall be extended through the next business day.

* * * * *

[FR Doc. 94–20035 Filed 8–15–94; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064–AB50

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend its regulations to except loans which are fully secured by certain types of collateral from the general limit on "other purpose" loans to executive officers of insured nonmember banks. The proposed amendment parallels recent changes by the Board of Governors of the Federal Reserve System to that agency's regulations on insider loans.

DATES: Written comments must be received on or before October 17, 1994.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to room F–400, 1776 F Street, NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m. on business days [FAX number (202) 898–3838]. Comments will be available for inspection and photocopying in the FDIC's reading room, room 7118, 550 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Mark Mellon, Senior Attorney, Regulation and Legislation Section, Legal Division, (202) 898–3854, or Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 22(g) of the Federal Reserve Act (the FRA) (12 U.S.C. 375a) prohibits member banks from making extensions of credit to their executive officers except to the extent authorized by that section. Section 22(h) of the FRA (12 U.S.C. 375b) prohibits member banks from making extensions of credit to their executive officers, directors, principal shareholders, or to a related interest (any company or political or campaign committee that is controlled by an executive officer, director, or principal shareholder), except to the extent authorized by that section. Section 18(j)(2) of the Federal Deposit Insurance Act (the FDI Act) (12 U.S.C. 1828(j)(2)) provides that both sections 22(g) and 22(h) of the FRA are applicable to insured nonmember banks in the same manner and to the same extent as though they were member banks.

The FDIC regulation which implements sections 22(g) and 22(h) for insured nonmember banks is 12 CFR 337.3. Section 337.3(a) currently provides that insured nonmember banks are subject to the restrictions contained in Subpart A of 12 CFR Part 215, Regulation O (Regulation O), the regulations promulgated by the Board of Governors of the Federal Reserve System (the FRS) to implement sections 22(g) and 22(h) for member banks, to the same extent and to the same manner as though they were member banks, with the exception of §§ 215.5(b), 215.5(c)(3) and 215.11.

Section 22(g)(2) of the FRA provides that a loan secured by a first lien on a residence of an executive officer may be made in any amount. Section 22(g)(3) of the FRA provides that loans to finance the educations of executive officers' children may be made in any amount. These requirements are implemented respectively by 12 CFR 215.5(c) (1) and (2). Such loans do, however, count toward the general individual and aggregate lending limits applicable to executive officers, directors, principal shareholders, and their related interests under 12 CFR 215.4 of Regulation O. See 12 CFR 215.5(d)(2).

Section 22(g)(4) of the FRA provides that extensions of credit to an executive officer not otherwise specifically authorized by section 22(g) may be made "in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency". Pursuant to its authority under section 22(g)(4), the Board of Directors of the FDIC has set the lending limit on extensions of credit by insured nonmember banks to executive officers for any other purpose not specified in § 215.5(c)(1) and (2) of Regulation O at the higher of 2.5 percent of the bank's capital and unimpaired surplus but in no event more than $100,000. See 12 CFR 337.3(c)(2). The Board of Directors of the FDIC now proposes to except loans which are fully collateralized by certain categories of highly stable and liquid collateral from being counted toward the "other purpose" general lending limit.

II. The Proposal

The Board of Directors of the FDIC proposes to create an exception to the lending limit for other purpose loans to executive officers for those loans which are fully secured by:

(a) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(b) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(c) A perfected security interest in a segregated deposit account in the lending bank.

If the proposed exception is adopted, a loan to an executive officer of an insured nonmember bank which has been secured by any of the types of collateral listed above may be made in any amount and will not be subject to the limit for other purpose loans set forth in 12 CFR 337.3(c)(2). This exception will be in addition to the statutory exceptions to the other purpose lending limit for home mortgage loans and education loans.

It is the opinion of the Board of Directors of the FDIC that the creation of such an exception to the general lending limit on loans to executive officers of insured nonmember banks is consistent with safe and sound banking practices. This is because the Board of Directors believes that extensions of credit which have been collateralized in the manner described above pose a minimal risk of loss to a bank. The Board of Directors of the FDIC is also of the opinion that the proposed exception would not lend itself to abuse because the collateralized loans to executive directors would still continue to be subject to the requirement that the loan not be on more favorable terms than those afforded other borrowers (section 22(g)(1) of the FRA) and would still be subject to the prohibitions against preferential lending in section 22(h) of the FRA.

The proposed changes parallel changes recently made by the Board of Governors of the FRS to its regulations. See 59 FR 8831 (1994).[1] The Board of Directors is proposing to adopt the same exception to the limit for other purpose loans to executive officers that the Board of Governors of the FRS promulgated for member banks in order to put insured state nonmember banks on an equal footing with state member banks, thus avoiding disparity of treatment among banks based upon their membership, or lack of membership, in the Federal Reserve System.

As noted before, it is the responsibility of each federal banking agency under section 22(g)(4) to specify the limit on other purpose loans to executive officers of the depository institutions which are subject to a particular banking agency's supervision. The FDIC specifies the limit on other purpose loans to executive officers of insured nonmember banks in 12 CFR 337.3(c)(2). Prior to the most recent amendments to Regulation O, § 215.5(c)(3) specified the limit on other purpose loans to executive officers by member banks. 12 CFR 215.5(c)(3) was amended by the Board of Governors of the FRS to provide that a loan may be made by a member bank to one of its executive officers in any amount if it has been secured by certain types of collateral. The Board of Governors of the FRS concurrently redesignated the provision which sets forth the limit for other purpose loans by member banks to their executive officers as 12 CFR 215.5(c)(4). 59 FR at 8840–8841. In light of these regulatory changes by the FRS, the Board of Directors of the FDIC proposes to amend § 337.3 to cross-reference § 215.5(c)(4), along with § 215.5(c)(3), as one of the provisions of Regulation O which are inapplicable to insured nonmember banks.

III. Requests for Comment

The Board of Directors specifically requests comment from all interested parties as to whether it is appropriate

[1] Along with the new exception to the general lending limit on loans to executive officers, the Board of Governors of the FRS made a number of other substantive, technical and conforming changes to 12 CFR Part 215, Regulation O. These changes were effective on February 18, 1994. See 59 FR at 8831. These changes became applicable to insured nonmember banks on February 18, 1994, without any need for action on the part of the FDIC because insured nonmember banks are subject to the regulations of the FRS which implement section 22(g) and 22(h) of the FRA, with the exception of the provisions which implement section 22(g)(4). For a comprehensive discussion of these changes, see 59 FR at 8831–8837.

for the FDIC to establish an exception to the limit on other purpose loans to executive officers of insured nonmember banks for loans that have been collateralized in the manner described above.

The Board of Directors also specifically requests comment from all interested parties as to whether the amendments which the FDIC proposes are the most appropriate means to create an exception to the limit on other purpose loans to executive officers of insured nonmember banks. If a commenter should feel that there is a better alternative to the proposed amendments, the Board of Directors of the FDIC requests that the alternative be specifically described.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FDIC hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. If adopted, the rule will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Regulatory Flexibility Act.

The FDIC has reached this conclusion because the effect of the rule, if it is ultimately promulgated in its current form, will be to reduce the regulatory requirements that are imposed upon small depository institutions rather than to increase them. Small depository institutions will have greater freedom of action to extend credit to executive officers as a result of the proposed rule rather than less.

V. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

In consideration of the foregoing, the Board of Directors proposes to amend part 337 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—[AMENDED]

1. The authority citation for Part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1821(f), 1828(j)(2), 1831f, 1831f–1.

2. Section 337.3 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of insured nonmember banks.

(a) With the exception of 12 CFR 215.5(b), 215.5(c)(3), 215.5(c)(4), and 215.11, insured nonmember banks are subject to the restrictions contained in subpart A of Federal Reserve Board Regulation O (12 CFR part 215, subpart A) to the same extent and to the same manner as though they were member banks.

* * * * *

(c) * * *

(2) An insured nonmember bank is authorized to extend credit to any executive officer of the bank for any other purpose not specified in § 215.5(c)(1) and (2) of Federal Reserve Board Regulation O (12 CFR 215.5(c)(1) and (2)) if the aggregate amount of such other extensions of credit does not exceed at any one time the higher of 2.5 percent of the bank's capital and unimpaired surplus or $25,000 but in no event more than $100,000, provided, however, that no such extension of credit shall be subject to this limit if the extension of credit is secured by:

(i) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) A perfected security interest in a segregated deposit account in the lending bank.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of August, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–19953 Filed 8–15–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

RIN 1515–AB47

Test Programs

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by adding a new provision that would allow for test programs and procedures in general and, specifically, for purposes of implementing those Customs Modernization provisions of the North American Free Trade Agreement Implementation Act that provide for the National Customs Automation Program. The proposed regulation would allow the Commissioner of Customs to conduct limited test programs/procedures, which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise, and impose upon participants requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Durant, Director, Commercial Rulings Division, (202) 482–6990.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B

of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (section 414).

Section 631 of the Act provides Customs with direct statutory authority for full electronic processing of all Customs-related transactions. For each planned NCAP program component, Customs is required to prepare a separate implementation plan in consultation with the trade community, establish eligibility criteria for voluntary participation in the program, test the component, and transmit to Congress the implementation plan, testing results, and an evaluation report. The testing of any planned NCAP components would be conducted under carefully delineated circumstances—with objective measures of success or failure, a predetermined time frame, and a defined class of participants. Notice of any NCAP program component testing would be published in both the Customs Bulletin and the **Federal Register** and participants solicited.

In addition to testing planned NCAP components there are other areas of Customs-related transactions wherein Customs and the trade community could benefit from the valuable information that limited test programs/procedures could provide. Thus, Customs is proposing this regulation in order both to meet its obligations under the NCAP legislation and to provide itself with the ability to obtain information necessary to predict the effects of various policy options. If adopted, the regulation would allow the Commissioner of Customs to conduct limited test programs and procedures and allow certain eligible members of the public to participate on a voluntary basis. Also, because test programs could require exemptions from regulations in various parts of the Customs Regulations, *e.g.*, parts 113 (Customs bonds), 141 (entry of merchandise), 142 (entry process), 171 (fines, penalties, and forfeitures), 174 (protests), and 191 (drawback), participants would be subject to requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. Accordingly, pursuant to the Secretary's authority under section 624 of the Tariff Act of 1930 (19 U.S.C. 1624) to make such rules and regulations as may be necessary to carry out the provisions of the Tariff Act of 1930 and pursuant to the requirement set forth in section 413 of the Tariff Act of 1930 (19 U.S.C. 1413) that the Secretary test planned NCAP program components, it is proposed to amend the Customs Regulations at part 101 (19 CFR part 101) to allow the Commissioner of Customs to conduct limited test programs and procedures in general, as well as for purposes of implementing the NCAP provisions of the Act.

Discussion of Proposed Amendment

Customs proposes to amend part 101 of the Customs Regulations (19 CFR part 101) by adding a new § 101.9, which would allow the Commissioner of Customs to conduct limited test programs and procedures in general and for purposes of implementing NCAP program components, which may impose upon eligible participants requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. Those test programs/procedures related to the NCAP would be subject to certain time, scope, participation, and publication constraints, whereas, those test programs that are not related to the NCAP would be subject, in general, to constraints concerning time and scope only. However, because general test programs may affect the processing not only of passengers and carriers but also the importation of merchandise, Customs recognizes that the provisions of 19 U.S.C. 1484(a)(2)(C), as amended, require that, to the maximum extent practicable, the Secretary provide for the equal treatment of all importers of record of imported merchandise. Accordingly, the proposed regulation requires that notice be published in both the Customs Bulletin and the **Federal Register** before implementing those limited tests or procedures that involve merchandise.

In order to implement test programs and procedures in general (*i.e.*, tests that are designed to evaluate the effectiveness of new technology or operational procedures in the processing of passengers, carriers, or merchandise) paragraph (a) authorizes the Commissioner of Customs to provide for requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. Such different requirements will be limited in scope, time, and application as necessary to facilitate the conduct of the specified program or procedure. Where the test program or procedure could affect the processing of merchandise, however, not less than thirty days prior to implementing such test program or procedure a notice of the test program would be published in both the Customs Bulletin and the **Federal Register**, inviting public comments concerning the methodology of the test program or procedure, and which informs interested members of the public of the eligibility criteria for voluntary participation in the test program and the basis for selecting participants. Where the test program or procedure does not affect the importation of merchandise and is not required under the NCAP legislation, however, public notice would not be required.

In order to implement test programs and procedures for purposes of implementing NCAP program components, as described in section 411(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1411(a)(2)), paragraph (b) similarly authorizes the Commissioner of Customs to provide for requirements that may be different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. The publication requirement on tests of planned NCAP components is similar. Not less than 30 days prior to implementing any test program or procedure notice of the NCAP test would be published in both the Customs Bulletin and the **Federal Register** that invites public comments concerning the test program, and informs interested members of the public of the eligibility criteria for voluntary participation in the test program and the basis for selecting participants. Within a reasonable time following the completion of the test program or procedure a description of the results would be published in both the Customs Bulletin and the **Federal Register**.

Comments

Before adopting this proposed regulation as a final rule consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch,

Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., N.W., 4th floor, Washington, D.C.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Since the regulation proposed seeks to alleviate regulatory burdens rather than impose new ones, it does not constitute a "major rule" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and is, therefore, not subject to its provisions. Further, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Tests.

Amendments to the Regulations

For the reasons stated above, part 101 of the Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

Section 101.9 also issued under 19 U.S.C. 1411–1414.

2. It is proposed to amend part 101 by adding a new § 101.9 to read as follows:

§ 101.9 Test programs or procedures; alternate requirements.

(a) *General testing.* For purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. The imposition of any such different requirements shall be subject to the following conditions:

(1) *Defined purpose.* The test is limited in scope, time, and application to such relief as may be necessary to facilitate the conduct of a specified program or procedure;

(2) *Prior publication requirement.* For tests affecting the entry of merchandise, whenever practicable, notice shall be published in the **Federal Register** not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning the methodology of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants. For tests affecting the entry of passengers or carriers, no public notice is required.

(b) *NCAP testing.* For purposes of conducting an approved test program or procedure designed to evaluate planned components of the National Customs Automation Program (NCAP), as described in section 411(a)(2) of the Tariff Act of 1930 (19 U.S.C. 411), the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. In addition to the requirement of paragraph (a)(1) of this section, the imposition of any such different requirements shall be subject to the following conditions:

(1) *Prior publication requirement.* For tests affecting the NCAP, notice shall be published in the **Federal Register** not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning any aspect of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants; and,

(2) *Post publication requirement.* Within a reasonable time period following the completion of the test, a complete description of the results shall be published in both the **Federal Register** and the Customs Bulletin.

George J. Weise,

Commissioner of Customs.

Approved: August 5, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–20029 Filed 8–15–94; 8:45 am]

BILLING CODE 4820–02–P

19 CFR Part 191

Eliminate Notice of Exportation, Customs Form 7511, as Proof of Exportation for Drawback; Withdrawal

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws the proposed amendment to the Customs Regulations, which would have eliminated the requirement that the notice of exportation, Customs Form 7511, be submitted as proof of exportation for the purpose of obtaining drawback, and instead permitted the use of other documents generated internally in the course of trade to prove exportation. Customs has concluded that the retention of the notice of exportation is essential, especially in those circumstances where the drawback claimant is not the direct exporter, and the exporter refuses to provide its own documentary evidence to the claimant because of business confidentiality or the administrative cost of providing such supporting documents.

EFFECTIVE DATE: This withdrawal is effective on August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, (202–927–0916).

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax or fee. There are a number of different kinds of drawback authorized under law, including, for example, manufacturing drawback and unused merchandise drawback. In order to qualify for drawback, there must be an exportation or a destruction under Customs supervision. The statute providing for specific types of drawback is 19 U.S.C. 1313. Part 191, Customs Regulations (19 CFR part 191), contains the general regulations for drawback claims and specialized provisions for specific types of drawback claims.

The requirements for establishing the exportation of merchandise as part of a drawback claim are set forth in subpart E of part 191. This subpart authorizes the use of several alternative procedures to establish exportation. Two such alternatives, contained in §§ 191.51(a) and 191.52 (19 CFR 191.51(a), 191.52), require a claimant, in order to receive drawback, to file a notice of exportation on Customs Form (CF) 7511, either uncertified, or certified by a Customs

officer at the time of exportation, for each shipment of merchandise exported. The information required on a CF 7511 consists of the name of the exporting vessel or carrier, the number and kinds of packages and their marks and numbers, a description of the merchandise, the name of the exporter, and the country of ultimate destination. This information, however, is also available from other paperwork, particularly documents usually generated by the exporter internally in the process of trade.

Accordingly, Customs published a notice of proposed rulemaking in the **Federal Register** on October 7, 1992 (57 FR 46113), which would have eliminated the notice of exportation, CF 7511, and instead permitted the use of such other documents generated internally in the course of trade to prove exportation for purposes of obtaining drawback. It was believed that this would result in a saving of paperwork to the benefit of both Customs as well as the drawback claimant.

Discussion of Comments

Thirty comments were received in response to the notice of proposed rulemaking. Of the thirty comments only four generally were in favor of eliminating or replacing the CF 7511. The remaining twenty-six comments strongly opposed the elimination of the CF 7511.

Almost all of the commenters opposing the elimination of the CF 7511 stated that they would be forced to relinquish their right to claim drawback whenever they were not the direct exporter. A separate exporter might not be willing to provide documentation that would reveal information such as the name and address of the foreign purchaser and prices charged by the exporter.

Also, many of these commenters believed that the CF 7511 was necessary for shipments to Mexico and Canada, citing the unavailability of other documents as a continuing problem for drawback claimants.

Another reason against the proposed change mentioned by several commenters was the fact that the reverse side of the CF 7511 is used for the endorsement of drawback rights from one party to another. This endorsement also satisfies the requirement of § 191.73(a), which requires satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. If this form were to be abolished, Customs would probably have to develop another form to take its place.

It was further asserted that the CF 7511 in fact also provided information that might not be readily available on other documents, such as the name of the carrier, the date of exportation, the destination, and the shipper.

Conclusion

Though the concerns about proof of exportation to Mexico and Canada have been resolved by § 181.47(c), Customs Regulations (19 CFR 181.47(c)), which also allows a copy of the Canadian or Mexican customs entry to be used as proof of exportation, Customs is, nevertheless, constrained to conclude that the comments submitted point out persuasive, and controlling, reasons militating against adoption of the proposal, and that, on balance, the retention of the notice of exportation satisfies the concerns of the trade, while occasioning relatively minimum and reasonably justified time and effort in its preparation and/or certification. In particular, the retention of the notice is essential, especially in those circumstances where the drawback claimant is not the direct exporter, and the exporter refuses to provide its own documentary evidence to the claimant because of business confidentiality or the administrative cost of providing such supporting documents.

Withdrawal of Proposal

In view of the foregoing, and after consideration of the comments received and further review of the matter, Customs has determined to withdraw the notice of proposed rulemaking published in the **Federal Register** on October 7, 1992 (57 FR 46113).

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: July 22, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–20028 Filed 8–15–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

[Docket No. R–94–1743; FR–3755–N–02]

(RIN 2529–AA73)

Discrimination in Property Insurance Under the Fair Housing Act; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: HUD is charged with the administration and enforcement of the Fair Housing Act (the Act), including the promulgation of regulations under the Act. This notice announces HUD's intention (1) to publish regulations concerning nondiscrimination in property insurance practices under the Fair Housing Act, and (2) to solicit public comment on this subject prior to publication of a proposed rule. Issues for which HUD specifically requests comment from the public are set forth in the Supplementary Information section of this notice.

DATES: Comment Due Date: October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Room 5240, 451 Seventh Street SW., Washington DC 20410–0500, telephone (202) 708–2904 (not a toll free number). The toll free TDD number is 1–800–877–8339.

ADDRESSES: Interested persons are invited to submit comments in response to this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Housing and Urban Development (HUD) is committed to initiatives that will provide access to capital and economic

empowerment for all Americans. HUD has launched several programs to stem disinvestment in cities and disadvantaged communities throughout the country, increase the flow of capital into these communities, and create communities of opportunity throughout the nation.

Among HUD's priorities are: (1) Empowerment of local communities by supporting local economic development efforts; (2) expansion of housing opportunities through partnerships with state and local government and private developers and financial institutions; and (3) opening housing markets through vigorous enforcement of the Fair Housing Act (42 U.S.C. 3601–3619). A critical component of these initiatives is assuring access to capital for homeownership and business development. Assuring fair access to property or hazard insurance is essential to achieve each of these objectives. Insurance is necessary for access to capital.

HUD is charged with the administration and enforcement of the Act, including the promulgation of regulations under the Act. HUD is also responsible for receiving and investigating complaints alleging discriminatory practices under the Act and bringing enforcement actions where the Department determines that reasonable cause exists to believe that a violation has occurred or is about to occur. As part of these initiatives, and in furtherance of its responsibilities under the Act, HUD announces its intent to issue regulations concerning property insurance practices that are discriminatory under the Act.

As indicated in HUD's current regulations, discriminatory housing practices include "refusing to provide * * * property or hazard insurance * * * or providing such * * * insurance differently because of race, color, religion, sex, handicap, familial status, or national origin." 24 CFR 100.70(d)(4). Case precedents such as *Dunn* v. *Midwestern Indemnity Mid-American Fire & Casualty Co.*, 472 F. Supp. 1106 (S.D. Ohio 1979) and *McDiarmid* v. *Economy Fire & Casualty Co.*, 604 F. Supp. 105 (S.D. Ohio 1984) established the applicability of the Act to discriminatory insurance practices. But see *Mackey* v. *Nationwide Insurance Co.*, 724 F. 2d 419 (4th Cir. 1984). More recent precedents, *N.A.A.C.P.* v. *American Family Mutual Insurance Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2335 (1993) and *Nationwide Mutual Insurance Co.* v. *Cisneros*, No. C3–92–52 (S.D. Ohio Feb. 24, 1994), reaffirmed this principle, according deference, under standards established in *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), to HUD's substantive regulation promulgated in 1989.

II. Solicitation of Public Comments

HUD is requesting public comment in several areas to be addressed by the regulation. There are several complex issues to be addressed by this regulation. In developing this regulation, HUD will work closely with insurance companies, trade associations, State regulators, civil rights groups and community organizations to ensure that HUD has heard as many viewpoints as possible on the subject of property insurance practices. HUD already has begun informal discussions with representatives of these entities, organizations and individuals to learn more about their views on current property insurance practices and about issues that HUD should address in the regulation. These contacts will continue in the form of group meetings and informal discussions with insurance companies, advocacy groups and trade associations.

In addition, HUD will hold several public meetings around the country for industry groups, advocacy groups and private citizens to submit comments and discuss what the regulation should address.

Based on the comments that HUD receives in response to this notice and comments presented at the public meetings, as well as any written guidance received from additional communications with industry groups and others, HUD will publish a proposed rule. Following careful consideration of the comments received on the proposed rule, HUD will issue a final regulation.

HUD is considering the issues and areas that the regulation should address in order for the regulation: (1) to be effective as guidance to HUD investigators, state and local civil rights agencies and private fair housing groups; (2) to serve as a guidepost for preventive acts by the industry; and (3) to be a clear description of the rights afforded protected classes. To do so, the regulation will address specific practices that are prohibited under the Act, describe the standards to be utilized in determining whether violations of the Act have occurred, and discuss investigative techniques that will be sought where violations are found, and voluntary affirmative efforts that are appropriate to eliminate discrimination.

The standards for determining discrimination in this area are those utilized in all other areas covered by the Act. Specific practices that violate the Act will be identified and the factual circumstances for identifying violations will be defined. The rule will describe the investigative techniques HUD will utilize, including those HUD employs in current fair housing complaint investigations. The rule will identify remedies to be considered that are appropriate to insurance cases.

The areas for which HUD specifically requests comment from the public are the following:

1. Underwriting practices that may discriminate due to either disparate treatment or disparate impact.

2. Sales and marketing practices that may discriminate due to either disparate treatment or disparate impact.

3. Explanations or justifications for those industry practices that could be challenged as violations of the Act because of disparate treatment or disparate impact. In cases of disparate impact, explanations should address the business necessity for the practice and why no less discriminatory alternative exists.

4. Barriers to the availability of insurance, or barriers to equal terms and conditions of insurance, for particular protected classes.

5. Entities and individuals who should be covered by the prohibition against discriminatory insurance practices, such as mutual and stock companies, independent agents, direct writers, exclusive agents, and rating services.

6. Techniques HUD should use in complaint investigations.

7. Remedies HUD should consider to discourage discriminatory practices, including equitable, injunctive, and affirmative relief, monetary damages, and civil penalties.

8. Voluntary actions insurers can take to assure nondiscrimination and to increase availability of insurance to allow access to capital.

9. Other issues that are relevant to the issue of insurance discrimination.

In addition to comments, HUD is also requesting any reports, documents, or other evidence that will assist the Department in evaluating issues to be addressed in the regulation.

HUD requests that, in submitting comments on any of the foregoing issues, the commenter please cite the item number of the issue addressed by the comment. HUD also welcomes comments on issues related to insurance practices that are not specifically included in the items listed.

Dated: August 10, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–20048 Filed 8–15–94; 8:45 am]

BILLING CODE 4210–28–P

PANAMA CANAL COMMISSION

35 CFR Part 103

RIN 3207–AA36

General Provisions Governing Vessels

AGENCY: Panama Canal Commission.

ACTION: Proposed rule.

SUMMARY: Under existing regulations, fees for booking transits at the Panama Canal are assessed at a fixed rate per Panama Canal Gross Ton. The Panama Canal Commission has proposed a major revision of the rules for measurement of vessels using the Panama Canal expected to become effective October 1, 1994. Under the proposal, the existing rules of measurement will be replaced with the Panama Canal Universal Measurement System (PC/UMS). PC/UMS will no longer utilize a Panama Canal Gross Tonnage value. Accordingly, fees for the use of the transit booking or reservation system must be assessed on some other basis. This proposed rule recommends retention of the existing method of calculating booking fees for vessels subject to PC/UMS transitional relief measures and the fixing of fees for all other vessels in reference to the PC/UMS Net Ton.

DATES: Comments must be submitted on or before August 25, 1994.

ADDRESSES: Comments may be addressed to Michael Rhode, Jr., Secretary, Panama Canal Commission, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402, (Telephone: (202) 634–6441), (Facsimile: (202) 634–6439).

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr. at the above address and telephone.

SUPPLEMENTARY INFORMATION: On April 18, 1994, the Panama Canal Commission published in the **Federal Register** (59 FR 18332) an advance notice of proposed rulemaking with a request for comments and a notice of hearing with respect to a related matter—a complete revision of the Rules for Measurement of Vessels for the Panama Canal as set forth in 35 CFR part 135. Comments were solicited and received, and a public hearing was held May 25, 1994 in Washington, DC. The views presented by the interested parties were considered by the Board of Directors of the Panama Canal Commission. The Board gave final approval on July 13, 1994 to proceed with implementation of the PC/UMS. The proposed rule together with the Board's recommendation was forwarded to the President for his approval. The proposed rule was published in the **Federal Register** on July 18, 1994 (59 FR 36398). It is expected that, on or before August 30, the final rule will be approved by the President and published in the **Federal Register**. It is scheduled to become effective October 1, 1994.

Corresponding changes in the transit booking system regulations are necessary to reconcile 35 CFR § 103.8(e) with the aforementioned revisions to the rules for measurement of vessels using the Panama Canal. Under existing § 103.8(e), fees for booking transits at Panama Canal are assessed at $0.23 per Panama Canal Gross Ton. With the expected replacement of the existing regulations on October 1, 1994, a Panama Canal Gross Ton value will no longer exist. Instead, under the revisions, the new PC/UMS will utilize a PC/UMS Net Ton value. Accordingly, in order to continue using tonnage as the basis for rate assessment for the transit booking system, fees must be assessed on the tonnage value used in the PC/UMS. Therefore, the Commission proposes that for vessels transiting the Canal for the first time after September 30, 1994 transit booking fees be fixed in relation to the PC/UMS Net Ton.

At the same time, however, the Commission desires to minimize the financial impact of the change on the customer. As with the PC/UMS itself, the Commission is striving for revenue-neutrality in the aggregate and for minimal impact for the individual customer. Therefore, the proposed rule also provides special relief measures for vessels which have previously transited the Canal.

In the first category—vessels which have not transited the Canal before October 1, 1994, the proposed regulation establishes a proposed new rate of $0.26 per PC/UMS Net Ton. This rate of $0.26 per PC/UMS Net Ton is expected to result in a booking fee near the rate assessed under the existing system. In other words, the amount paid by an individual vessel at $0.26 per PC/UMS Net Ton will closely approximate the amount it would have paid at $0.23 per Panama Canal Gross Ton. The new booking fee rate system will be applied to a limited number of vessels inasmuch as the number of first-time transits involves a relatively small number of vessels each year.

As noted above, the Commission's intention is to revise the rate in a manner which maintains fees at approximately the same level as currently paid by individual vessels. Retention of the $0.23 rate—merely fixing fees at $0.23 per PC/UMS Net Ton—could reduce individual booking fees as much as 20%. Inasmuch as the intent of this proposal is solely to reconcile paragraph 103.8(e) with the new standard tonnage measurement and not to otherwise alter the booking fees, the agency proposes the $0.26 rate which approximates present booking fees without increasing customer costs.

For the other and larger category—vessels which have previously transited the Canal, the proposal retains the existing booking fee computation method. This recommendation has its genesis in the proposed revisions to the Rules for Measurement of Vessels using the Panama Canal. The PC/UMS proposed rule contains transitional relief measures which preserve existing tonnage for ships transiting the Canal between March 23, 1976 (the date of the last significant rules change) and September 30, 1994, inclusive. In the instant proposed rule, the Commission proposes that the method for assessing booking fees for these vessels be similarly retained. Vessels meeting the aforementioned PC/UMS requirements for transitional relief which use the booking system after September 30, 1994 will not be affected inasmuch as they will continue to pay the same fee—$0.23 per Panama Canal Gross Ton. For these previously-transiting vessels, the booking fee would change only in the event the vessel undergoes a significant structural change, defined in the PC/UMS as a change in the volume of the vessel of 10% or more. Under the PC/UMS, a vessel undergoing a significant structural change loses its entitlement to the relief measures and becomes subject to application of the PC/UMS measurement formulas. In such an instance, the new rate of $0.26 per PC/UMS Net Ton would be applied to the vessel.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this proposed rule. Even if the order were applicable, the proposed regulation, which concerns "rates" and "practices relating" thereto, would not constitute a "rule" as that term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(2)) and would not have a significant impact on a substantial number of small entities under that Act.

A review of the environmental effect of the proposed measurement rule changes concludes that the proposed change will not have a significant effect on the quality of the human environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Finally, the Administrator of the Panama Canal Commission certifies that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 35 Part 103

Advance reservations, Booking system, Order of transit, Panama Canal, Vessels.

Accordingly, for the reasons set forth above, it is proposed that 35 CFR part 103 be amended as follows:

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

1. The authority citation for part 103 is revised to read as follows:

Authority: 22 U.S.C. 3791, E.O. 12215, 45 FR 36043, 3 CFR, 1981 Comp., p. 257.

2. Paragraph (e) of § 103.8 is revised to read as follows:

§ 103.8 Preference in the transit schedule; order of transiting vessels.

* * * * *

(e) Booking Fees. (1) For vessels measured in accordance with § 135.13(a) of this chapter, the fee for booking shall be $0.26 per PC/UMS Net Ton.

(2) For vessels subject to the transitional relief measures of § 135.31 of this chapter and measured in accordance with § 135.13(b) of this chapter, the fee for booking shall be $0.23 per Panama Canal Gross Ton as specified on the last certificate issued by the Panama Canal Commission between March 23, 1976 and September 30, 1994, inclusive.

(3) The minimum booking fee for any vessel is $1,500.

* * * * *

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval.)

Dated: August 10, 1994.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 94–20049 Filed 8–15–94; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5052–2]

State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Addendum to General Preamble for future proposed rulemakings.

SUMMARY: This addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 principally describes EPA's preliminary views on how the Agency should interpret various provisions of title I with regard to requirements for PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) serious nonattainment area State implementation plans (SIP's). This document also addresses policy and guidance on attainment date waivers potentially applicable to all areas that have been designated nonattainment for PM–10, waivers of certain requirements applicable to PM–10 serious nonattainment areas, and requirements for international border areas in PM–10 nonattainment areas. Although the guidance includes various statements that States must take certain actions, these statements are made pursuant to EPA's preliminary interpretations, and thus do not bind States and the public as a matter of law. This addendum is an advance notice of how EPA generally intends to take action on SIP submissions and to interpret various PM–10 related title I provisions.

FOR FURTHER INFORMATION CONTACT: Charlene E. Spells, Air Quality Management Division, Mail Drop 15, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5255.

ADDRESSES: References cited herein are available from the Public Docket No. A–92–23. The docket is located at the Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, Mail Code 6102, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

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In accordance with 1 CFR 5.9(c), this document is published in the proposed rules category.

I. Introduction

Issues are discussed in this document regarding policy and guidance that will be applicable to areas that have been designated nonattainment for PM–10 and reclassified as serious areas. This document also discusses issues regarding policy and guidance on attainment date waivers potentially applicable to all areas that have been designated nonattainment for PM–10, as well as policy and guidance on waivers of certain other requirements applicable to PM–10 serious nonattainment areas, and requirements for international border areas in PM–10 nonattainment areas.

Initially, all areas designated as nonattainment for PM–10 are classified as moderate areas (see section 188(a) of the Clean Air Act (Act)).[1] Subsequently,

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM–10 national ambient air quality standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

in accordance with section 188(b) of the Act, "The Administrator may reclassify as a serious PM–10 nonattainment area * * * any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM–10 by the attainment date (as prescribed in subsection (c)) for moderate areas" or any area that fails to timely attain. The EPA took final action on January 8, 1993 to reclassify 5 moderate areas that were initially designated as nonattainment for PM–10 upon enactment of the 1990 Amendments (see 58 FR 3334). The EPA is considering reclassifying additional areas from moderate to serious.

This guidance document is being published as an addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble) published April 16, 1992 (57 FR 13498).[2] Among other things, this PM–10 nonattainment area guidance document describes EPA's preliminary views on how EPA should interpret various provisions of title I with regard to requirements for PM–10 serious area SIP's. Although the guidance includes various statements that States must take certain actions, these statements are made pursuant to EPA's preliminary interpretations, and thus do not bind the States and the public as a matter of law. Of course, the use of prescriptive language is appropriate in those instances where the policy is simply reiterating statutory mandates which provide that States must take certain actions.

Possible approaches to implementing the provisions in section 179B applicable to international border areas, general SIP requirements of section 172(c), the specific requirements in subpart 4 of part D of title I in serious PM–10 nonattainment areas, the issues involved and the means of resolving those issues are discussed in the following sections. The topics discussed include SIP requirements such as provisions to assure that best available control measures (BACM) are implemented; waivers for areas impacted by nonanthropogenic sources; treatment of international border areas; requirements for quantitative milestones, reasonable further progress (RFP) and contingency measures.

[2] A supplemental notice was published at 57 FR 18070, April 28, 1992, which provides certain appendices to the April 16, 1992 General Preamble. Subsequent references in this notice to the General Preamble are inclusive of both documents.

II. Designations and Classifications

A. Designations

Section 107(d) of the Act provides generally for the designation of areas of each State as attainment, nonattainment or unclassifiable for each pollutant for which there is a national ambient air quality standard (NAAQS). Certain areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment for PM–10 by operation of law upon enactment of the 1990 Amendments (initial PM–10 nonattainment areas). A **Federal Register** notice announcing all of the areas designated nonattainment for PM–10 at enactment and classified as moderate was published on March 15, 1991 (56 FR 11101). A follow-up notice correcting some of these area designations was published August 8, 1991 (56 FR 37654). The nonattainment areas were formally codified in 40 CFR part 81, effective January 6, 1992 (56 FR 56694, November 6, 1991). All those areas of the country not designated nonattainment for PM–10 at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act).

B. Classifications

Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), all PM–10 nonattainment areas are initially classified as moderate by operation of law upon their designation as nonattainment.

C. Reclassifications

1. General Conditions

A moderate area can subsequently be reclassified as a serious nonattainment area under two general conditions. First, EPA has general discretion under section 188(b)(1) to reclassify a moderate area as a serious area at any time the Administrator determines the area cannot practicably attain the NAAQS by the statutory attainment date for moderate areas.[3]

Second, under section 188(b)(2) a moderate area is reclassified as serious by operation of law after the statutory attainment date has passed if the Administrator finds that the area has not attained the NAAQS. The EPA must publish a **Federal Register** notice identifying the areas that have failed to attain and were reclassified, within 6 months following the attainment date (see section 188(b)(2)(B)).

[3] The EPA's interpretation of the reclassification provisions in section 188(b)(1) is discussed in detail in section III.C.1(b) of the General Preamble (57 FR at 13537–38).

2. Reclassification of Initial PM–10 Nonattainment Areas

Section 188(b)(1)(A) provides an accelerated schedule by which EPA is to reclassify appropriate initial PM–10 nonattainment areas. The EPA proposed on November 21, 1991 (56 FR 58656) to reclassify 14 of the 70 initial moderate areas as serious. The 14 areas EPA proposed to reclassify were identified largely based on the magnitude and frequency of ambient PM–10 measurements above the 24-hour NAAQS of 150 micrograms per cubic meter ($\mu g/m^3$) during calendar years 1988–1990. The EPA took final action on January 8, 1993 (58 FR 3334) to reclassify 5 of the 14 areas. The final decision to reclassify the 5 areas was based on the criteria utilized in the proposal, comments received in response to the proposal and on EPA's preliminary review of the SIP's for the areas.

In the future, EPA anticipates that, generally, any decision to reclassify an initial PM–10 nonattainment area before the attainment date will be based on specific facts or circumstances demonstrating that the NAAQS cannot practicably be attained in the area by December 31, 1994 (the statutory attainment date specified in section 188(c)(1) for initial PM–10 nonattainment areas).

3. Reclassification of Future PM–10 Nonattainment Areas

Section 188(b)(1)(B) provides a timeframe within which EPA is to reclassify appropriate areas designated nonattainment for PM–10 subsequent to enactment of the 1990 Amendments. Appropriate areas are to be reclassified as serious within 18 months after the required date for the State's submission of a moderate area PM–10 SIP.[4] The statute requires that these moderate area PM–10 SIP's be submitted within 18 months after the area is designated nonattainment (see section 189(a)(2)(B)). Taking these provisions together, the statute thus requires that EPA reclassify appropriate PM–10 moderate areas designated nonattainment after 1990 as serious within 3 years of such designation.

Because the moderate area SIP's are due before this reclassification deadline, EPA anticipates that any determination that such areas should be reclassified will be based upon facts contained in

[4] This directive does not restrict EPA's general authority, but simply specifies that it is to be exercised, as appropriate, in accordance with certain dates.

the moderate area SIP demonstrating that the NAAQS cannot practicably be attained by the statutory deadline. The EPA may also consider reclassifying moderate areas for which a SIP has not been submitted whenever it becomes apparent (e.g., because of an extensive delay in submitting the SIP) that an area cannot practicably attain the standards by the applicable attainment date. The EPA may also determine that an area cannot practicably attain the standards by the applicable date when the State submits an incomplete or otherwise inadequate SIP for the area (i.e., a SIP which would not assure timely attainment) and the State does not act expeditiously to correct such deficiencies.

The EPA does not believe that generally reclassifying moderate areas as serious rewards areas which delay development and implementation of PM–10 control measures. Rather, EPA believes its policy creates an incentive for the timely submittal and effective implementation of moderate area SIP requirements and facilitates the PM–10 attainment objective. For example, if an area that fails to submit a timely moderate area SIP is reclassified, this does not obviate the requirement that the area submit and implement the moderate area SIP requirements. Accordingly, in addition to reclassifying such areas, EPA would also determine that the State had failed to submit a PM–10 SIP and the area could be subject to sanctions under sections 110(m) and 179 for its delay. As provided under section 179(a) of the Act, States containing areas for which EPA has made such determinations have up to 18 months from EPA's determination to submit a complete plan or plan revision before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source offsets described in section 179(b). If the deficiency has not been corrected 6 months after the first sanction applies, then the second sanction must apply.[5] The EPA's determination also triggers a requirement for EPA to impose a Federal implementation plan under section 110(c)(1) of the Act. In conjunction with the possible imposition of sanctions, EPA may issue a determination to reclassify the area to serious.

D. Appendix K and Waivers

Appendix K to 40 CFR part 50 provides guidance on the interpretation of ambient air quality data to determine the air quality status of an area. Appendix K and accompanying guidance (both preceding the 1990 Amendments to the Act) provide in part that measured exceedances of the PM–10 NAAQS which are believed to be influenced by uncontrollable events caused by natural sources of particulate matter or by events that are not expected to recur at a given location are flagged and excluded from decisions as to whether or not the area should be designated nonattainment.[6] Therefore, if it is established that exceedances are caused by natural sources, a State may be permitted to avoid designating the area as nonattainment, even though the exceedances are expected to recur.

The savings provision of section 193 of the amended Act provides, among other things, that regulations and guidance promulgated or issued by the Administrator prior to enactment of the 1990 Amendments are to remain in effect according to their terms except to the extent that they are inconsistent with any provision of the amended Act. Section 188(f) of the amended Act provides EPA with the discretionary authority to waive a specific date of attainment for a PM–10 nonattainment area where it is determined that nonanthropogenic sources contribute significantly to the violation of the standard in the area, and to waive certain nonattainment area SIP requirements where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the standard in the area. These provisions take as a fundamental premise that areas experiencing violations of the NAAQS due to nonanthropogenic sources are to be designated as nonattainment. If areas were permitted to avoid being designated as nonattainment because their violations are caused in whole or part by uncontrollable natural events, then this statutory provision would have to be read as having no legal effect or significance. However, this would violate canons of statutory construction, which direct that statutory language not be treated as mere surplusage.

Consequently, although appendix K appears to be preserved in part by section 193, the provision permitting the treatment of "uncontrollable events caused by natural sources" as exceptional events, and therefore excludable from nonattainment decisions, is inconsistent with the provisions of section 188(f) and should therefore be regarded as no longer having legal effect. Similarly, any EPA guidance permitting such exclusion of these events is inconsistent with the amended Act. For this reason, exceedances which are attributable to uncontrollable nonanthropogenic events may not be discounted or deweighted in any manner, but must be fully considered in determining whether violations of the NAAQS have occurred and whether designation as nonattainment is warranted. Future determinations relevant to exceptional events should therefore focus on the remaining type of exceptional event identified under section 2.4 of 40 CFR part 50, appendix K, namely whether the events—anthropogenic or nonanthropogenic—are likely to recur at the same location.

The EPA plans to make perfunctory modifications to section 2.4 of 40 CFR part 50, appendix K. In addition, guidance on the interpretation of air quality data believed to be influenced by special events and conditions will be addressed in a separate publication that will replace the 1986 Exceptional Events Guideline.

III. International Border Areas

A. Statutory Requirement

Section 818 of the 1990 Amendments added a new section, 179B, to subpart 1, part D of title I. Section 179B applies to areas that could attain the relevant NAAQS by the statutory attainment date but for emissions emanating from outside the United States (U.S.). For PM–10 nonattainment areas, section 179B(a) provides that EPA must approve the moderate area SIP if (1) the SIP meets all the applicable requirements under the Act other than a requirement that such plan or revision demonstrate attainment and maintenance of the PM–10 NAAQS by the applicable attainment date, and (2) the State demonstrates to EPA's satisfaction that the SIP would be adequate to attain and maintain the PM–10 NAAQS by the attainment date but for emissions emanating from outside the U.S. In addition, section 179B(d) provides that if a State demonstrates that an area would have timely attained the PM–10 NAAQS but for emissions emanating from outside the U.S., the area must not be subject to the reclassification provisions of section 188(b)(2). Section 188(b)(2) provides that any moderate PM–10 nonattainment area that EPA determines is not in attainment after the applicable attainment date shall be reclassified to serious by operation of law. Therefore, the statute provides that areas that could attain but for emissions emanating from outside the U.S. must not be reclassified

[5] See 58 FR 51270 (October 1, 1993).

[6] See section 2.4 of appendix K of 40 CFR part 50 and "The Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events," EPA–450/4–86–007, July 1986.

as serious after failing to attain by the applicable date.[7]

B. Policy

Assuming that a plan or revision meets all applicable requirements, the State must show that an area is eligible to have its SIP approved and not be reclassified as serious under section 179B by evaluating the impact of emissions emanating from outside the U.S. and demonstrating that the SIP would bring about attainment but for those emissions. Several types of information may be used to evaluate the impact of emissions emanating from outside the U.S. The EPA will consider the information presented by the State for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B. Five examples of such information are listed below in increasing order of sophistication (the State may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area; the first three examples do not require the State to obtain information from a foreign country):

1. Place several ambient PM–10 monitors and a meteorological station, measuring wind speed and direction, in the U.S. nonattainment area near the international border.[8] Evaluate and quantify any changes in monitored PM–10 concentrations with a change in the predominant wind direction.

2. Comprehensively inventory PM–10 emissions within the U.S. in the vicinity of the nonattainment area and demonstrate that the impact of those sources on the nonattainment area after application of reasonably available controls does not cause the NAAQS to be exceeded. This analysis must include an influx of background PM–10 in the area. Background PM–10 levels could be based, for example, on concentrations measured in a similar nearby area not influenced by emissions from outside the U.S.

3. Analyze ambient sample filters for specific types of particles emanating from across the border (although not required, characteristics of emissions from foreign sources may be helpful).

4. Inventory the sources on both sides of the border and compare the magnitude of PM–10 emissions originating within the U.S. to those emanating from outside the U.S.

5. Perform air dispersion and/or receptor modeling to quantify the relative impacts on the nonattainment area of sources located within the U.S. and of foreign sources of PM–10 emissions (this approach combines information collected from the international emission inventory, meteorological stations, ambient monitoring network, and analysis of filters).

In addition to demonstrating that the SIP for the area would be adequate to timely attain and maintain the NAAQS but for emissions emanating outside the U.S., the SIP must continue to meet all applicable moderate area SIP requirements in order to qualify for the special SIP approval under section 179B. Among other things, the SIP must provide for the implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT) (see 57 FR 13540). In international border areas, RACM/RACT must be implemented to the extent necessary to demonstrate attainment by the applicable attainment date if emissions emanating from outside the U.S. were not included in the analysis. The EPA believes that this interpretation of the degree of RACM the State is required to implement in moderate PM–10 areas affected by emissions emanating from outside the U.S. is consistent with the purpose of section 179B. By directing EPA, under section 179B, to approve the plan or plan revision of a moderate PM–10 area which shows it would attain the NAAQS but for foreign emissions and by excluding such an area from reclassification to serious, Congress clearly wanted to avoid penalizing States containing such areas by not making them responsible for control of emissions emanating from a foreign country over which they have no jurisdiction. Moreover, by excluding the area from reclassification, Congress also elected to avoid subjecting such areas to the more stringent control measures applicable in serious PM–10 areas. In addition, as set forth in section 179B(a)(2), the second condition which must be met before EPA may approve a moderate area plan showing attainment but for foreign emissions, by its plain terms, requires the State to establish only that the plan submitted would be "adequate" to timely attain and maintain the NAAQS, but for emissions from outside the U.S. Nothing in section 179B relieves the State from meeting all its applicable moderate area PM–10 SIP requirements, including the requirement to implement RACM. Nonetheless, if, in doing so, States containing such an area were also required, because of contributions to PM–10 violations caused by foreign emissions, to shoulder more of a regulatory and economic burden than States not similarly affected (i.e., by implementing measures which go well beyond those which the SIP demonstrates would otherwise be adequate to timely attain and maintain the PM–10 NAAQS) such a requirement would unfairly penalize States containing international border areas and effectively undermine the purpose of section 179B. Indeed, to the extent an affected State can satisfactorily demonstrate that implementation of such measures clearly would not advance the attainment date, EPA could conclude they are unreasonable and hence do not constitute RACM. Notwithstanding the above, in light of the overall health and clean air objectives of the Act, EPA does encourage affected States to reduce emissions beyond the minimum necessary to satisfy the "but for" test in order to reduce the PM–10 concentrations to which their populations are exposed.

The SIP for an international border area must also include contingency measures as required under section 172(c)(9) of the Act. Under section 179B(a)(1), such SIP's must meet "all the requirements applicable to it under the Act" except that they may demonstrate timely attainment by discounting emissions emanating from outside the U.S. Contingency measures are additional measures included in the SIP that can be undertaken to reduce emissions if the area fails to make RFP or to attain the primary NAAQS by the

[7] As noted, section 179B(d) states that areas demonstrating attainment of the standards, but for emissions emanating from outside the U.S., shall not be subject to section 188(b)(2) (reclassification for failure to attain). By analogy to this provision and applying canons of statutory construction, EPA will not reclassify before the applicable attainment date areas which can demonstrate attainment of the standards, but for emissions emanating from outside the U.S. (see section 188(b)(1)). First, section 179B evinces a general congressional intent not to penalize areas where emissions emanating from outside the country are the but-for cause of the PM–10 nonattainment problems. Further, if EPA were to reclassify such areas before the applicable attainment date, EPA, in effect, would be reading section 179B(d) out of the statute. Specifically, if EPA proceeded to reclassify, before the applicable attainment date, those areas qualifying for treatment under section 179B, an area would never be subject to the provision in section 179B(d) which prohibits EPA from reclassifying such areas after the applicable attainment date. Canons of statutory construction counsel against interpreting the law such that language is rendered mere surplusage. Finally, note that section 179B(d) contains a clearly erroneous reference to carbon monoxide instead of PM–10, and that this section contains other clear errors (see, e.g., section 179B(c) reference to section 186(b)(9), which does not exist).

[8] See 40 CFR part 58 for guidance on locating PM–10 monitors and "On-site Meteorological Program Guidance for Regulatory Modeling Applications," EPA–450/4–87–013, June 1987 for guidance on locating meteorological stations.

applicable attainment date. In international border areas, EPA will not require the contingency measures for PM–10 to be implemented after the area fails to attain if EPA determines that the area would have attained the NAAQS, but for emissions emanating from outside the U.S. However, the EPA will require contingency measures to be implemented if it determines that the area failed to make RFP in achieving the required reductions in PM–10 emissions from sources within the U.S., or if the area does not, in fact, obtain the emission reductions that were necessary to demonstrate timely attainment of the NAAQS, but for emissions emanating from outside the U.S.

IV. Serious Area SIP Requirements

The Act requires States to submit several SIP revisions, as necessary, providing for implementation of increasingly stringent control measures and demonstrating when those control measures will bring about attainment of the PM–10 NAAQS. The first SIP revision was due November 15, 1991 for the initial moderate PM–10 nonattainment areas. For areas redesignated nonattainment for PM–10 in the future under section 107(d)(3), the first SIP revision will be due within 18 months after the area is redesignated (see section 189(a)(2)). This SIP revision must, among other things, provide for implementation of RACM on sources in the area (see sections 189(a)(1)(C) and 172(c)(1)). All available technologically and economically feasible control measures would be considered RACM, and therefore reasonable for adoption, for areas that cannot attain the NAAQS by the applicable attainment date (December 31, 1994 for initial moderate PM–10 nonattainment areas) (see 57 FR 13544).[9]

If EPA determines that a moderate area cannot practicably attain the NAAQS by the applicable attainment date (or determines the area has failed to attain) and reclassifies the area as a serious nonattainment area under section 188(b), a second SIP revision for the area is required under section 189(b). This revision must, among other things, include provisions to assure that BACM (including BACT) will be implemented in the area (see section 189(b)(1)(B)). In addition, a demonstration (including air quality modeling) must be submitted showing that the plan will attain the NAAQS either by the applicable attainment date or, if an extension is granted under section 188(e), by the most expeditious alternative date practicable (see section 189(b)(1)(A)).

The SIP revisions to require the implementation of BACM must be submitted to EPA within 18 months after an area is reclassified as serious (see section 189(b)(2)). The BACM are to be implemented no later than 4 years after an area is reclassified (see section 189(b)(1)(B)). The EPA's policies regarding the requirement to implement BACM in serious areas are discussed in section VI of this document.

The serious area attainment demonstration required under section 189(b)(1)(A) must be submitted to EPA within 4 years after an area is reclassified based on a determination by EPA that the area cannot practicably attain the NAAQS by the statutory deadline for moderate areas. It is due within 18 months after an area is reclassified for actually having failed to attain the NAAQS by the moderate area attainment date (see section 189(b)(2)).

The new attainment date for initial PM–10 nonattainment areas that are reclassified as serious is to be as expeditious as practicable but not later than December 31, 2001. For areas that are designated nonattainment for PM–10 in the future and subsequently become serious, the attainment date is to be as expeditious as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment (see section 188(c)(2)).

If the State demonstrates to the satisfaction of EPA that attainment by the statutory deadline for serious areas (as set forth in section 188(c) of the Act) is impracticable, the State must demonstrate that the SIP provides for attainment by the most expeditious alternative date practicable. The State may apply to EPA for a single extension of the serious area attainment date, under section 188(e) of the Act, not to exceed 5 years beyond the serious area attainment date. A State requesting an extension under section 188(e) for an area must, among other things, demonstrate that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. The EPA intends to issue guidance in the future, as appropriate, on applying for an extension of the serious area attainment date.

If a serious area fails to attain by the applicable attainment date (which may be an extended attainment date), another SIP revision is required within 12 months that provides for attainment and until then for annual reductions in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent emission inventory for the area (see section 189(d)).

In addition to the specific PM–10 SIP requirements contained in subpart 4 of part D, title I, States containing serious areas must meet all of the applicable general SIP requirements set forth in section 110(a)(2) and the nonattainment area SIP requirements set forth in subpart 1 of part D, title I, to the extent that these provisions are not otherwise subsumed by, or integrally related to, the more specific PM–10 requirements.[10] The general SIP requirements applicable to all nonattainment areas are discussed in the General Preamble at 57 FR 13556–13557.

The requirements specifically applicable to serious areas under subpart 4 are found primarily in section 189. Those requirements include:

a. Current actual and allowable emissions inventories that meet EPA guidelines[11] (see section VI.D. below).

b. Submission of a SIP, under section 189(b)(1)(A), that includes a demonstration that the plan provides for attainment by the applicable attainment date (December 31, 2001 for the areas initially designated nonattainment for PM–10 by operation of law under section 107(d)(4) and no later than the end of the tenth year beginning after the area's redesignation for areas subsequently redesignated nonattainment), or a demonstration that attainment by the above date is not practicable and that the plan provides for attainment by the most expeditious alternative date practicable.[12]

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[9] Note that if it can be shown that measures are unreasonable because emissions from the sources affected are insignificant or de minimis, such measures may be excluded from consideration as they would not represent RACM for that area (see 57 FR 13540). Moreover, in international border areas, measures which go beyond those which the SIP demonstrates would be adequate to attain and maintain the standard, but for emissions emanating from outside the U.S., would not be considered "reasonably" available—and therefore would not be required by RACM—since they would not advance the attainment date (although States may elect to implement such measures in order to reduce the public's exposure to PM–10) (see discussion under International Border Areas of this guidance document).

[10] See 57 FR 13538 (April 16, 1992).

[11] "PM–10 Emission Inventory Requirements," EPA–450/2–93–XX, U.S. Environmental Protection Agency, Research Triangle Park, NC, 1993.

[12] Subsequent to adopting requirements for BACM shortly after the nonattainment area is reclassified as serious, it may be necessary for the State to adopt additional control measures in order to demonstrate that the SIP provides for attainment of the PM–10 NAAQS in accordance with section 189(b)(1)(A)(i). If the State demonstrates, in accordance with section 189(b)(1)(A)(ii), that attainment by the applicable serious area attainment date is impracticable and seeks an extension of the

c. Provisions, under section 189(b)(1)(B), to assure that BACM (including BACT) will be implemented no later than 4 years after the area is reclassified as serious.

d. A requirement, under section 189(b)(3), that the terms "major source" and "major stationary source," used in implementing a new source permitting program under section 173 and control of PM–10 precursors under section 189(e), include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM–10.

e. Contingency measures [13] (see section VII. below).

f. Quantitative milestones, (applicable to both moderate and serious area SIP's under section 189(c)), which are to be achieved every 3 years until the area is redesignated attainment, and which demonstrate RFP toward attainment by the applicable date. The provision includes a requirement for periodic reports demonstrating whether the milestones have been met (see section VIII. below).

g. Plan revisions which provide for attainment of the PM–10 NAAQS and annual reductions of not less than 5 percent of inventoried PM–10 and PM–10 precursor emissions within the area, under section 189(d), if the serious area fails to attain the standards.

h. As applicable, RACT-level, BACT-level, and new source review control of PM–10 precursors from major stationary sources of precursors in the airshed (applicable to both moderate and serious area SIP's under section 189(e)).

The demonstration required under section 189(b)(1)(A) should follow the existing modeling guidelines addressing PM–10 (e.g., "PM–10 SIP Development Guideline" (June 1987); "Guideline on Air Quality Models" (Revised); memorandum from Joseph Tikvart and Robert Bauman dated July 5, 1990) and any applicable regulatory requirements. A supplementary attainment demonstration policy applicable to initial moderate PM–10 nonattainment areas facing special circumstances was issued in a memorandum from EPA's Office of Air Quality Planning and Standards to the Directors of EPA Regional Air Divisions on March 4, 1991.[14] That supplementary policy is not applicable to serious area SIP demonstrations.

attainment date pursuant to section 188(e), the State must demonstrate to the best of its ability that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can be feasibly implemented in the area.

[13] Contingency measures are other available control measures, in addition to those in the control strategy to attain the NAAQS, that can be implemented if EPA determines the area fails to make reasonable further progress or to attain the NAAQS by the applicable attainment date [see section 172(c)(9)].

V. Waivers for Certain PM–10 Nonattainment Areas

A. Historical Perspectives

The EPA in the past focused much of its air pollution control efforts on industrial point source emissions and other traditional sources of air pollution.[15] For instance, EPA's 1977 guidance on SIP development gave priority to control of urban fugitive dust after control of traditional sources, but in preference to rural fugitive dust, on the grounds that (1) urban soil was believed to be contaminated and, therefore, potentially more harmful than the native soils in rural areas; (2) the potential for significant population exposures and attendant health effects was much greater in urban areas; and (3) scarce resources at the Federal, State, and local agency levels could be most effectively brought to bear on the more pronounced problems found in urban areas.[16] Accordingly, EPA's policy was to require greater emphasis on control of emissions in urban areas, including control of fugitive dust from all major sources. In contrast, control requirements for rural areas were far less ambitious, focussing on the control of major industrial sources, with little attention given to natural or nonindustrial emissions. This policy of giving a lower priority to controlling natural or nonindustrial emissions in rural areas became known as the "Rural Fugitive Dust Policy." [17]

[14] "PM–10 SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas," memorandum from John Calcagni and William Laxton to Director, Air Division, EPA Regions I–X, March 4, 1991.

[15] The EPA distinguished between "traditional" and "nontraditional" sources. The term "nontraditional source" first appeared in official print in 1976 in EPA's "National Assessment of the Urban Particulate Problem," EPA–450/3–76–024, July 1976, and was coined as a catch-all to refer to those sources not traditionally considered in air pollution control strategies, including construction and demolition, tailpipe emissions, tire wear, and various sources of fugitive dust. Since then, the use of the term has expanded to include such sources as prescribed agricultural and silvicultural burning, open burning, and residential wood combustion.

[16] "Guidance on SIP Development and New Source Review in Areas Impacted by Fugitive Dust," Edward F. Tuerk, Acting Assistant Administrator for Air and Waste Management, to Regional Administrators.

[17] See, e.g., "Model Letter Regarding State Designation of Attainment Status," David H. Hawkins, Assistant Administrator for Air and Waste Management, to Regional Administrators, October 7, 1977; see also, "Fugitive Dust Policy: SIP's and New Source Review" (August 1984).

The EPA's policy focus shifted away from the type and location of the emission sources (i.e., traditional or nontraditional sources, urban or rural locations) to the size of the particles emitted when the indicator for the NAAQS was changed in 1987 from total suspended particulate matter to PM–10. While revisions to the rural fugitive dust policy were being considered, the policy was continued during the initial phases of implementing the PM–10 NAAQS on an interim basis.[18] However, EPA believes that the 1990 Amendments provide a statutory alternative that wholly supplants the rural fugitive dust policy (see sections 107(d)(4)(B) and 188(f) of the amended Act; 56 FR 37659 (August 8, 1991)).

B. Waiver Provisions

The Act, as amended in November 1990, was designed to assure that attainment and maintenance of the PM–10 standards, which were promulgated in 1987 (52 FR 24634, July 1, 1987), be as expeditious as practicable. Thus, the Act requires States to submit several revisions of the SIP for PM–10 nonattainment areas, if necessary, to ensure attainment of the PM–10 NAAQS as expeditiously as practicable. Among other planning requirements, the SIP revisions must first provide for the implementation of RACM on PM–10 sources. If RACM is not adequate to attain the NAAQS, subsequent revisions must provide for implementation of additional, more stringent control measures until the NAAQS are attained.

Congress recognized that there may be areas where the NAAQS may never be attained because of PM–10 emissions from "nonanthropogenic sources," [19] and that the imposition in such areas of certain State planning requirements, as described in the previous section, may not be justified. Therefore, under section 188(f) of the Act, Congress provided a means for EPA to waive a specific date for attainment and certain control and planning requirements when certain conditions are met in the nonattainment area.

Section 188(f) provides two types of waivers. First, the Administrator may, on a case-by-case basis, waive any requirement under subpart 4 applicable to any serious nonattainment area where EPA determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the

[18] See 52 FR 24716 (July 1, 1987).

[19] The legislative history of the 1990 Amendments indicates that Congress intended that the term "nonanthropogenic" sources of PM–10 refer to activities where the human role in the cause of such emissions is highly attenuated [see H.R. Rep. No. 490, 101st Cong., 2d Sess. 265 (1990)].

standard in the area. Second, the Administrator may waive a specific date for attainment of the standard where EPA determines that nonanthropogenic sources of PM–10 contribute significantly to the violation of the standard in the area.

Section 188(f) contains two different legal tests. The first test applies to a waiver of the serious area requirements and requires that EPA determine that anthropogenic sources do not contribute significantly before EPA grants such a waiver. The second test applies to a waiver of an area's attainment date and requires that EPA determine that nonanthropogenic sources contribute significantly before waiving the attainment date. The first test is more stringent than the second.

C. Application of the Waiver Provisions

Several questions must be answered before the waiver provisions can be applied. Each of these questions is discussed in the subsections that follow

1. What types of sources should be considered anthropogenic and nonanthropogenic?

The legislative history of the 1990 Amendments indicates that Congress intended that the term "nonanthropogenic" sources of PM–10 refer to activities where the human role in the cause of such emissions is highly attenuated (see H.R. Rep. No. 490 at 265). Naturally occurring events such as wildfires, volcanic eruptions, unusually high pollen counts, and high winds which generate dust from undisturbed land are examples of nonanthropogenic sources that EPA believes meet the intent of Congress.

Anthropogenic sources of PM–10 emissions are those resulting from human activities. Some of the traditional and nontraditional anthropogenic sources generally considered in PM–10 SIP's are commercial, institutional, and residential fuel combustion; fossil fuel-fired electric power plants; industrial processes; vehicular traffic on paved and unpaved roads; construction activities; agricultural activities; and other sources of fugitive dust which are directly traceable to human activities and which are reasonably foreseeable incidents of such activities.[20]

2. What criteria should be used in determining when nonanthropogenic sources contribute significantly and when anthropogenic sources do not contribute significantly to violation of the NAAQS in the area?

The Act does not define the term "contribute significantly" as it is used in section 188(f), nor does the legislative history provide any useful guidance.[21] Where a statute is silent or ambiguous with respect to the meaning of a statutory term, a reasonable agency interpretation of the term must be given deference by a reviewing court (see *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–845 (1984)). The EPA thus believes it has the authority to select reasonable criteria by which to determine when nonanthropogenic/anthropogenic sources in an area do/do not "contribute significantly" to levels of pollution which exceed the NAAQS, as well as to consider for this purpose, criteria utilized in other statutory contexts. In light of the different legal tests set forth in section 188(f), the EPA believes that different indicators of significance are needed to serve the statutory purpose of encouraging protection of public health and welfare while avoiding unreasonable control actions. The criteria which EPA believes provide a reasonable approach to making such a determination, as well as a discussion of the basis for selecting these criteria, are set forth below.

Generally, where a nonattainment area's anthropogenic sources contribute very little to violations, it is likely that controlling those emissions to the extent feasible for the area will be insufficient to attain the NAAQS. In such cases, it would be unreasonable to require the area to implement more stringent and more expensive controls on anthropogenic sources since they would contribute little to attainment or to reducing the public's exposure to unhealthy air quality. In similar fashion, where nonanthropogenic emission contributions are great, even after the area has taken reasonable steps to reduce them, at some point it may not be feasible for the area to reduce nonanthropogenic (or anthropogenic) emissions sufficiently to effect any real change in ambient concentrations. Consequently, it would be unreasonable to require the area to continue to pursue control measures that are beyond the area's practicable abilities. These principles are discussed below in connection with each of the two waiver tests.

In selecting an appropriate "significance" contribution from anthropogenic sources (for the purposes of deciding whether serious area requirements should be waived), EPA has elected to rely on the test of significance that is applied under new source permitting programs. Under the new source review (NSR) permit program, the EPA requires State permitting programs to consider new major sources or major modifications as causing or contributing to a violation of the PM–10 NAAQS when the source would add, at a minimum, over 5 $\mu g/m^3$ to the 24-hour average or over 1 $\mu g/m^3$ to the annual average PM–10 concentrations in an area that does not or would not meet the PM–10 NAAQS (see 40 CFR 51.165(b)). Given that the purpose of new source permitting programs is also to protect air quality in both attainment and nonattainment areas, EPA generally believes that the test of significant contribution to violations under that program should also be applicable when determining significant contributions of anthropogenic sources under section 188(f) of the Act. It should also be noted that, in determining "significance" for purposes of section 188(f), the plain terms of that provision and its underlying purpose dictate that EPA consider the impact of the anthropogenic sources as a whole. Consequently, where emissions from all anthropogenic sources as a whole contribute less than or equal to 5 $\mu g/m^3$ to 24-hour average design concentrations and less than or equal to 1 $\mu g/m^3$ to annual mean design concentrations in a nonattainment area, after all RACM have been implemented,[22] EPA will generally regard such contributions as insignificant for purposes of waiving requirements applicable to serious PM–10 nonattainment areas pursuant to section 188(f).

Generally, if an area meeting this test has not yet been reclassified as serious and the area would qualify under this test for a waiver of certain serious area requirements as deemed appropriate by EPA (see discussion below), then EPA will not require reclassification, since that action would have no practical

[20] "PM–10 SIP Development Guideline," EPA–450/2–86–001, U.S. Environmental Protection Agency, Research Triangle Park, NC, 1987, p. 5–5, Table 5.1.

[21] It should be noted that the term "contribute significantly" (or variations of that term) has been interpreted differently throughout the Act, e.g., in the ozone/carbon monoxide programs (see section 107(d)(4)(A)(iv) and (v)), the new source review (NSR) program, and in specific provisions of the statute, such as sections 110(a)(2)(D)(i)(I) and 126(a)(1)(B). An agency is permitted, but not required, to give a similar meaning to similar terms which appear in different parts of a statute. Thus, although EPA is not bound to adopt the interpretation given the term "contribute significantly" in other parts of the statute, it is likewise not precluded from according this use of similar language some interpretive weight.

[22] Implementation of RACM (including RACT) is required in all moderate PM–10 nonattainment areas and that requirement is not waived under the provisions of section 188(f). Therefore, the issue is whether anthropogenic sources still contribute significantly to violations of the NAAQS in an area, after implementing RACM.

effect. Generally, if the contribution of anthropogenic emissions to the 24-hour design concentration exceeds 5 μg/m^3, or if the contribution to the annual design concentration exceeds 1 μg/m^3, even after the application of all RACM, then the area should be reclassified as serious, and serious area requirements, including BACM, should be implemented. The EPA will consider exercising its authority to waive serious area requirements on a case-by-case basis where the anthropogenic source contribution exceeds these levels, and it can be persuasively demonstrated that because of unique circumstances, anthropogenic sources do not contribute significantly to violations of the PM–10 NAAQS in the area.

The EPA will consider nonanthropogenic sources to contribute significantly (and hence grant an attainment date waiver) only if, after the application of RACM to nonanthropogenic sources, their contribution to the 24-hour average design concentration exceeds 150 μg/m^3, or their contribution to the annual mean design concentration exceeds 50 μg/m^3. Because the basic purpose of title I is to protect public health and welfare through attainment and maintenance of the NAAQS, EPA believes that before it may generally presume a serious area's nonanthropogenic emissions contribution to be significant, that contribution should by itself prevent the area from attaining the NAAQS after reasonable steps have been taken to reduce or minimize their impacts. Areas which do not meet the above criteria, and other situations for which the general presumption is rebutted, will be reviewed on a case-by case basis (see question 4 below).

Information derived from chemical and optical analyses of ambient filter catches, area emission inventories, and dispersion modeling to determine maximum source impacts can be used to evaluate the impact of anthropogenic and nonanthropogenic sources. Analysis of filters collected with a network of monitors over a long period (1 or more years) should reveal the portions of normal area PM–10 concentrations attributable to background, nonanthropogenic, and anthropogenic sources, respectively.

3. Under what conditions will the attainment date for a moderate area be waived?

The effect of waiving the attainment date for a moderate area is to relieve it of the serious area requirements. Therefore, special considerations apply to the determination of whether nonanthropogenic sources contribute significantly to violation of the PM–10 NAAQS in a moderate area and whether such area therefore qualifies for an attainment date waiver.

The significant disparity between the legal tests set out in section 188(f), as discussed above, may lead to an absurd result. In particular, if a moderate area met the less stringent attainment date waiver test and the attainment date for the area was actually waived, the area would never be reclassified.[23] The result would be that a moderate area would be effectively relieved from the serious area requirements without having met the more stringent test that Congress expressly required be met as a prerequisite to a waiver of such requirements. In such an event, the more stringent test for determining whether to waive serious area requirements would be rendered meaningless. Moderate areas would qualify for the attainment date waiver, be effectively relieved of all serious area requirements and never have to meet the required test for such waiver.

To avoid this absurd result and only grant a waiver of the serious area requirements consistent with the legal standard set out in the Act, EPA has construed section 188(f) in the following manner. A moderate area may only qualify for an attainment date waiver if it also qualifies for a waiver of the serious area requirements. Therefore, EPA must determine that anthropogenic sources in the area do not contribute significantly to the violation of the PM–10 NAAQS, and the serious area requirements should be waived before EPA can grant an attainment date waiver for a moderate area. If such a determination is made, then the attainment date may be waived and the area would not be reclassified. These special considerations would not be relevant where EPA is determining whether to waive the attainment date for a serious area since waiving the date in such circumstances would not as a matter of course have the effect of relieving the area of the serious area requirements. An area already reclassified as serious could qualify for an attainment date waiver solely by showing that nonanthropogenic emissions contribute significantly to the nonattainment problem.

As part of its policy, EPA will require that areas receiving waivers be revisited periodically to reevaluate source contributions, to ensure that source emissions growth is reasonably controlled, and to determine whether additional controls to reduce the public's exposure to high concentrations of PM–10 are available (see also the discussion under question 5).

4. What happens if an area cannot meet the general criteria described above?

If evidence in a given nonattainment area suggests that nonanthropogenic emissions may contribute significantly to violations but are not greater than 150 μg/m^3 and/or anthropogenic source contributions are relatively small but not less than 5 μg/m^3, then EPA will review the situation on a case-by-case basis taking into account relevant information such as the relative contribution of nonanthropogenic emissions/anthropogenic emissions and the effects of applying additional controls to both types of sources.

For moderate areas, if preliminary data (emission inventory, filter analysis, etc.) persuasively indicate that anthropogenic emissions may be insignificant and that nonanthropogenic emissions may be significant in an area, but such data are not decisive, then EPA will consider granting a temporary or conditional waiver of the moderate area attainment date for no more than 3 years to allow further evaluation of the situation. Prior to granting a temporary waiver, EPA and the State must agree on a protocol for evaluating the impacts of anthropogenic and nonanthropogenic emissions. The protocol must include a schedule with interim milestones by which the State will complete its analyses. The schedule should consider the need for the area to adopt and implement BACM so as to meet the applicable serious area attainment date (as expeditiously as practicable and, for those areas designated nonattainment under section 107(d)(4)(B), no later than December 31, 2001) in the event the evaluation demonstrates that nonanthropogenic emissions do not contribute significantly to violations in the area. If the evaluation conclusively demonstrates that nonanthropogenic emissions are significant, then a waiver of the serious area attainment date may be granted.

If it is shown for any moderate nonattainment area that, although nonanthropogenic emissions may be significant, the application of controls on anthropogenic sources would

[23] If EPA waives a specific attainment date for a moderate area consistent with its authority under section 188(f), the attainment date for the area will be vacated. Therefore, the moderate area would not be subject to reclassification under section 188(b) because there simply would be no attainment date that the area cannot practicably meet or that the area fails to meet. However, since section 188(f) authorizes waiving only the attainment date, the moderate area would still be subject to all the remaining moderate area SIP requirements. Therefore, the moderate area SIP submitted to meet the applicable requirements of subparts 1 and 4 must, among other requirements, continue to provide for implementation of RACM.

appreciably reduce PM–10 concentrations in the area, then the area would not be granted a waiver of the moderate area attainment date, but would be reclassified as serious. The area would then be required to implement BACM on non-de minimis anthropogenic source categories (see discussion in section VI). However, subsequent to such reclassification, the area may later apply for a waiver of the serious area attainment date if it can demonstrate that even after implementing BACM (and after considering the extended attainment and post-attainment provisions of sections 188 and 189 of the Act), nonanthropogenic emissions will prevent the area from attaining the NAAQS.

5. For what period may a specific attainment date be waived?

When nonanthropogenic sources have been determined to contribute significantly to violations in an area that has been reclassified to serious, in accordance with the above criteria, those sources may permanently prevent the area from attaining the standards. Therefore, the attainment date for such areas could be waived indefinitely.[24] "However, the phrase waive a specific date" does not require that the attainment date be waived indefinitely (see footnote 23 on the effect of waiving the moderate area attainment date), nor does it lessen the State's obligation to strive to expeditiously attain the NAAQS at some time in the future through available means. While EPA does not expect States to exhaust their resources to meet standards that may be unattainable, it does expect them to continue efforts to minimize exposures to unhealthy air.

Even though a specific attainment date and serious area requirements may be waived indefinitely for an area where, respectively, nonanthropogenic sources contribute significantly to violations and anthropogenic sources do not, the State should review the status of anthropogenic and nonanthropogenic source contributions in the area every 3 years. Such a review would entail determining whether nonanthropogenic sources still contribute significantly and anthropogenic sources do not contribute significantly to violation of the PM–10 NAAQS in the area. Since emissions from anthropogenic sources increase with population growth and the location of new sources to the area, the contribution of anthropogenic sources to violations can become significant over time. Therefore, the need for reinstating a specific attainment date and/or previously waived serious area requirements should be reconsidered periodically.

The EPA has the authority under section 172(c)(3) to require periodic updates of a nonattainment area's emissions inventory to assure that the requirements of part D are met. The EPA plans to use this authority to periodically review the waiver status of areas, as described above. A specific attainment date and applicable requirements should be reinstated if it is determined that nonanthropogenic sources no longer contribute significantly or anthropogenic sources begin contributing significantly to violations in the area.

6. What requirements applicable to serious nonattainment areas under subpart 4 of part D should be waived?

The individual subpart 4 requirements (see section IV. above) will be waived only after considering all relevant circumstances on a case-by-case basis for serious areas where anthropogenic sources do not contribute significantly and where RACM have been implemented. Currently, the section 189(b)(3) requirement to modify the definitions of "major source" and "major stationary source" is the only serious area requirement that will not be waived.

D. Waiver Policy Description

Consistent with the discussion above, the EPA intends to implement its authority to grant waivers under section 188(f) in a manner described by the diagram presented in Figure 1. It is important to note that this diagram is provided for illustrative purposes only and should not be interpreted contrary to the policy as it is described in this notice. The figure presents six decision questions. A SIP submitted for a moderate nonattainment area seeking a waiver is expected to address the first three questions:

1. Can the area attain the NAAQS by the applicable statutory attainment date (December 31, 1994 for the initial nonattainment areas) after implementing RACM (including RACT) for contributing anthropogenic and nonanthropogenic sources?

If the moderate area SIP demonstrates that the area can attain with RACM (including RACT) by the attainment date, then the answer to this question is "yes" and the waiver provisions are not applicable.

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[24] In cases where it is feasible to implement measures that will reduce future emissions from nonanthropogenic sources (i.e., planting indigenous vegetation or establishing wind breaks), EPA has the authority under section 188(e) to extend the attainment date for a serious area for up to 5 years beyond 2001 if it is possible that the NAAQS could be attained in the future. Such measures should be considered by States before seeking waivers of the attainment date.

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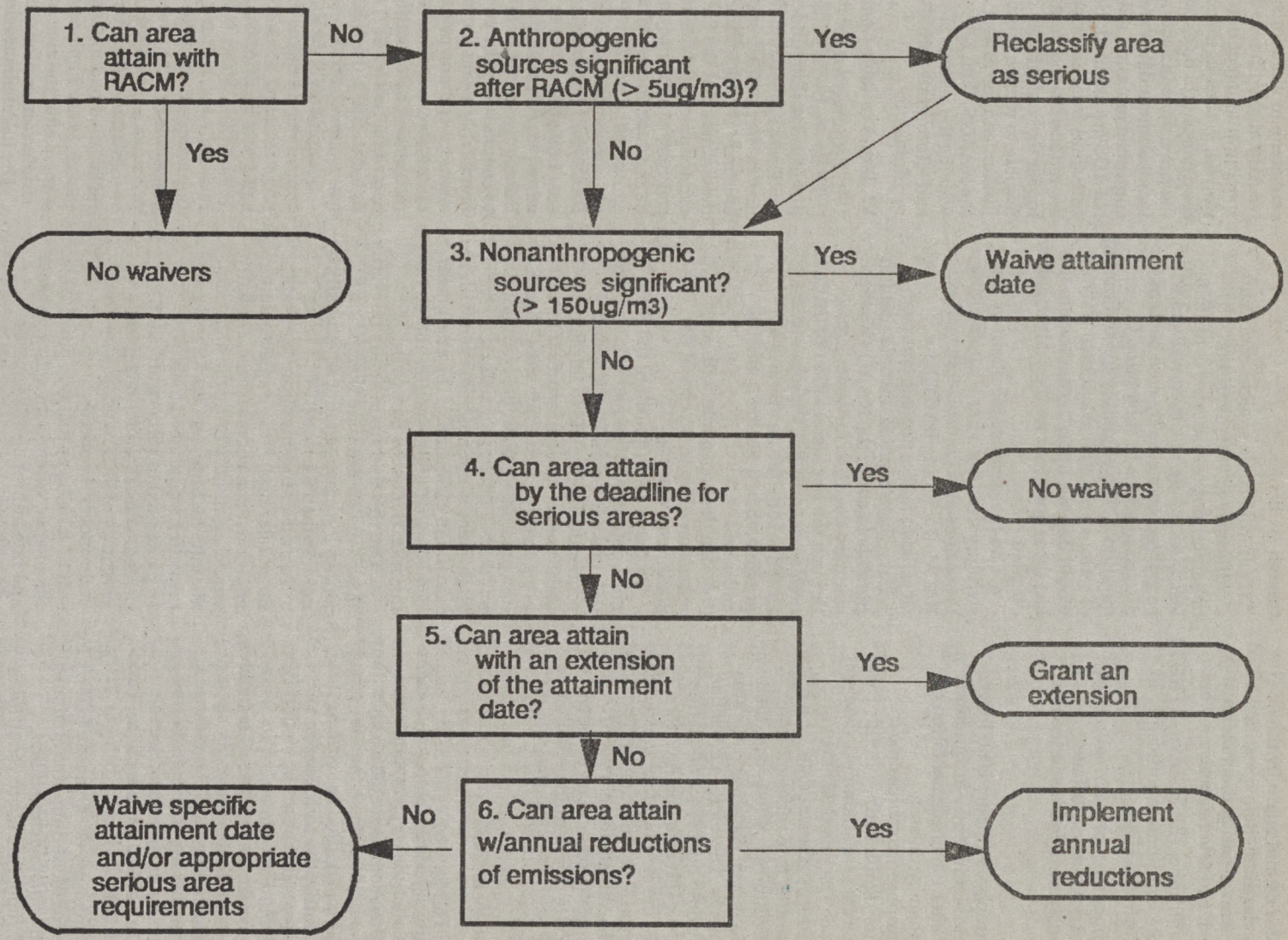
FIGURE 1. WAIVER POLICY DIAGRAM



If an area cannot attain by the statutory deadline, then questions 2 and 3 on the waiver policy diagram must be addressed, and several cases may exist.

2. Do anthropogenic sources of PM–10 as a whole contribute significantly to violations in the area?

3. Do nonanthropogenic sources of PM–10 as a whole contribute significantly to violations in the area?

Case #1

If anthropogenic sources no longer contribute significantly to violations in the area after the implementation of RACM, then by default, nonanthropogenic sources must contribute significantly.[25] In this case, the moderate area attainment date may be waived. The practical effect of waiving the attainment date for a moderate area is to relieve it from reclassification as serious and, therefore, to relieve it from certain serious area requirements. Therefore, a moderate area may only qualify for an attainment date waiver if it also qualifies for a waiver of the serious area requirements (see section V.C., question 3). The State should reevaluate the impact of anthropogenic sources on the area periodically to determine whether or not they contribute significantly to violations.

Case #2

If anthropogenic sources still contribute significantly to violations in the area after the implementation of RACM (i.e., contribute over 5 μg/m3 to PM–10 concentrations), then the area would be reclassified as serious. Consequently, the serious area requirements discussed in section IV, above, would have to be implemented in the area. These requirements include, among other things, the application of BACM (including BACT) on source categories that are still contributing significantly to violations (see the discussion of BACM in section VI and footnote 33).

Subsequently, the area may qualify for a waiver of the serious area attainment date if it is demonstrated that nonanthropogenic source contributions (i.e., contributions greater than 150 μg/m3) would prevent the area from attaining the NAAQS.

Case #3

If anthropogenic sources contribute significantly to violations, but, nonanthropogenic sources contribute less than 150 μg/m3, then waivers will be granted on a case-by-case basis as discussed above in subsection C., question 4. The eligibility for and timing of serious area attainment date waivers would depend upon the answers to the last three questions on the waiver policy diagram.

4. Can the serious area attain by the statutory deadline after implementing the serious area control strategy (i.e., BACM, (including BACT)), for significant anthropogenic sources?

If the State can demonstrate that it is possible to attain the NAAQS by the statutory deadline for serious areas through the implementation of BACM, then a waiver is not appropriate. If attainment by the deadline is not possible, then question 5 must be addressed.

5. Can the area attain with an extension of up to 5 years of the attainment date? [26]

To answer this question, the State must determine if an extension of time will make it technologically and economically feasible to implement additional control measures that will bring the area into attainment. Again, if it is possible to attain the NAAQS, then a waiver is not appropriate. If attainment is not possible even with the maximum extension of the attainment date allowed under section 188(e), then question 6 must be addressed.

6. Can the area attain at any time after the extension deadline if emissions within the area are reduced annually by not less than 5 percent? [27]

To answer this question, the State must determine if the implementation of additional control measures, annually, would eventually bring the area into attainment. Sufficient additional control measures would need to be implemented to achieve at least 5 percent annual reductions in the inventory of PM–10 emissions from anthropogenic sources.

If EPA believes that it is practicable for an area, where both anthropogenic and nonanthropogenic sources contribute to violations, to attain the NAAQS at any time in the future, a specific attainment date would not be waived. Rather, as discussed previously, the State would be expected to follow the provisions in sections 188 and 189 for attainment date extensions and continued emission reductions until the NAAQS are attained. However, if emissions from anthropogenic sources are reduced to the point that it is no longer technologically or economically feasible to reduce those emissions further, and the area still cannot attain the NAAQS, then EPA may consider waiving the serious area attainment date and appropriate serious area requirements.

VI. Best Available Control Measures

A. Requirement for BACM

There are two circumstances, as discussed earlier, under which a moderate PM–10 nonattainment area may be reclassified as serious. First, an area may be reclassified whenever EPA determines that the PM–10 NAAQS cannot practicably be attained by the statutory attainment date.[28] Such a determination may be made before the attainment date if a review of the SIP for an area shows that RACM, including RACT, will not practicably bring the area into attainment or if delays in adopting, submitting, and implementing SIP requirements form a basis for EPA to conclude that an area cannot practicably attain the NAAQS by the statutory attainment date. The second circumstance is when the area is reclassified by operation of law upon a determination by EPA that the area has failed to attain the NAAQS on schedule (see section 188(b)).

Section 189(b) establishes additional control requirements for PM–10 nonattainment areas that are reclassified as serious by EPA. Under section 189(b)(1)(B), States must submit SIP revisions which provide for implementation of the BACM for PM–10 emissions in such areas. These SIP revisions must be submitted to EPA within 18 months after an area is reclassified and must assure that the measures are implemented no later than 4 years after the area is reclassified as serious (see section 189(b) (1) and (2)).

The EPA believes the requirement to implement BACM in serious PM–10 nonattainment areas should, in one respect, be interpreted similarly to the comparable requirement to implement RACM in moderate PM–10

[25] It is likely that Congress intended all areas—even those eligible for waivers—to implement whatever measures were reasonably available. Therefore, EPA believes the best reading of the statute requires that the emission reductions attributable to RACM (including RACT) should be considered before evaluating the significance of anthropogenic contributions.

[26] The EPA may grant a single extension of the attainment date for serious areas of no more than 5 years under the conditions of section 188(e) of the Act. Guidance on demonstrating that a State qualifies for an attainment date extension will be issued in the future.

[27] If an area fails to attain the NAAQS by the end of the extension period, then the State must plan to achieve annual reductions of not less than 5 percent of PM–10 and PM–10 precursor emissions within the area, as reported in the most recent inventory (see section 189(d)).

[28] The statutory attainment date for the initial group of areas designated nonattainment by operation of law upon enactment of the 1990 Amendments, under section 107(d)(4), is December 31, 1994.

nonattainment areas. Section 172(c)(1), which applies to all nonattainment areas, states that part D RACM shall include "such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology * * *." Thus, moderate PM–10 nonattainment area RACM plans, which are submitted to meet the requirements of section 189(a)(1)(C), must include provisions ensuring the adoption of RACT (see 57 FR 13540, column 1).

For moderate PM–10 areas reclassified as serious, the nonattainment control requirements (i.e., RACM) are carried over and elevated to a higher level of stringency (i.e., BACM). So, by analogy, just as RACM includes RACT, in the same way, BACM includes BACT.[29] Thus, just as moderate PM–10 SIP revisions when implementing RACM under section 189(a)(1)(C) must provide for the adoption of RACT, similarly, PM–10 SIP revisions under section 189(b)(1)(B), implementing BACM in serious PM–10 nonattainment areas, must include provisions ensuring the adoption of BACT. This point was explicitly addressed in the House Committee Report: "Serious areas must include in their submission provisions to require that the best available control measures for the control of PM–10 emissions are implemented no later than 4 years after the area is classified or reclassified as serious. Such provisions must include the application of the best available control technology to existing stationary sources" (H.R. Rep. No. 490, 101st Cong., 2nd Sess. 266–67 (1990)).

Although section 189(b)(1)(B) requires BACM (including BACT) to be implemented in serious PM–10 nonattainment areas, the Act does not define either BACM or BACT for PM–10 nonattainment purposes. Where a statute is silent or ambiguous with respect to the meaning of a statutory term, the agency is authorized to adopt an interpretation reasonably accommodated to the purpose of the statutory provisions.[30] In considering how to interpret the provisions requiring BACM (including BACT) for serious PM–10 nonattainment areas, EPA has looked at several factors: The way in which similar terms have been historically interpreted in other sections or titles of the Act, the ordinary grammatical usage associated with the word "best," and the overall structure and purpose of title I of the statute.

B. EPA's Historical Interpretation of Control Technology Terminology

The Act uses several terms to refer to different levels of emission control technology required for existing or new sources: "reasonable (RACT)," "best (BACT)," and lowest achievable emission rate (LAER). It is helpful to consider EPA's past and current interpretation and implementation of these various control levels in determining the control level appropriate for BACM for serious PM–10 nonattainment areas.

The term "reasonably available" was applied to control measures and control technology required to be implemented at existing sources in nonattainment areas by the 1977 Clean Air Act Amendments (1977 Amendments) (42 U.S.C. 7502(c)(1)). At that time, EPA defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of technology that is reasonably available considering technological and economic feasibility.[31] Control measures were determined to be reasonable after considering their energy and environmental impacts and their annualized capital and operating costs. In EPA's view, the cost of using a control measure is considered reasonable if those same costs are borne by other comparable facilities. Since Congress, in the 1990 Amendments, did not modify EPA's interpretations of the RACM and RACT in the earlier 1977 Amendments, it can be presumed to have given some endorsement to EPA's definition of the term.

Congress defined the term "best available control technology" in section 169(3) of the 1977 Amendments for use in implementing the requirement to prevent significant deterioration (PSD) of air quality under part C, title I, of that Act. This definition was modified by section 403(d) of the 1990 Amendments. The BACT is currently defined for the PSD program as an emission limitation based on the "maximum degree of reduction of each pollutant * * * emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques * * * for control of each such pollutant." Thus, BACT is to be determined for the PSD program on a case-by-case basis taking into account the energy, environmental, and economic impacts and other costs. Section 169(3) also requires that BACT be at least as stringent as any corresponding new source performance standard (NSPS) or national emission standard for hazardous air pollutants (NESHAP).

Under the PSD program, BACT applies through preconstruction permits issued to major new and major modified facilities in areas where the air quality is better than the NAAQS (section 165(a)(4) of the Act, 42 U.S.C. 7475(a)(4)). In broad overview, BACT is determined by identifying the technologically feasible control measures, from the universe of available control techniques, which yield the maximum degree of emission reduction, after considering the energy, environmental and economic impacts of the technology, and other costs. This may include consideration of the annualized capital and operating costs for the facility. The costs of control for a major new facility or major modification of an existing facility should be considered as a portion of the overall costs of the new facility.

The term LAER refers to the level of control required for issuing a preconstruction permit to major new or major modified facilities in areas where the air quality is worse than the NAAQS (i.e., nonattainment areas) (section 173(a)(2) of the Act, 42 U.S.C. 7503(a)(2)). In broad terms, LAER is defined at section 171(3) of the Act as the more stringent emission rate based on either the most stringent State emission limit or the most stringent emission limit achieved in practice by such class or category of source. Like BACT, the LAER level of control must be at least as stringent as the NSPS applicable to the source. Unlike RACT and BACT, the LAER requirement does not consider energy or cost factors. In general, the costs of achieving LAER in a nonattainment area must be considered as a portion of the overall cost of investing in a major new or major modified facility, as they are with BACT in attainment areas. The EPA believes that it is reasonable to conclude that in selecting the term "best" to apply to control measures in PM–10 serious nonattainment areas, Congress likely considered how the term has been

[29] Even without the RACM analogy, the best available technological control measures by their plain terms are a subset of the universe of best available control measures.

[30] *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843–44 (1984).

[31] See, for example, 44 FR 53761–53762 (September 17, 1979) and footnote 3 of that notice. Note that EPA's emissions trading policy statement (51 FR 43814 (December 4, 1986)) has clarified that RACT requirements may be satisfied by achieving "RACT equivalent" emissions reductions in the aggregate from the full set of existing stationary sources subject to those requirements (see also EPA's proposed economic incentives rule, 58 FR 11110, 11123 (February 23, 1993)).

interpreted in other sections and titles of the Act. Several other factors (discussed below) support such a conclusion.

C. BACM for Serious PM–10 Nonattainment Areas

A plain-English interpretation of the term "best" implies a generally higher standard of performance than one that may be considered "reasonable." In addition, the structural scheme throughout title I of the Act is to require the implementation of increasingly stringent control measures in areas with more serious pollution problems, while providing such areas a longer time to attain the applicable standards. This structural scheme reflects a basic underlying premise of title I. The premise is (1) That more stringent control measures are needed in cases when the current control requirements will be insufficient to bring a particular area into attainment; and (2) that the more serious the air quality problem, the more reasonable it is to require States to implement control measures of greater stringency despite the greater burdens such measures are likely to cause. The Act attempts to balance the greater burden imposed in those areas where more stringent controls are required by affording the State additional time to implement them.

For example, under section 188(e), EPA is given authority to extend the attainment date for a serious PM–10 nonattainment area beyond the specified statutory date, provided certain conditions are met. One of those conditions is that the State must demonstrate to EPA's satisfaction that "the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area." Thus, under this section, the Act provides such areas an opportunity to receive additional time to attain the NAAQS. The consequence of receiving additional time, however, is that the State must demonstrate that its PM–10 implementation plan contains the "most stringent measures" that can feasibly be implemented in the relevant area from among those which are either included in any other SIP or have been achieved in practice by any other State.

Similarly, the Act requires the application of control measures that are "reasonable" in moderate PM–10 nonattainment areas (RACM) and control measures that are "best" (BACM) whenever a moderate area cannot "practicably" attain or fails to attain the NAAQS and is therefore reclassified as serious. Accordingly, for the reasons stated above, EPA believes it is reasonable to conclude that Congress intended a greater level of stringency to apply in areas that are required to implement "best available" controls than in those required only to implement controls that are "reasonably available."

As noted earlier, an array of different control measures is applicable under various title I NAAQS-related programs. A key factor, among others, in determining the level of control appropriate for a given area from among the different emission control measures and technologies referred to throughout title I is the severity of the air pollution problem in that area. In addition to the general categorization of areas as "attainment," "nonattainment," and "unclassifiable," the Act characterizes the severity of an area's air pollution problem by classifying the area, for example, as "marginal," "moderate," "serious," and so on. As discussed above, the different control measures are required to be implemented as follows: For new (or modified) sources, BACT applies in PM–10 unclassifiable and attainment areas under the PSD program, while LAER applies in moderate and serious PM–10 nonattainment areas under the nonattainment NSR program; for existing sources, RACM (including RACT) applies in moderate PM–10 nonattainment areas, while BACM (including BACT) applies in serious PM–10 nonattainment areas. In each case, the more serious the pollution problem, the more stringent the control standard required.

It is apparent that in requiring the application of BACM to existing sources in serious PM–10 areas, Congress implied that these sources should be subject to a more stringent level of control than the application of RACM required for existing sources in moderate PM–10 nonattainment areas, but not as stringent as the application of LAER required for new or modified sources in moderate and serious nonattainment areas (or the degree of control required to secure an extension under section 188(e)).

1. Definition

In view of the preceding discussion, EPA believes that, as a starting point in interpreting BACM for PM–10 nonattainment purposes, it is reasonable to consider the term BACT as applied in the PSD program under section 169(3) as an analogue. Because PSD BACT and PM–10 BACM (which includes BACT) are similar terms, EPA believes it is reasonable to accord some interpretive weight to this use of similar language.[32]

Therefore, EPA's interpretation of BACM for serious PM–10 nonattainment areas will generally be similar to the definition of BACT for the PSD program. The BACM is the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source (except as provided in subsection C. 3) which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant. For PM–10, BACM must be applied to existing source categories in nonattainment areas that cannot practicably attain (or fail to attain) within the moderate area timeframe and are reclassified as serious.[33]

As noted above, EPA will interpret PSD BACT and PM–10 BACM as generally similar because, despite the similarity in terminology, certain key differences exist between control measures applicable in the PSD and PM–10 serious nonattainment area programs. The BACT under the PSD program applies only in areas already meeting the NAAQS, while PM–10 BACM applies in areas which are seriously violating the NAAQS. This difference in policy goals, arguably, suggests that the PM–10 BACM control standard should be more stringent than that for PSD BACT. On the other hand, the burden of installing efficient controls during construction of a new source or source modification is generally less onerous than retrofitting an existing PM–10 source with similar controls. If one compares both programs in terms of these factors, the differing regulatory and economic burdens and the different policy purposes tend to offset each other. Nevertheless, EPA

[32] Under accepted principles of statutory interpretation, similar terms in a statute generally suggest a similar meaning, and an agency is permitted, but not required, to give a similar meaning to similar terms which appear in different parts of a statute.

[33] The term "source categories" for which BACM will be required, refers to categories of area-wide sources or large individual stationary sources of PM–10 or PM–10 precursor emissions that may be regulated under a specific rule, generic emission limit, or standard of performance, or a specific control program in a SIP. For example, the SIP may regulate emissions from unpaved roads, construction activities, residential wood combustion, asphalt concrete batch plants, etc., as source categories. Note that, in some instances, an entire source category may consist of one large individual stationary source that is regulated separately under the SIP such as a single iron and steel manufacturing facility and the various processes therein.

believes that the differences in policy goals—i.e., preventing further pollution under the PSD program and reducing existing pollution under the PM–10 nonattainment program—counsel against adopting the interpretation and implementation of PSD BACT in its entirety for PM–10 nonattainment purposes. Rather, EPA considers it reasonable to use the approach adopted in the PSD BACT program as defined in section 169(3) of the Act as an analogue for determining appropriate PM–10 nonattainment control measures in serious areas, while at the same time retaining the discretion to depart from that approach on a case-by-case basis as particular circumstances warrant.

2. Preventive Measures

The EPA considers measures that prevent PM–10 emissions over the long term (e.g., requiring gas logs in new fireplaces) to be preferable to those measures that will only temporarily reduce emissions (e.g., curtailment of wood stove use during air pollution episodes or treatment of fugitive dust sources with water). This is because such preventive measures are inherently more effective and involve significantly fewer resources for surveillance, enforcement, and administration. Moreover, increasing emphasis on prevention over mitigation is more likely to be both economically and environmentally beneficial over the long term.

3. De Minimis Source Categories

The BACM are required for all categories of sources in serious areas unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the NAAQS. While EPA regards the BACM standard applicable in PM–10 serious areas as a more stringent control standard which calls for a greater degree of emissions control for the source categories to which it applies, EPA also believes that it has the authority to limit the applicability of BACM to those source categories which "contribute significantly" to violations of the NAAQS. The Act leaves unresolved the question of whether BACM is intended to be an all-inclusive requirement applicable to every PM–10 serious area source category. It should be noted that in section 189(b)(1)(B), which contains the requirement that serious area PM–10 SIP's provide for the implementation of BACM, Congress has not used the word "all" in conjunction with BACM. Congress has also not stated anywhere in the relevant law or legislative history that BACM must be applied to all serious area source categories. Even if the statute on its face were interpreted to require States to impose BACM on all source categories in serious PM–10 areas, the Agency believes, based on the decision in *Alabama Power Co.* v. *Costle*,[34] that it has the authority to exempt from regulation those source categories in the area which contribute only negligibly to ambient concentrations which exceed the NAAQS. The EPA believes the court's test for invoking the de minimis exemption authority would be satisfied in circumstances where a State demonstrates conclusively that, because of the small contribution of the source category's emissions to the nonattainment problem, the imposition of additional controls, such as BACM, on a particular source category in the area would not contribute significantly to the Act's purpose of achieving attainment of the NAAQS "as expeditiously as practicable." The EPA will have to determine from the record that, with respect to particular serious area PM–10 source categories which contribute to emissions in excess of the NAAQS, requiring application of BACM would produce an insignificant regulatory benefit.

The EPA will, in general, rely on the criteria applied under new source permitting programs (40 CFR 51.165(b)) to determine when a source category contributes significantly to violations of the NAAQS in a PM–10 serious nonattainment area. The criteria will also be applied spatially and temporally in the same way it is under new source permitting programs.[35]

As discussed above, a moderate PM–10 nonattainment area may be reclassified as serious based on evidence that the area cannot practicably attain the NAAQS by the statutory attainment date or evidence that it has failed to attain by that date. The evidence, whether modeled or measured, will generally indicate the standard (24-hour or annual), the day, and the location of the predicted or monitored violation. Therefore, under this policy, a source category (see footnote 33) will be presumed to contribute significantly to a violation of the 24-hour NAAQS if its PM–10 impact at the location of the expected violation would exceed 5 $\mu g/m^3$. Likewise, a source category will be presumed to contribute significantly to a violation of the annual NAAQS if its PM–10 impact at the time and location of the expected violation would exceed 1 $\mu g/m^3$.

Procedures for identifying source categories that continue to significantly affect the air quality of a serious area (even after RACM (including RACT) are implemented) and procedures for identifying the appropriate mix of control measures applicable to those source categories are discussed below in subsection E.

4. BACM Analysis Independent of Attainment Analysis

The overall structure and purpose of title I of the amended Act, the standard suggested by the word "best," and the differences in the statute between the requirements for BACM as compared to those for RACM, lead EPA to believe that, unlike RACM, BACM are to be established generally independent of an analysis of the attainment needs of the serious area.

As noted earlier in this section, the overall structural scheme throughout title I of the Act is to require the implementation of increasingly stringent control measures in areas with more serious pollution problems, while providing such areas additional time to attain the applicable standards. These tougher measures are deemed necessary in cases where it appears that less stringent controls will be insufficient to reduce emissions in an area to the level of the NAAQS. As described above, the fact that the Act requires the application of control measures that are "reasonable" in moderate PM–10 areas and control measures that are "best" whenever it is determined that a moderate area cannot "practicably" attain or actually fails to attain the NAAQS and is therefore reclassified as serious, strongly suggests that BACM is intended to be a more stringent standard than RACM. Thus, it is reasonable to interpret the statute as requiring a different analysis for determining BACM from the practice of analyzing RACM according to what is reasonable in light of the overall attainment needs of the area. Moreover, when comparing the terms "reasonable" and "best" as applied to control measures, the word "best" strongly implies that there should be a greater emphasis on the merits of the measure or technology alone and less flexibility in considering other factors.

[34] The inherent authority of administrative agencies to exempt de minimis situations from a statutory command has been upheld in contexts where an agency is invoking a de minimis exemption as "a tool to be used in implementing the legislative design" on the ground that "the burdens of regulation yield a gain of trivial or no value" (*Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979)).

[35] See "Interpretation of 'Significant Contribution,'" memorandum from Richard G. Rhoads to Alexandra Smith, December 16, 1980, OAQPS Policy and Guidance Notebook, PN 165–80–12–16–007.

Additionally, for PM–10 areas reclassified as serious before the moderate area attainment date, States have up to 4 years, under section 189(b)(2), in which to submit their serious area attainment demonstration. However, under section 189(b)(2), States have only 18 months after reclassification from moderate to serious to submit their plans requiring the use of BACM for those same areas. Thus, for such areas, Congress provided a difference of as much as 2½ years between the required date for submitting BACM plans and the date by which to submit a new attainment demonstration satisfying the requirements of section 189(b)(1)(A). This pronounced difference in timing for the serious area submittals described above is to be contrasted with the timing for submittal of similar provisions for moderate areas. Under section 189(a)(2), both the RACM plans and the attainment demonstration for moderate PM–10 areas must as a general matter be submitted at the same time. The fact that the Act requires BACM to be adopted and implemented by an appreciable time before the attainment demonstration is required, for areas that are reclassified before the moderate area attainment date, suggests that Congress intended that BACM determinations be based more on the feasibility of implementing the measures rather than on an analysis of the attainment needs of the area.[36] Therefore, the steps described below for making a BACM determination are intended to be carried out independently from the analysis to determine the emission reductions that would be necessary to attain the NAAQS by the statutory deadline. If the attainment demonstration for the area subsequently shows that BACM will bring the area into attainment before the statutory deadline, then the plan provides for expeditious attainment of the NAAQS. However, if the BACM are not adequate to provide for attainment of the standards, then the State must submit additional measures with the attainment demonstration that will result in attainment of the standard by the statutory deadline or apply for an extension of the attainment date by demonstrating that the specific conditions of sections 108(e) and 189(b)(1)(A)(ii) have been met.

D. Procedures for Determining Best Available Control Measures

1. Inventory Sources of PM–10 and PM–10 Precursors

The BACM (including BACT) applicable in a nonattainment area must be determined on a case-by-case basis since the nature and extent of a nonattainment problem may vary within the area and from one area to another. Nonattainment problems range from reasonably well-defined areas of violation caused by a specific source or group of sources to violations over relatively broad geographical areas due predominantly to large numbers of small sources widely-distributed over the area. The BACM are required for all source categories for which the State cannot conclusively demonstrate that their impact is de minimis. As stated above, the EPA will generally presume the contribution to nonattainment of any source category to be de minimis if the source category causes a PM–10 impact in the area of less than 5 $\mu g/m^3$ for a 24-hour average and less than 1 $\mu g/m^3$ annual mean concentration. The starting point for making a BACM determination would be to reevaluate the emission inventory submitted with the moderate area SIP. Section 172(c)(3) of the Act calls for all nonattainment areas to submit comprehensive, accurate, and current emissions inventories and provides for such periodic revisions as may be necessary to assure that the nonattainment planning requirements are met. If there have been any significant changes in PM–10 sources in the area since the inventory was first compiled (i.e., sources permanently shut down or new or modified sources constructed) or if the inventory is not adequate to support the more rigorous analysis required for serious area SIP demonstrations, it should be revised. All anthropogenic sources of PM–10 emissions and PM–10 precursors (if applicable)[37] and nonanthropogenic sources in a nonattainment area must be included in the emission inventory.

Because of its importance in identifying anthropogenic and nonanthropogenic sources and the applicability of BACM requirements, the breakdown of sources to consider when compiling an emissions inventory are as follows:

a. Major point sources (i.e., sources with the potential to emit at least 70 tons per year of PM–10 (or PM–10 precursors) as required in sections 189(b)(3) and 189(e) of the Act).

b. Minor point source categories.

c. Area source categories such as fugitive dust from anthropogenic sources (e.g., construction activities, paved and unpaved roads, agricultural activities, etc.), residential wood combustion, prescribed burning, and commercial/institutional fuel combustion.

d. Nonanthropogenic sources.

2. Evaluate Source Category Impact

The second step in determining BACM for an area is to identify those source categories having a greater than de minimis impact on PM–10 concentrations. The potential maximum impact of various source categories may have been determined with receptor or dispersion modeling performed for the attainment demonstration submitted with the moderate area SIP. In addition, the impact of some source categories may be apparent from analysis of ambient sampling filters from days when the standards are exceeded. If modeling was not performed during development of the moderate area SIP, receptor modeling, screening modeling or, preferably, refined dispersion modeling will generally be necessary at this time to identify key source categories.

3. Evaluate Alternative Control Techniques

In developing a fully adequate BACM SIP, the State is expected to evaluate the technological and economic feasibility of the control measures discussed in the BACM guidance documents[38] and other relevant materials for all source categories impacting the nonattainment area except those with a de minimis impact considering emission reductions achieved with RACM.

Energy and environmental impacts of the control measures and the cost of control should be considered in determining BACM. In general, for the reasons stated above, the test of economic and technological feasibility will be higher for source categories in serious areas than for source categories in moderate areas because of the greater

[36] The EPA believes this interpretation of the Act is reasonable, even if, as to areas which are classified in the future as serious PM–10 nonattainment areas because the areas have failed to attain, the date BACM plans must be submitted and the date the serious area attainment demonstration is due should happen to coincide. There is no rational basis for interpreting BACM differently depending merely on when an area happens to be reclassified.

[37] Ambient filter analysis and inventory information may have been presented in certain moderate area SIP to indicate the insignificance of secondary particles (see 57 FR 13541–42).

[38] See "Technical Information Document for Residential Wood Combustion Best Available Control Measures," EPA–450/2–92–002, September 1992; "Prescribed Burning Background and Technical Information Document for Best Available Control Measures," EPA–450/2–92–003, September 1992; and, "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA–450/2–92–004, September 1992.

need for emission reductions to attain the NAAQS. As noted earlier, this interpretation is consistent with the overall statutory scheme which requires that as an area's air quality worsens, increasingly stringent control measures are to be adopted in conjunction with the area receiving more time to attain the NAAQS. Thus, measures that were not considered reasonable to implement by the moderate area attainment date may be BACM for serious areas because of the additional time available for implementing them [39] and because of the higher degree of stringency implied by the statutory scheme and the term "best." Therefore, BACM could include, though it is not limited to, expanded use of some of the same types of control measures as those included as RACM in the moderate area SIP.

It does not currently appear that mobile sources, as distinct from the surfaces on which they travel, contribute significantly to the PM–10 air quality problem in a sufficient number of areas to warrant issuing national guidance on best available transportation control measures for PM–10 under section 190 of the Act. However, in those areas where mobile sources do contribute significantly to PM–10 violations, the State must, at a minimum, address the transportation control measures listed in section 108(f) to determine whether such measures are achievable in the area considering energy, environmental and economic impacts and other costs.

The technological feasibility of reducing emissions from area sources depends on the ability to alter the characteristics that affect emissions from the sources. Those characteristics have to do with the size or extent of the sources, their physical characteristics and the operating procedures. Reducing emissions of fugitive dust from construction activities, for example, could require the most effective combination of reducing the size of the sources (i.e., acres cleared at one time or vehicle miles traveled on unpaved surfaces), changing the physical characteristics (i.e., silt loading on travel surfaces or moisture content of materials handled), and/or changing the operating practices (i.e., lower vehicle speeds, less surface area exposed to the wind, treating or paving travel surfaces).

[39] The statutory attainment date for initial moderate PM–10 nonattainment areas reclassified as serious will be December 31, 2001. For areas designated nonattainment subsequent to enactment of the 1990 Amendments that become serious, the attainment date will be before the end of the tenth year beginning after the area's designation as nonattainment (see section 188(c)).

The technological feasibility of applying an emission reduction method to a particular point source should consider the source's process and operating procedures, raw materials, physical plant layout, energy requirements, and any collateral environmental impacts (e.g., water pollution and waste disposal). The process, operating procedures, and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and the selection of add-on emission control equipment. The operation and longevity of control equipment can be significantly influenced by the raw materials used and the process to which it is applied. The feasibility of modifying processes or applying control equipment is also influenced by the physical layout of the particular plant. The space available in which to implement such changes may limit the choices and will also affect the costs of control.

4. Evaluate Costs of Control

Economic feasibility considers the cost of reducing emissions from a particular source category and costs incurred by similar sources that have implemented emission reductions. As with RACT determinations and BACT/LAER analyses in other statutory contexts, EPA believes that for PM–10 BACM purposes, it is reasonable for similar sources to bear similar costs of emission reduction. As such, when identifying BACM, consideration of economic feasibility should not rely on claims regarding the ability of a particular source to "afford" to reduce emissions to the level of similar sources. Otherwise, less efficient sources might be rewarded for their inefficiency by being allowed to bear lower emission reduction costs. Instead, economic feasibility for PM–10 BACM purposes should focus upon evidence that the control technology in question has previously been implemented at other sources in a similar source category without unreasonable economic impacts.

Where the economic feasibility of a measure (e.g., road paving) depends on public funding, EPA will consider past funding of similar activities as well as availability of funding sources to determine whether a good faith effort is being made to expeditiously implement the available control measures. In other words, if 20 miles of unpaved roads are typically paved each year, then the BACM fugitive dust program should include paving more than 20 miles per year of existing roads and should offer evidence of ambitious efforts to increase funding and increase the priority for use of existing funds.

The capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility. The "OAQPS Control Cost Manual, Fourth Edition," EPA–450/3–90–006, January 1990, describes procedures for determining these costs. The above costs should be determined for all technologically-feasible emission reduction options.

E. Selection of BACM for Area Sources

Once the significant PM–10 area source categories have been identified, the State should select area source control measures from the candidate BACM listed in the technical information documents for fugitive dust, residential wood combustion (RWC), prescribed burning, or any other technical information documents issued by EPA (see footnote 38). This guidance is based on EPA's analysis of available control alternatives for the identified source categories. While the guidance is intended to be comprehensive, it is by no means exhaustive. Consequently, the State is encouraged to consider other sources of information and is not precluded from selecting other measures and demonstrating to the public and EPA that they constitute BACM. Further, any control measure that a commenter indicates during the public comment period is available for a given area should be reviewed by the planning agency. The agency should determine whether the affected categories of sources are significant and, if so, whether the available measure is achievable in the area considering energy, environmental, and economic impacts and other costs.

As stated earlier, EPA considers measures that prevent PM–10 emissions over the long term to be preferable to short-term curtailment measures. Therefore, when selecting BACM for area sources, a State should first consider pollution preventive measures and measures that provide for long-term sustained progress toward attainment in preference to quick, temporary control. For example, a State should consider requiring the replacement, over time, of old wood stoves with cleaner-burning wood stoves or alternative fuels. Such programs would complement and reduce dependance on wood-burning curtailment programs adopted as RACM for the moderate area SIP. However, EPA recognizes that such long-term measures may entail significant lead time and that temporary measures like wood-burning curtailments may need to be continued in serious areas, at a

minimum, to provide interim health protection.

Once the list of available measures for an area source has been identified, the State must evaluate the technological and economic feasibility of implementing the controls. The State may refer to the technical information documents for procedures to determine feasibility.

When evaluating economic feasibility, States should not restrict their analysis to simple acceptance/rejection decisions based on whether full application of a measure to all sources in a particular category is feasible. Rather, a State should consider implementing a control measure on a more limited basis, e.g., for a percentage of the sources in a category if it is determined that 100 percent implementation of the measure is infeasible. This would mean, for example, that an area should consider the feasibility of paving 75 percent of the unpaved roadways even though paving all of the roads may be infeasible. Alternatively, the State should consider whether measures which cannot feasibly be implemented in their entirety prior to the statutory deadline for BACM implementation could be completed over an extended period. In that event, BACM might itself be defined to change over time from a more limited set of measures at the initial implementation date to a progressively tighter or more ambitious program at later dates.

The following example is presented to illustrate how a moderate area program of RACM for fugitive dust control may be complemented with additional BACM after the area is reclassified as serious. Assume that the following control measures were adopted as RACM:

1. Reduce the speed limit on unpaved county roads to 25 miles per hour.
2. Treat all unpaved county roads, monthly, with chemical dust suppressants within 500 feet of their intersections with paved roads.
3. Treat 10 miles of the most heavily-traveled, unpaved county roads with chemical dust suppressants once per month.
4. Pave 4 miles of unpaved city streets.
5. Treat unpaved parking lots in the city with chemical dust suppressants once per month.
6. Clean anti-skid materials from 50 miles of city streets within 48 hours after snow melt begins.

The same area, after being reclassified as serious, may adopt the following BACM examples to complement the RACM program: [40]

1. Pave 10 miles of the most heavily-traveled, unpaved county roads.
2. Treat 10 miles of unpaved county roads with chemical dust suppressants once per month.
3. Pave 25 unpaved county roads within 500 feet of their intersections with paved roads.
4. Chemically treat or pave both shoulders of 30 miles of State highways within the county.
5. Pave all parking lots within the city.
6. Revise the specifications for winter anti-skid materials to require cleaner, less friable materials, and reduce the quantity used per lane-mile.
7. Require crop rotations on highly erodible lands.
8. Retire highly erodible sections of farmland and plant indigenous vegetation as a cover instead of leaving land fallow.
9. Plant crops and windbreaks across the prevailing wind direction on highly erodible lands.

In summary, the State must document its selection of BACM by showing what control measures applicable to each source category (not shown to be de minimis) were considered. The control measures selected should preferably be measures that will prevent PM–10 emissions rather than temporarily reduce them. The documentation should compare the control efficiency of technologically-feasible measures, their energy and environmental impacts and the costs of implementation.

F. Selection of BACT for Point Sources

The reviewing authority determines BACT on a case-by-case basis. As described above, EPA would expect the reviewing authority to select an emissions limitation that reflects the maximum degree of emission reduction of each pollutant subject to regulation (PM–10 and/or PM–10 precursors), taking into account energy, environmental, and economic impacts and other costs, that it determines is achievable for such facility.

In light of preceding discussions of BACT and its statutory bases, it is EPA's policy that BACT be determined using the analytical methodology established in the reviewing authority's current PSD program to the extent that it is consistent with guidance contained in this notice. The analytical methodology used should, at a minimum, consider a representative range of available controls (including the most stringent, those capable of meeting standards of performance under 40 CFR part 60 or 61, and those identified by commenters during the public comment period). Selection of a particular control system as BACT must be justified by a comparison of the candidate control systems considering energy, environmental, and economic impacts, and other costs, and be supported by the record.

In addition, if the reviewing authority determines that there is no economically-reasonable or technologically-feasible way to accurately measure the emissions, and hence to impose an enforceable emissions standard, it may require the source to use design, alternative equipment, work practice, or operational standards to reduce emissions of the pollutant to the maximum extent feasible (see, by analogy, 40 CFR 52.21(b)(12); 40 CFR 51.166(b)(12)).

Alternative approaches to reducing emissions of particulate matter including PM–10 are discussed in "Control Techniques for Particulate Emissions From Stationary Sources" - Volume I (EPA–450/3–81/005a) and Volume II (EPA–450/3–81–005b), September 1982. The design, operation, and maintenance of general particulate matter control systems such as mechanical collectors, electrostatic precipitators, fabric filters, and wet scrubbers are discussed in Volume I. The collection efficiency of each system is discussed as a function of particle size. Information is also presented regarding energy and environmental considerations and procedures for estimating costs of particulate matter control equipment. The emission characteristics and control technologies applicable to specific source categories are discussed in Volume II. Secondary environmental impacts are also discussed.

The BACT/LAER Clearinghouse, the EPA Control Technology Center, and past BACT analyses for new and modified major sources under the PSD program may be used to assist in identifying available control options and maximum achievable emission reductions. The EPA will continue to evaluate the need for additional guidance and will produce additional materials as appropriate.

VII. Contingency Measures

Section 172(c)(9) requires that SIP's provide for the implementation of specific measures to be undertaken if the Administrator finds that the

[40] Adoption of these types of measures may require coordination with other local governmental entities such as the Departments of Agriculture, Transportation, and/or the Interior.

nonattainment area has failed to make RFP toward attainment or to attain the primary NAAQS by the applicable statutory deadline. Following the Administrator's finding, the measures are to "take effect without further action by the State, or the Administrator." The EPA interprets this requirement to be that no further rulemaking actions by the State or EPA would be needed to implement the contingency measures (see generally 57 FR 13512 and 13543–544). The EPA recognizes that certain actions, such as the notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively. However, States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. After EPA determines that a moderate PM–10 nonattainment area has failed to attain the PM–10 NAAQS, EPA generally expects all actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of the area's failure. The State should ensure that the measures are fully implemented as expeditiously as practicable after they take effect.

The purpose of contingency measures is to ensure that additional measures beyond or in addition to the required "core" control measures (i.e. RACM for moderate areas and BACM for serious areas) immediately take effect when the area fails to make RFP or to attain the PM–10 NAAQS in order to provide interim public health and welfare protection. The protection is considered "interim" because the statute often provides for a more formal SIP revision in order to correct, for example, the failure of an area to attain the PM–10 NAAQS (e.g., section 189(b)—serious area plan required upon finding of failure of moderate area to attain the PM–10 NAAQS under 188(b)(2)—and 189(d) (plan revisions required upon failure of serious area to attain the PM–10 NAAQS)). Thus, EPA has noted previously that contingency measures should consist of other available control measures not contained in the applicable core control strategy (57 FR 13543). In designing its contingency measures, the State should also take into consideration the potential nature and extent of any attainment shortfall for the area. The magnitude of the effectiveness of the measures should be calculated to achieve the appropriate percentage of the actual emission reductions required by the SIP control strategy to bring about attainment. The EPA has recommended that contingency measures provide the emission reductions equivalent to 1 year's average increment of RFP (see discussion below).

Once moderate areas are subsequently reclassified as serious, the affected States must ensure that adequate contingency measures, as described above, are in place for such areas. This is explicitly required under the statute. Section 189(b)(1) requires areas reclassified as serious to submit "an implementation plan." Under section 172(c), in turn, "plan provisions" required under part D must provide for the implementation of contingency measures. Accordingly, for those moderate areas reclassified as serious, if all or part of the moderate area plan contingency measures become part of the required serious area control measures (i.e., BACM), then additional contingency measures must be submitted whether or not the previously submitted contingency measures had already been implemented. Further, the affected States must ensure that serious areas have adequate contingency measures considering, among other things, new information about the potential attainment shortfall for the newly reclassified serious area. The States must submit contingency measures for serious areas or otherwise demonstrate that adequate measures are in place within 3 years of reclassification.[41]

VIII. Quantitative Milestones and Reasonable Further Progress

A. General Discussion

The PM–10 nonattainment area SIP's must include quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (see section 189(c) of the amended Act). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." A discussion of these requirements follows.

B. Reasonable Further Progress

Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient generally to maintain at least linear progress toward attainment by the specified deadline. Requiring linear progress reductions in emissions to maintain RFP may be appropriate in four situations:

1. When pollutants are emitted by numerous and diverse sources.
2. Where the relationship between any individual source and the overall air quality is not explicitly quantified.
3. Where a chemical transformation is involved.
4. Where the emission reductions necessary to attain the standard are inventory-wide.

For example, in those areas where the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM–10 emissions should not remain constant or increase from 1 year to the next in such an area.

Requiring linear progress reductions in emissions to maintain RFP is less appropriate:

1. Where there are a limited number of sources.
2. Where the relationships between individual sources and air quality are relatively well defined.
3. Where the emission control systems utilized (e.g., at major point sources) will result in swift and dramatic emission reductions.

For example, in those areas where the PM–10 nonattainment problem is attributed to a few stationary sources, RFP should be met by "adherence to an ambitious compliance schedule"[42] which is likely to periodically yield significant emission reductions. Adherence to "an ambitious compliance schedule" does not necessarily mean that it would be unreasonable to achieve

[41] The Clean Air Act does not prescribe when States containing serious PM–10 nonattainment areas shall submit section 172(c)(9) contingency measures (or otherwise demonstrate that adequate contingency measures are already in place). However, section 172(b) of the Act directs the Administrator to establish a schedule for submittal of the plan items in section 172(c) at the time the Administrator designates an area as nonattainment. Such schedule is to include a date or dates "extending no later than 3 years from the date of the nonattainment designation" (see section 172(b)). By analogy, EPA concludes it is reasonable to establish that the formal deadline for the submittal of section 172(c)(9) contingency measures (or a demonstration that adequate contingency measures are in place) by States containing serious PM–10 nonattainment areas is no later than 3 years from the date of the serious area reclassification (*see Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 842–45 (1984)).

[42] U.S. EPA, Office of Air Quality Planning and Standards, "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," Research Triangle Park, NC, January 27, 1984, page 25.

annual incremental emission reductions or generally linear progress, however.

The SIP's for PM–10 nonattainment areas must include detailed schedules for compliance with emission regulations in the areas and accurately indicate the corresponding annual emission reductions to be realized from each milestone in the schedule. In reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM–10 NAAQS. Additionally, EPA believes that it is appropriate to require early implementation of the most cost-effective control measures (e.g., controlling fugitive dust emissions at the stationary source) while phasing in the more expensive control measures, such as those involving the installation of new hardware.

Section 189(c) provides that the quantitative milestones submitted by a State for an area also must be consistent with RFP for the area. Thus, EPA will determine an area's compliance with RFP in conjunction with determining its compliance with the quantitative milestone requirement. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every 3 years, when a State demonstrates an area's compliance with the quantitative milestone requirement, it should also demonstrate that RFP has been achieved during each of the relevant 3 years. Thus, the discussion of quantitative milestones below refers to the "RFP/milestone" submittal dates, achievement dates and demonstration (or reporting) requirements.

C. Quantitative Milestones

1. Nature of Quantitative Milestones

As mentioned above, PM–10 nonattainment SIP's are to contain quantitative milestones (see section 189(c)). These quantitative milestones should consist of elements which allow progress to be quantified or measured. Specifically, States should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date. The following are examples of measures which support and demonstrate how the overall quantitative milestones identified for an area may be met:

a. Percent implementation of various control strategies (e.g., pave 50 percent of culpable streets, replace 75 percent of residential wood heaters with natural gas heating units).

b. Percent compliance with implemented control measures.

c. Adherence to a compliance schedule.

2. RFP/Milestone Due Dates

As mentioned above, PM–10 nonattainment SIP's are to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment. There is a gap in the law in that the text of section 189(c) does not articulate the starting point for counting the 3-year period. The EPA believes it is reasonable to begin counting the 3-year milestone deadline from the due date (and not the submittal date) for the applicable moderate area implementation plan revision (see section III.C.1.(f) of the General Preamble (57 FR 13539) for an explanation of why EPA believes it is appropriate to begin counting the 3-year milestone deadline from the SIP due date).

The first "RFP/milestone" achievement date for those areas initially designated as nonattainment for PM–10 by operation of law when the Act was amended will be the moderate area attainment date of December 31, 1994, as stated in section III.C.1.f. of the General Preamble (57 FR 13539). The RFP/milestone achievement date would normally be November 15, 1994, 3 years after the SIP due date of November 15, 1991. The achievement date was delayed 46 days, however, because the de minimis timing differential between the attainment date and the literal first milestone date made it administratively impracticable and of trivial value to require separate milestones and attainment demonstrations for these areas. Thus, for these initial areas that demonstrate timely attainment, EPA's policy is to deem the emission reductions progress made between the SIP submittal due date and the attainment date as sufficient to satisfy the first milestone requirement (57 FR 13539).

Thus the initial RFP/milestone will be met by showing that emission reductions scheduled to be made between the SIP due date and the attainment date for these moderate areas were actually achieved. Most of the emission reductions will result from implementation of RACM (including RACT) adopted as part of the moderate area SIP. The Act requires that RACM be implemented by December 10, 1993 in the initial PM–10 nonattainment areas (see section 189(a)).

Subsequent RFP/milestones for these initial PM–10 nonattainment areas that are reclassified as serious will be due every 3 years after the original due date for the moderate area SIP.[43] Therefore, the second RFP/milestone for the initial nonattainment areas that are reclassified as serious must be achieved by November 15, 1997. The third RFP/milestone achievement date will be November 15, 2000, etc. These RFP/milestones should be addressed by quantifying and comparing the annual incremental emission reductions which result from implementation of BACM/BACT (required within 4 years after the area is reclassified as serious) and from additional measures included in the final serious area SIP to those reductions which were identified in the SIP as quantitative milestones necessary to achieve the NAAQS by the applicable attainment date. The annual incremental emission reductions must be sufficient to assure attainment as expeditiously as practicable but not later than December 31, 2001. In some cases it may also be appropriate to require that the annual incremental emission reductions maintain at least linear progress toward attainment, as discussed earlier.

3. RFP/Milestone Report

The State must demonstrate to EPA, within 90 days after the milestone achievement date, that the SIP measures are being implemented and the RFP/quantitative milestones have been met (see section 189(c)(2)). The RFP/milestone report must be submitted from the Governor or Governor's designee to the Regional Administrator of the respective EPA Regional Office which serves the State where the affected area is located.

The RFP/milestone report must contain technical support sufficient to document completion statistics for appropriate milestones. For example, the demonstration should graphically display RFP over the course of the relevant 3 years and indicate how the emission reductions achieved to date compare to those required or scheduled to meet RFP and the required

[43] The plain terms of section 189(c) require that milestones be achieved "every 3 years until the area is redesignated attainment" and, therefore, do not contemplate any breaks in the milestones due to an area's reclassification. Further, reclassifying an area to serious does not obviate the State from controls and emission reductions required in the moderate area implementation plan (see section 189(b)(1)). A continuous series of control measures must be implemented in PM–10 nonattainment areas beginning with RACM (including RACT) and followed by contingency measures which are to be implemented if the moderate area fails to attain. Next, BACM (including BACT) must be implemented within 4 years after the area is reclassified as serious. Subsequently, it may be necessary to implement additional control measures beyond BACM/BACT to attain the NAAQS. Therefore, the structure of the Act requires a series of measures which can provide for RFP/milestones.

milestones. The calculations (and any assumptions made) necessary to determine the emission reductions to date should also be submitted. The demonstration should also contain an evaluation of whether the PM–10 NAAQS will be attained by the projected attainment date in the SIP, i.e., answer the question "Are the emission reductions to date sufficient to ensure timely attainment?"

Within 90 days of its receipt, EPA must determine whether or not the State's demonstration is adequate and meets all the requirements discussed above. The EPA will notify the State of its determination by sending a letter to the appropriate Governor or Governor's designee.

4. Failure to Submit RFP/Milestone Report or Meet RFP/Milestones

If a State fails to submit the RFP/milestone report within the required timeframes or if EPA determines that the State has not met any applicable RFP/milestone, EPA shall require the State, within 9 months after such failure or determination, to submit a plan revision that assures that the State will achieve the next milestone (or attain the PM–10 NAAQS, if there is no next milestone) by the applicable date (see section 189(c)(3)). For example, with respect to RFP, if the required annual emission reductions are not achieved for the relevant years according to the RFP schedule and the implementing milestone requirement, EPA will require the State to submit a SIP revision so that these deviations can be corrected and attainment assured by the applicable date. This would also necessitate implementation of appropriate contingency measures pursuant to section 172(c)(9).

Note also that failure to meet RFP, if not expeditiously corrected, could also result in the application of sanctions as described in sections 110(m) and 179(b) of the amended Act (pursuant to a finding under section 179(a)(4)).

IX. Other Requirements

A. Executive Order 12866

Under Executive Order 12866 (E.O. 12866) (58 FR 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of E.O. 12866. The E.O. 12866 defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government 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 E.O. 12866, OMB has notified EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Whenever the Agency is required by section 553 of the Administrative Procedure Act (APA) or any other law to publish general notice of proposed rulemaking for any proposed rule, the Agency shall propose and make available for public comment an initial regulatory flexibility analysis. The regulatory flexibility requirements do not apply for this PM–10 serious area addendum to the General Preamble because it is not a regulatory action in the context of the APA or the Regulatory Flexibility Act.

Dated: July 29, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–19884 Filed 8–15–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–74; RM–8476]

Radio Broadcasting Service; Elma, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Correction.

SUMMARY: This document contains a correction to the *Notice of Proposed Rule Making* (MM Docket No. 94–74; RM–8476), which was published Monday, July 25, 1994 (59 FR 37737). The *Notice* proposed the allotment of Channel 271A at Elma, Washington, as the community's first local aural transmission service.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Need for Correction.

As published, the *Notice* reflected the wrong rulemaking number which needs to be corrected.

Correction of Publication.

Accordingly, the publication on July 25, 1994 of the Public Notice regulations (MM Docket No. 94–74) which were the subject of FR Doc. 94–17992, is corrected as follows:

On page 37737, in the third column, under 47 CFR Part 73, the rulemaking number is corrected to read "RM–8503" in lieu "RM–8476."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19989 Filed 8–15–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting: Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1994–95 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations that would be established for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands for the 1994–95 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 31, 1994.

ADDRESSES: Address Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW, Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and

Wildlife Service, Department of the Interior, Room 634 ARLSQ, 1849 C St., NW, Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION:

In the April 7, 1994 **Federal Register** (59 FR 16762), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1994–95 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for: (1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, there is a need to provide clarification here. The Service routinely provides **Federal Register** copies of published proposed and final rulemakings and other documents to all State Directors, tribes and other interested parties. It is the responsibility of the States, tribes and others to bring any concern for any feature(s) of any regulations to the attention of the Service. Consultation will be initiated at the point in time at which the Service is made aware of a concern. The Service cannot presume to know beforehand what, if any, concerns will be voiced regarding rulemakings.

The guidelines provide for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Convention with Canada, and it is not so large as to adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations and the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is normally too small to have significant impacts on the migratory bird resource.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include: (a) details on the harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact on the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and they were made final beginning with the 1988–89 hunting season (53 FR 31612). It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

It has been appropriate over the past several years to make a statement in this proposed rule qualifying the Service's intent with regard to approving duck seasons and limits because of the uncertainty of production. Although the Service notes that survey results in the 1993–94 season indicated duck numbers were not *significantly* changed from those of the previous few years, there is reason for cautious optimism that the trend of poor reproduction caused by a long period of drought in the Prairie Pothole Region of Canada and the United States may be in the early stages of reversal. Certainly there are indications that drought conditions are lessening, which may in turn set the stage for improved duck production. The extended drought has been especially severe in critical production areas, but in 1993–94 water conditions in many important local production areas were good. Although 1994 spring and early-summer ground water conditions appear to have improved greatly in most areas of the Prairie Pothole Region, preliminary results of

breeding population surveys and production will not be known for some time. Thus, although the situation is expected to be improved, the Service will continue to assess production information as it becomes available over the summer and make final decisions on 1994–95 regulatory frameworks when all the customary data are in.

In summary, the purpose of this document is to propose 1994–95 season migratory bird hunting regulations for participating tribes.

Hunting Season Proposals from Indian Tribes and Organizations

For the 1994–95 hunting season, the Service received requests from fifteen tribes and Indian organizations that followed the 1985 proposal guidelines and were appropriate for publication in the **Federal Register** without further and/or alternative actions. The Lower Brule Sioux (South Dakota), the Kalispel Tribe (Washington) and the Klamath Tribe (Oregon) are included in the regulations this year for the first time.

On June 17, the Mille Lacs Band of Chippewa Indians (Minnesota) provided the Service with a proposal to continue with regulations for the upcoming season as per the Memorandum of Understanding between the Service and the band with regard to migratory bird hunting on the reservation. (The Mille Lacs Band is currently litigating off-reservation hunting and fishing rights with the State of Minnesota.) The Service and the Mille Lacs Band have cooperated in this fashion since the 1986–87 migratory bird hunting season. Similar agreements have been reached with other tribes in other hunting seasons. The Oneida Tribe of Indians of Wisconsin has indicated to the Service that they will seek such an agreement in the future.

The Service actively solicits regulatory proposals from other tribal groups that have an interest in working cooperatively for the benefit of waterfowl and other migratory game birds. Also, tribes are encouraged to work with the Service in developing agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early and late season hunting. There will be a final rule published later in an August 1994 **Federal Register** that will include tribal regulations for the early hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. There will also be a final rule published in a September 1994 **Federal Register** that will include regulations for late season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species. In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same that will be permitted the State(s) in which the tribal hunting area is located. The proposed frameworks for early-season regulations will be published in the **Federal Register** in mid-July; early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

The proposed regulations for the fifteen tribes with proposals that meet the established criteria are shown below.

1. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. The proposed seasons and bag limits would be more conservative than allowed by the Federal frameworks of last season and more conservative than States in the Pacific Flyway.

In a May 2, 1994, proposal, the tribe proposed the earliest opening date permitted Pacific Flyway States for ducks for the 1994–95 hunting season and a closing date of November 30, 1994. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. However, it is proposed again that no canvasbacks be allowed in the bag. Also, the goose season would continue to be closed. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department gives an annual estimate of harvest, which continues to be relatively small—comparatively speaking. In the 1993–94 season, estimated duck harvest was 1323, the largest since recordkeeping began in 1986, with the greatest percentage of this made up of mallards (31 percent), gadwall (27 percent) and teal (16 percent). Because water conditions on the reservation are again excellent, another good duck production and harvest year is expected.

The requested regulations are essentially the same as were established last year, and the Service proposes to approve the tribe's request for the 1994–95 hunting season.

2. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to for the 1993–94 hunting year.

The hunting zone for waterfowl continues to be restricted and is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other waters of the reservation would be closed to waterfowl hunting for the 1994–95 season.

The tribe is proposing a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of November 12, 1994, and a closing date of January 8, 1995. The tribe proposes a daily duck bag limit of 3, which can have no more than: 1 redhead; 2 canvasbacks; 1 pintail; and 1 hen mallard. The daily bag limit for mergansers is 3. The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposed to extend from November 12, 1994, through January 8, 1995. Hunting would be limited to Canada geese, and the daily bag limit is 2.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 2 through September 11, 1994, in Wildlife Management Units 7 and 10, only.

Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above referenced species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The regulations requested by the tribe for the 1994–95 seasons are as conservative as those established last year, and the Service proposes to approve them.

3. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority.

In their 1994–95 proposal, dated May 17, 1994, the Colorado River Indian Tribes are requesting split dove seasons with regulations as follows. The early season is proposed to begin on September 1 and end on September 11, 1994, with the bag limits being ten (10) mourning or ten (10) white wing doves either singly or in the aggregate. The late season for doves is proposed to open on November 21, 1994, and close on January 8, 1995, with the bag limit being ten (10) mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to sunset, and other special tribally set regulations would apply.

The Colorado River Indian Tribes are also proposing split duck hunting seasons, the first running from October 14, 1994, through November 10, 1994, and the second running from December 9, 1994, through January 8, 1995. The Tribes are proposing the same dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be 4, which would include no more than 2 redheads, 2 pintails, 1 canvasback or 1 Mexican duck. The possession limit would be twice the daily bag limit, after the first day. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit.

For geese, the Colorado River Indian Tribes has proposed a season of October 22, 1994, through January 22, 1995. The daily bag and possession limits for geese would be 5, which would include no more than 3 white geese (snow and/or Ross and blue geese) and not more than 2 dark geese (Canada geese).

Under the proposed regulations described here, based upon past seasons, the anticipated harvest is estimated to be less than 400 ducks and 100 geese.

A valid Colorado River Indian Reservation hunting permit is required before taking wildlife and to be in possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters. The Service is proposing to approve the Colorado River Indian Tribes regulations.

4. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in a decision by the Service to approve a special season for the 1836 ceded area in Michigan for the 1991–92 migratory bird hunting seasons.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a June 3, 1994, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 1994–95 seasons. Details of the proposed regulations are shown below. In general, the proposal contains liberalizations in bag limits for ducks (including mergansers) and geese from 1993–94 for all of the Minnesota and Wisconsin ceded areas. Bag limits for ducks and geese in these areas would be 20 and 10, respectively, although certain sex and species restrictions would apply. Regulations proposed for the 1836 and 1842 Treaty areas located in Michigan will be the same as those permitted for the State of Michigan, except for the daily bag limit of geese. Last year, the request for increase of goose bag limits was objected to by the Service in the belief that the Southern James Bay Population of Canada Geese, a population that has declined dramatically in the past several years, could potentially be further hurt by this action. We now know that this goose population is not a major contributor to the GLIFWC member band harvest; probably less than 25 geese from this population are taken annually by the Bay Mills Community hunters.

The Service has met several times over the last three months with the GLIFWC to explore the increase in duck and goose bag limit issue. The 1994–95 GLIFWC proposal provided results from those meetings and reflects the sensitivity to biological concerns acknowledged both by the GLIFWC and the Service. Estimates indicate that the GLIFWC bands have been harvesting less than 2000 ducks and 600 geese annually in past years. Results of the 1993–94 hunter survey show that 1631 ducks and 402 geese were actually harvested. Under the proposed regulations, the increase in harvest is projected to not exceed 3000 ducks and

900 geese. The Service believes that regulations advanced by the GLIFWC for the 1994–95 hunting season are biologically acceptable. The Service is proposing to approve the GLIFWC regulations. If the regulations are finalized as proposed, the Service would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. The MOA is intended to have long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this change in reference.

The GLIFWC's proposed 1994–95 waterfowl hunting season regulations are as follows:

Ducks

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end November 7, 1994.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads and 4 pintails. If a season is offered in the Mississippi Flyway, 2 canvasbacks, otherwise the taking of canvasbacks is prohibited.

B. *Michigan, 1842 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. *Michigan, 1836 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end November 7, 1994.

Daily Bag Limit: The daily bag limit would be 5, including no more than 1 hooded merganser.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

Geese: Canada Geese

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end December 1, 1994.

Daily Bag Limit: The daily bag limit would be 10, minus the number of blue, snow or white-fronted geese taken.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese: Blue, Snow and White-fronted Geese

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end December 1, 1994.

Daily Bag Limit: The daily bag limit would be 10, minus the number of Canada geese taken.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other Migratory Birds: Coots and Common Moorhens (Common Gallinules)

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end November 7, 1994.

Daily Bag Limit: The bag limit would be 20, singly or in the aggregate.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

Sora and Virginia Rails

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end November 7, 1994.

Daily Bag Limit: The daily bag limit is 25 singly, or in the aggregate. The possession limit would be 25.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25 singly, or in the aggregate. The possession limit would be 25.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25, singly or in the aggregate. The possession limit would be 25.

Common Snipe

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 15 and end November 7, 1994.

Daily Bag Limit: The daily bag limit would be 8.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

Woodcock

A. *Wisconsin and Minnesota 1837, 1842 and 1854 Zones: Season Dates:* Begin September 6 and end November 30, 1994.

Daily Bag Limit: The daily bag limit would be 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

D. *General Conditions*

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service

rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR Part 20 and shooting hour regulations in 50 CFR Part 20, Subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, *unless otherwise noted above.* Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

5. Kalispel Tribe, Kalispel Reservation, Usk, Washington

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4600 acres. All Reservation land is owned by the tribe and it has full management authority. Currently, the tribe has no recognized rights to hunt, fish or gather off-reservation. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State of Washington, with which it has an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The seasons described below pertain to non-tribal hunters that would be allowed to harvest waterfowl on a 176 acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area.

For the 1994–95 migratory bird hunting seasons, the Kalispel Tribe is proposing duck and goose seasons that begin 2 weeks earlier and end 2 weeks later than those for the State of Washington in the same area. The outside framework for ducks and geese would run from October 1, 1994, through January 29, 1995. In that period, non-tribal hunters would be allowed to hunt on Wednesdays, weekends, holidays and for a continuous period from November 28 through December 31; the total being 77 days. Hunters should obtain further information on days from the Kalispel Tribe.

Daily bag and possession limits would be the same as those for the State of Washington. All other State and Federal regulations contained in 50 CFR Part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, will be observed.

The Service proposes to agree to the regulations requested by the Kalispel Tribe.

6. Klamath Tribe, Chiloquin, Oregon

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing and gathering rights within the former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon and the Klamaths. The Klamath Indian Game Commission conducts the setting of seasons. Tribal harvest is monitored by both the tribal biological staff and tribal Regulatory Enforcement Officers through frequent bag checks and hunter interviews.

In a May 6, 1994, letter, the Klamath Tribe proposed season dates that run from October 1, 1994, through January 28, 1995. Daily bag limits would be 9 for ducks and 6 for geese; the possession limits would be twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset.

The Service proposes to approve the regulations of the Klamath Tribe, provided an agreement can be reached on waterfowl sex and species restrictions.

7. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 18, 1994, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 1994–95 hunting season for ducks (including mergansers), Canada geese, coots, band tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks, to be announced. For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the tribe proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation. The Service proposes to approve the Navajo Nation request for these special regulations for the 1994–95 migratory bird hunting seasons.

8. Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. However, the Oneida Tribe has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for both.

In a June 14, 1994, letter to the Service, the tribe proposed special

waterfowl hunting regulations. For ducks, geese, mourning dove and woodcock, the Tribe described the "outside dates" (seasons) as being September 1 through November 30, 1994, inclusive.

Canada goose bag limits would be 2 tribally tagged per day; the tribe will reissue 2 tags as each 2 birds are registered. The possession limit for Canada geese is 4. The Oneida Conservation Department is recommending a season quota of 150 geese taken. If that quota is attained before the season concludes, the Department recommends closing the season early. For ducks, the daily bag limit is 5, which could include: no more than 3 mallards, with only 1 hen; 4 wood ducks; 1 canvasback; 1 redhead; and 1 hooded merganser. The daily bag limits for mourning dove and woodcock would be 10 and 6, respectively.

Shooting hours are proposed to be one-half hour before sunrise to sunset. Indians and non-Indians hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except that the tribe proposes to exempt Indian hunters from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp ("Duck Stamp") and the plugging of shotguns to limit capacity to 3 shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin if the tribe requires tribal members to plug shotguns to limit capacity to three shells.

9. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applies only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size. The waterfowl harvest in the 1993–94 sustenance season is assumed to be low and similar to that of the previous seasons.

The Penobscot Nation usually outlines their migratory bird hunting season proposal through the Service's Region 5 Office, however, this year has not provided confirmatory information. The tribe normally requests special sustenance regulations for tribal members in an area of trust lands that includes but is much larger than the reservation. These lands were acquired by the tribe in the 1980 Maine Indian Claims Settlement. The tribe would be proposing a 1994–95 sustenance hunting season of 75 days (September 17–November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese or 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members would be only the larger of the two daily bag limits. All other Federal regulations would be observed by tribal members, including that shooting hours would be from one-half hour before sunrise to sunset.

Nontribal members hunting within Penobscot Indian Territory would adhere to the seasons and bag limits established by the State of Maine.

The Service proposes to approve the 1994–95 regulations put forward by the Penobscot Nation, provided the tribe provides the appropriate confirmation copies of regulations for the seasons.

10. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Up until the 1993–94 season, the tribe observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is continuing to develop a wildlife management program, and in a proposal dated June 13, 1994, requested that it set its own 1994–95 special waterfowl hunting regulations as it did for the 1993–94 hunting season. These regulations would be in accordance with Federal guidelines and independent of the State of South Dakota seasons. The tribe would have a later, continuous duck season, beginning on October 29 and ending on December 11, 1994, and the same daily bag and possession limits permitted by final Federal frameworks, to be announced. The requested hunting season dates would probably not be within Federal frameworks. The season and bag limits would be essentially the same as last year, and harvest is again expected to be low because of the small number of hunters. Estimated harvest, based on hunter reports, for ducks last season was about 67, including 59 mallards. The tribe states there may be an increase in the success of duck hunters in the 1994–95 season due to the shift in season dates.

The tribe requested that the goose hunting season begin on October 9, 1994, and extend through January 1, 1995. The daily bag and possession limits would be those permitted by final Federal frameworks, to be announced. Harvest for last season has been estimated at about 203, of which 191 were Canada geese. This harvest level is less than half of the estimated harvest for the previous hunting season. Harvest for this coming seasoning should be approximately the same as last season.

The Service proposes to approve the tribal requests for duck and goose hunting regulations. In the past, the duck regulations have been continued on an experimental basis; the Service now considers these regulations to be operational. However, as with all other groups, the Service asks that the tribe continue to survey and report the harvest.

11. Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota

For the first time, in the 1994–95 migratory bird seasons, the Lower Brule Sioux Tribe and the Service are cooperating to establish regulations for the Lower Brule Reservation. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, however, the Lower Brule Tribe currently has full management authority. On-reservation management authority over fish and wildlife was established for the Lower Brule Sioux Tribe via a MOA with the State of South Dakota, dated October 24, 1986. This MOA will continue until settled by the court. The MOA provides the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. Recent meetings between the Lower Brule Sioux Tribe, the South Dakota Department of Game, Fish and Parks and the Service have yielded consensus on the implementation of this Agreement for the 1994–95 season. This will allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters alike.

For the 1994–95 migratory bird hunting season, the Lower Brule Sioux Tribe is proposing a duck season length of 51 days, which would run from October 14 through December 3. The daily bag limit would be 4 ducks, which could include 4 mallards but no more than 1 hen mallard. The goose season

would run from October 14 through December 31, with daily bag limits of 2 Canadas or 2 white-fronted geese, or 2 in the aggregate. The daily bag limit for snow geese would be 10. Possession limits for the above would be twice the daily bag limits.

For the 1993–94 season, calculations set the duck harvest at 136, primarily mallards, and the goose harvest at 3,654, virtually all Canada geese. With these proposed regulations, the duck harvest is anticipated to increase by 90 and the goose harvest by 500. Estimates of increase are based on conditions in 1994–95 being the same or similar to the flight conditions in 1993–94. All basic Federal regulations contained in 50 CFR Part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed. The Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution on June 1982.

The Service proposes to approve the regulations set out here for the Lower Brule Reservation, provided the Service and the tribe can come to agreement on restrictions relative to species of concern, e.g., wood ducks, redheads, canvasbacks, hooded mergansers and pintails.

12. Yankton Sioux Tribe, Marty, South Dakota

On May 31, 1994, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1994–95 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nonmembers. The waterfowl hunting regulations to be established by this proposal would apply to tribal and trust lands within the external boundaries of the reservation.

The duck (including mergansers) and coot hunting regulations proposed by the Yankton Sioux Tribe, including seasons and bag limits, are as follows: Season limits would be October 29 to December 6, 1994. The possession limits for ducks and coots would be twice the daily bag limits, with only double the species restrictions. Daily bag limits would be 4 for ducks and 15 for coots. For ducks, the daily bag limit would include only 3 mallards (of which only 1 may be a hen), 1 redhead, 1 pintail, 2 wood ducks, 1 canvasback and 1 hooded merganser.

Swan season and bag limits would follow those set by the State of South Dakota, for both tribal and nontribal hunters.

The tribe has requested a continuous Canada (including brant), snow and white-fronted goose hunting season, beginning approximately October 1 and ending on December 18, 1994. The dark goose daily bag limit would be 2 Canada geese and 1 white-fronted goose. For white geese, the daily bag limit would be 10. Possession limits for geese are twice the daily bag limit.

A special extended goose season is proposed within the Yankton Sioux Reservation for both tribal and nontribal members. This season would begin at the close of the regular goose season (December 19, 1994) and continue through January 8, 1995. During this extended season, hunting for geese would be allowed only in the special hunting zone established by the Yankton Sioux Tribe in the area commonly known as the Chalk Rock Colony (Goose Hunting Unit 2). Bag limit and other regulations information, as well as maps, for this zone would be available at the Bureau of Indian Affairs Office in Wagner, South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters would have to comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

The Service proposes to concur with the Yankton Sioux proposal for the 1994–95 hunting season, and requests that the tribe continue to monitor and report the harvest of Canada, snow and white-fronted geese.

13. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. Reservation proposed special regulations for waterfowl hunting were submitted to the Service in a May 20, 1994, letter and would follow regulations for the Montana area of the Pacific Flyway, included in final Federal frameworks.

As in the past, tribal regulations for non-tribal duck and goose hunters would be at least as restrictive as for the Pacific Flyway portion of the State and, if circumstances warrant, would provide for early closure of goose hunting. Early closure may occur on December 4, 1994, in the special goose management unit that will be described in a later rulemaking. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset over the dates to be specified in the final regulations.

The requested season dates and bag limits are similar to the regulations of the past five years and it is anticipated there will be no significant changes in harvest levels. Data from check stations indicate the estimated 1993–94 duck harvest to be 309 and the goose harvest to be 120. A large majority of the harvest is by non-tribal hunters.

The Service proposes to approve the tribes' request for special migratory bird regulations for the 1994–95 hunting season.

14. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide additional protection to mallards and pintails; the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1994–95 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. In a May 11, 1994, proposal, for the 1994–95 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. If 59 days are permitted, as in last year, this could conceivably begin the season on October 22 and conclude it on December 20, 1994, with a later opening and a later closure. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days (93) are permitted as in previous years, the season would have a later opening (October 8, 1994) and a later closing date (January 8, 1995) than last year.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes to approve them.

15. The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a letter dated May 13, 1994, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1994–95 seasons as follows:

For ducks and coot, the proposed season for tribal members would be from September 15, 1994, through February 1, 1995. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Federal frameworks, to be announced. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail and wood duck the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks, to be announced. It would be necessary for non-tribal hunters to check with the Tulalip tribal authorities for additional conservation measures which may apply for specific species managed within the "region."

For geese, tribal members are proposed to be allowed to hunt from September 15, 1994, through February 1, 1995. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks, to be announced. For tribal hunters, the goose daily bag and possession limits are proposed to be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington, to be announced. The Tulalip Tribe also sets a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

For snipe, the proposed open seasons follow those regulations for ducks, coot and geese given above. For both tribal and non-tribal hunters, snipe daily bag and possession limits are proposed to be set at 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other regulations enforced by the tribe. Non-tribal hunters sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated through signature across the face in ink.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, a rough estimate of past harvests indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service intends to concur with the Tulalip Tribes request for the above seasons and requests that the harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

Public Comment

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, she desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and she will take into consideration any reasonable comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

No public comment has been provided to the Service for the Notice of Intent published on April 7, 1994, to promulgate a rulemaking with regard to regulations for migratory bird hunting by American Indian tribal members.

Comment Procedure

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comment. Two considerations compress the time in which this rulemaking process must operate: the need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1994, and on the other hand, the unavailability unfil late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 31, 1994 is impracticable in terms of publishing timely rulemakings and contrary to the public interest.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 ARLSQ, 1849 C St., NW, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 31, 1994 will be considered.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the

Federal Register on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated Section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands. When completed, the Service's biological opinion resulting from its consultation under Section 7 of the Endangered Species Act may be inspected by the public in, and/or are available to the public from, the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

In the April 7 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12866. These included preparing an Analysis of Regulatory Effects, preparing a Small Entity Flexibility Analysis under the Regulatory Flexibility Act, and publishing a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Dr. Keith A. Morehouse, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1994, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 1, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–20038 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 157
Tuesday, August 16, 1994

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

Office of the Secretary

[Docket No. 94–023C]

1995 Farm Bill; Hearing Rescheduled

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Public Hearing; Correction.

SUMMARY: On July 26, 1994, the Department announced two public hearings on the general issues relating to food safety and quality in preparation for the 1995 Farm Bill. The hearing to be held on August 19, 1994, will now be held on August 18, 1994, from 1 p.m. to 3 p.m. at the Holiday Inn Express Midtown, Philadelphia, Pennsylvania.

DATES: August 18, 1994, 1 p.m. to 3 p.m., Holiday Inn Express Midtown, 1305 Walnut Street, Philadelphia, Pennsylvania.

Participants may submit written materials or comments to the address below until September 2, 1994, or at the hearing. Those wishing to submit written materials or comments, or make oral comments should contact Elizabeth Jones, Confidential Assistant, Information and Legislative Affairs, Food Safety and Inspection Service, Room 1175–S, Washington, DC 20250, (202) 720–7943.

Transcripts of both public hearings and copies of data and information submitted during the hearings will be available for review at the office of the FSIS Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, under Docket Number 94–023N.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jones, Confidential Assistant, Information and Legislative Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7943.

SUPPLEMENTARY INFORMATION: We are holding this hearing to gather information and public opinions relating to the issues of food safety and quality that will be addressed in the 1995 Farm Bill. The presiding officer at the hearing will be Patricia Jensen, Acting Assistant Secretary for Marketing and Inspection Services. The presiding officer will be accompanied by a panel of USDA employees with relevant food safety and quality expertise. Oral presentations will be limited to 5 minutes.

Done at Washington, DC on August 11, 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–20080 Filed 8–15–94; 8:45 am]

BILLING CODE 3410–DM–P

Forest Service

Chenuis Creek/Cayada Mountain Timber Sale, Mt. Baker-Snoqualmie National Forest, Pierce County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On August 7, 1990, a notice of intent to prepare an environmental impact statement (EIS) for the Chenuis Creek/Cayada Mountain Timber Sale on the Mt. Baker-Snoqualmie National Forest was published in the **Federal Register** (55 FR 32105). A notice of availability for the draft EIS was published in the **Federal Register** on January 11, 1991 (56 FR 1184), with a comment period on the draft EIS ending February 25, 1991.

The Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan was amended on April 13, 1994 with additional land allocations and standards and guidelines (Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl, as amplified in attached Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl).

Because of this amendment, the analysis process has been terminated; there will be no final EIS for the Chenuis Creek/Cayada Mountain Timber Sale.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to J. Hansen-Murray, Environmental Coordinator, 21905 64th Avenue West, Mountlake Terrace, WA 98043 or telephone (206) 775–9702.

Dated: August 2, 1994.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 94–20025 Filed 8–15–94; 8:45 am]

BILLING CODE 3410–11–M

Hoodoo Ski Bowl Master Plan, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on the proposed Master Plan for Hoodoo Ski Bowl to be submitted by Hoodoo Ski Bowl, Inc. The need for a new Master Plan for Hoodoo Ski Bowl ski area is to replace the current Master Plan which was approved April 23, 1980. The current plan expires in December 1995. The Willamette National Forest invites written comments on the scope of the analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by October 1, 1994.

ADDRESSES: Send written comments to Phil Raab, District Recreation Assistant, McKenzie Ranger District, McKenzie Bridge, Oregon 97413.

FOR FURTHER INFORMATION CONTACT: Phil Raab, District Recreation Assistant, (503) 822–3381.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service, proposal is to prepare an environmental impact statement in order to review, modify, and approve a Master Plan for Hoodoo Ski Area located on the McKenzie Ranger District of the Willamette National Forest in Linn County, Oregon. The preparation of the Master Plan and EIS will take place concurrently.

Governmental agencies and the public who may be interested in or affected by

the proposal are invited to participate in the scoping process. The Forest Service will hold five formal public scoping meetings: Tuesday, Aug. 16, 1994, at the Shilo Inn, Bend, Oregon at 7 PM; Wednesday, Aug. 17, 1994, at the Sisters Firehall, Sisters, Oregon at 7 PM; Thursday, Aug. 18, 1994, at the Springfield Red Lion Inn, Springfield, Oregon at 7 PM; Tuesday, Aug. 23, 1994, at the Bureau of Land Management Office, Salem, Oregon at 7 PM; and Wednesday, Aug. 24 at Linn-Benton Community College, Albany, Oregon at 7 PM. Preliminary ideas prepared by the proponents will be available for public review. Further meetings may be planned at a later date. Due to budgetary and organizational uncertainties the Forest Service anticipates two possibilities for the preparation of the EIS; preparation by the Forest Service or by a third party company. This decision is expected by October 1, 1994.

The EIS will consider a range of alternatives based on the issues and concerns associated with the project. Only one alternative can be specified at present, the No Action alternative. Other alternatives may consist of modifications or changes in the various elements comprising the proposal.

The draft EIS will tier to the 1990 Final EIS for the Willamette National Forest Land and Resource Management Plan as amended by the Record of Decision for Amendment to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. The Forest Service is the lead agency.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March of 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519. 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed in July 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Hoodoo Ski Bowl Master Plan. Darrel L. Kenops, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the Master Plan. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: August 8, 1994.

Harold A. Legard,

Acting Forest Supervisor.

[FR Doc. 94–20024 Filed 8–15–94; 8:45 am]

BILLING CODE 3410–11–M

Procedure for Evaluating Water Resource Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of Agency directive.

SUMMARY: The Forest Service has revised its direction to employees on procedures for evaluating water resource projects to meet the requirements of Section 7 of the Wild and Scenic Rivers Act of October 2, 1968. The direction is contained in Chapter 2350 of the Forest Service Manual, Amendment No. 2300–94–4 effective July 8, 1994. The amendment sets out a uniform procedure to determine whether or not proposed water resource projects are permissible under Section 7 of the Wild and Scenic Rivers Act. Specific decision criteria are identified. The procedure applies to congressionally designated rivers, congressionally designated study rivers, rivers identified for study through land management planning, and to proposed activities outside a designated or study river corridor.

ADDRESSES: Single copies of Amendment No. 2300–94–4 are available without charge by writing to the Distribution Section, Directives and Regulations Branch, Information Systems Staff (809 RPE), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Dated: July 29, 1994.

David G. Unger,

Associate Chief.

[FR Doc. 94–19991 Filed 8–15–94; 8:45 am]

BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Government of Pakistan ("Borrower") as part of USAID's development assistance program. At this time, the Government of Pakistan has authorized USAID to request proposals from eligible lenders for a loan under this program of $15 Million U.S. Dollars (US$15,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Pakistan

Project No.: 391-HG–001A—$15,000,000

Housing Guaranty Loan No.: 391–HG–002 A01

1. Attention: Mr. Javed Noel, Joint Secretary, External Finance Wing

Address: Ministry of Finance and Economic Affairs, Q Block, Pakistan Secretariat, Islamabad, Pakistan
Telex No.: 542–02 MIFIN PK
Telefax No.: 011–92–51–821–941 (preferred communication)
Telephone Nos;: 011–92–51–821–847
Attention: Mumtaz Malik, Deputy Secretary

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by *Tuesday, August 30, 1994, 12:00 noon Eastern Daylight Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

1. Mr. Randall Cummings, Chief, Private Enterprise and Energy Division, USAID/Islamabad, Pakistan
Street address: USAID/Islamabad, Diplomatic Enclave, Ramna 5, Islambad, Pakistan
Telefax No.: 011–92–51–824–086 (preferred communication)
Telephone No.: 011–92–51–824–071
2. Mr. Earl Kessler, Director/RHUDO/ New Delhi, USAID/New Delhi, India
Street address: c/o American Embassy, Chanakyapuri, New Delhi–110 021, India
Telefax No.: 011 (91) 11–686–8594 (preferred communication)
Telephone No.: 011 (91) 11–686–5301
3. Mr. David Grossman, Assistant Director/Mr. Peter Pirnie, Financial Advisor
Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, D.C. 20523–0214
Telex No.: 892703 AID WSA
Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication)
Telephone No.: (202)663–2530 or (202) 663–2547

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $15 million.
(2) *Term:* 30 years.
(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.
(4) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.
(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6¼% U.S. Treasury Bond due August 15, 2023. Such rate is to be set at the time of acceptance.
(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.
(5) *Prepayment:* (a) Offers should include any options for prepayment and mention prepayments premiums, if any.
(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).
(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fees. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*
(7) *Closing date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at lest 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full not later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214, Fax Nos: (202) 663–2552 or 663–2507, Telephone: (202) 663–2530.

Dated: August 10, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–20014 Filed 8–15–94; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–816]

Certain Softwood Lumber Products From Canada: Notice of Panel Decision, Revocation of Countervailing Duty Order and Termination of Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Panel Decision, Revocation of Countervailing Duty Order and Termination of Suspension of Liquidation.

SUMMARY: On February 23, 1994, the Binational Panel convened under the United States-Canada Free Trade Agreement issued a decision affirming the Department of Commerce's (the Department) determination issued pursuant to remand that the Canadian provincial governments were not providing countervailable subsidies to producers or exporters of certain softwood lumber products. The United States requested that an Extraordinary Challenge Committee (ECC) be convened to review the Binational Panel's decision. On August 3, 1994, the ECC affirmed the Binational Panel's February 23, 1994, order affirming the Department's redetermination. Therefore, we are revoking the countervailing duty order on certain softwood lumber products from Canada and ordering the termination of suspension of liquidation.

EFFECTIVE DATE: August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill or Norbert Gannon, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephones: (202) 482–4126; (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1992, the Department determined that the Canadian provincial governments were providing countervailable subsidies to producers and exporters of certain softwood lumber products (57 FR 22570). On July 6, 1992, the International Trade Commission notified the Department of its determination that a U.S. industry was being materially injured by reason of imports of certain softwood lumber products from Canada. On July 13, 1992, the Department published in the **Federal Register** (57 FR 30955) the countervailing duty order on certain softwood lumber products from Canada.

The Department's determination was reviewed by a Binational Panel under the United States-Canada Free Trade Agreement. The Binational Panel remanded the determination to the Department and ordered it to find that no countervailable subsidies were being provided to softwood lumber producers or exporters by the Canadian provincial governments. The Department filed its amended redetermination, which the Binational Panel affirmed. The Binational Panel's decision became final on March 17, 1994 (59 FR 12584). The United States requested that an ECC be convened to review the Binational Panel's decision. On August 3, 1994, the ECC affirmed the Binational Panel's Order Affirming the Determination on Remand. Therefore, we are revoking the countervailing duty order on certain softwood lumber products from Canada, effective March 17, 1994, and ordering the U.S. Customs Service to terminate the suspension of liquidation on all entries made on or after that date. Cash deposits made prior to March 17, 1994 are not addressed in this notice.

Termination of Suspension of Liquidation

The Department will instruct the U.S. Customs Service to terminate the suspension of liquidation of certain softwood lumber products from Canada, effective March 17, 1994, to cease collection of cash deposits on certain softwood lumber products from Canada, and to proceed with liquidation of the subject merchandise which entered the United States on or after March 17, 1994, without regard to countervailing duties.

Dated: August 12, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–20230 Filed 8–15–94; 8:45am]

BILLING CODE 3510–05–P

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 90–026

Title: Novel Multifunctional Acrylates and the Synthesis Thereof.

Description: A new, facile synthetic technology developed at NIST makes available a wide range of hydrophobic and hydrophilic multifunctional acrylic monomers and oligomers that are not readily available by other synthetic processes.

NIST Docket No. 93–003

Title: Method of Adhering Substrates.

Description: Two substrates can be joined together by exploiting the natural attraction between acidic and basic molecules. A new acid-base bonding technique developed at NIST permits strong (yet reversible) adhesion without substantially altering material properties near or across the interface.

NIST Docket No. 93–036

Title: Method of and Articles for Accurately Determining Relative Positions of Lithographic Artifacts.

Description: In the 21st century, making a 4-gigabit computer chip will require accurately stacking together many circuit layers with nanometer-scale features. To help make such devices a reality, NIST researchers have developed a procedure for measuring alignment flaws smaller than 10 nanometers.

NIST Docket No. 93–054

Title: A Procedure for Digital Image Restoration.

Description: A fast procedure to improve the deblurring of images incorporates a new type of a-priori constraint that sharply suppresses noise contamination, is applicable in very diverse imaging contexts and requires only a workstation-sized computer.

NIST Docket No. 93–060D

Title: High Speed Amplitude Variable Thrust Control.

Description: A new NIST invention provides a means of precisely and rapidly varying the thrust produced by a high pressure fluid. The control system uses a piezoelectric stack, displacement amplifier, and high pressure axial valve assembly. A microprocessor (along with the associated energy storage and power amplifier system) can change the displacement of the piezoelectric stack in as little as ten microseconds.

Dated: August 9, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–19995 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–13–M

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for

information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket NO. 91–007

Title: X-Ray Photoelectron Emission Spectrometry System.

Description: New NIST technology using x-ray photoelectron emission spectroscopy makes it possible to obtain depth information on chemical species located 1 to 5 nanometers beneath a material surface. The technique eliminates distortions in the data which may result from changes in position between the sample and electron spectrometer during analysis. It also takes advantage of the x-ray reflectivity of the sample.

NIST Docket No. 92–049

Title: Faraday Effect Magnetic Field Sensor.

Description: NIST researchers have successfully demonstrated a flux-concentration technique for enhancing the sensitivity of magneto-optic magnetic field sensors. The resulting Faraday effect sensor is 200 times more sensitive than the magneto-optic material alone.

NIST Docket No. 93–024

Title: Piezoelectric Linear Stepping Motor.

Description: The NIST "Miliped" is a piezo driven linear stepping motor that uses a novel application of the expansion properties of piezo ceramics coupled with a novel motor housing. This design provides greater clamping/driving force in a robust and stiff actuator that is easily manufactured. Range of travel is limited only by housing length with a minimum step size limited only by the quality of the power supply.

NIST Docket No. 93–053

Title: Thin Film High Temperature Silicide Thermocouples.

Description: The invention includes a method of preparing a thin film metal silicide thermoelements for thermocouples with superior durability in air at 700–900 degrees Celsius and thermocouples made using this structure.

NIST Docket No. 93–072C

Title: Multiple Memory Self-Organizing Pattern Recognition Network.

Description: A NIST neural network has been developed which allows patterns to be filtered, recognized, and classified with no prespecified class or filtering information. The technology allows adaptive, high accuracy, parallel classification of complex noisy patterns from a small set of training examples.

Dated: August 9, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–19996 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 080994A]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Coral FMP Committee of the Caribbean Fishery Management Council will hold a meeting to discuss issues related to marine reserves.

The Committee will convene on August 31, from 10:00 a.m. until 4:00 p.m., in St. Thomas, VI.

The meeting will be held at the L.B. Francis Armory, National Guard Building, Estate Nazareth, St. Thomas, VI.

The meeting is open to the public, and will be conducted in English. Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: August 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation, and Management National Marine Fisheries Service.

[FR Doc. 94–19973 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080894D]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council and its Administrative Committee will hold separate meetings. The Council will hold its 82nd regular public meeting to discuss the Draft Queen Conch Fishery Management Plan, among other topics.

The Council will convene on September 13, 1994, from 9:00 a.m. until 5:00 p.m. and on September 14, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on September 12, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operation.

Both meetings will be held at the Conference Room of the Caravelle Hotel, in Christiansted, St. Croix, VI.

The meetings are open to the public, and will be conducted in English. Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: August 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–19974 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080894A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Modification 3 to Permit 825 held by the Columbia River Inter-Tribal Fish Commission (P513).

On September 15, 1993 notice was published (58 FR 48354) that an application had been filed by the Columbia River Inter-Tribal Fish Commission for a modification to Permit 825 to take listed Snake River chinook salmon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on August 9, 1994, as authorized by the provisions of the ESA, NMFS issued Modification 3 to Permit Number 825 (P513) to take listed Snake River spring/summer chinook salmon subject to certain conditions set forth therein. The modification increases the take numbers for a cryopreservation study, but restricts the take to post-spawned adult male fish.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: August 9, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–19972 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Nepal on Certain Cotton and Man-Made Fiber Textile Products

August 10, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 29, 1994, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Nepal with respect to cotton and man-made fiber dresses in Categories 336/636, produced or manufactured in Nepal.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Nepal, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Nepal and exported during the twelve-month period which began on July 29, 1994 and extends through July 28, 1995, at a level of not less than 146,656 dozen.

A summary market statement concerning Categories 336/636 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 336/636, or to comment on domestic production or availability of products included in Categories 336/636, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Nepal.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 336/636. Should such a solution be reached in consultations with the Government of Nepal, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Nepal

Category 336/636—Cotton and Manmade Fiber Dresses

July 1994

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber dresses, Category 336/636, from Nepal reached 174,621 dozen during the year ending May 1994, three times the 58,596 dozen shipped during the year ending May 1993. During the first five months of 1994, imports of Category 336/636 from Nepal surged to 138,555 dozen, more than triple the 42,801 dozen imported during the same period in 1993 and nearly double Nepal's total calendar year 1993 level.

The sharp and substantial increase of Category 336/636 imports from Nepal is

disrupting the U.S. market for cotton and manmade fiber dresses.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton and manmade fiber dresses, Category 336/636, fell from 15,290,000 dozen in 1989 to 12,710,000 dozen in 1993, a decrease of 17 percent. In contrast, U.S. imports of cotton and manmade fiber dresses, Category 336/636, increased from 5,891,000 dozen in 1989 to 6,312,000 dozen in 1993, a 7 percent increase. U.S. imports in Category 336/636 are surging in 1994, increasing 33 percent in the first five months of 1994 over the January-May 1993 level.

The ratio of imports to domestic production increased from 39 percent in 1989 to 50 percent in 1993. The domestic manufacturers' share of the cotton and manmade fiber dress market declined from 72 percent in 1989 to 67 percent in 1993, a decline of 5 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 84 percent of Category 336/636 imports from Nepal during the year ending May 1994 entered the U.S. under HTSUSA 6204.42.3050—Women's woven cotton dresses, other than corduroy; and HTSUSA 6204.44.4010—Women's woven dresses of artificial fibers, containing less than 36 percent wool or fine animal hair by weight. These dresses entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable dresses.

[FR Doc. 94–20052 Filed 8–15–94; 8:45 am]

BILLING CODE 3510–DR–F

CONGRESSIONAL BUDGET OFFICE

Transmittal of Sequestration Update Report for Fiscal Year 1995 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1995 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 94–19986 Filed 8–15–94; 8:45 am]

BILLING CODE 4107–02–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0013]

The Toro Company, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR Part 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with The Toro Company, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 31, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0013, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the settlement agreement and order appears below.

Dated: August 8, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between The Toro Company, a corporation (hereinafter "Toro"), and the staff of the Consumer Product Safety Commission (hereinafter "the staff") is a compromise resolution of the matter described herein, without a hearing or determination of issues of law or fact.

I. The Parties

2. The Toro Company is a corporation organized and existing under the laws of the state of Delaware, with its principal corporate offices located at 8111 Lyndale Avenue South, Bloomington, Minnesota 55420–1196.

3. The staff of the Consumer Product Safety Commission (hereinafter "the Commission") are those members of the Commission's staff responsible for enforcing the laws administered by the Commission. The Commission is an independent federal regulatory agency established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "the CPSA" or "the Act"), 15 U.S.C. § 2053.

II. Jurisdiction

4. On November 7, 1989, Toro acquired Lawn-Boy. Inc, (hereinafter "Lawn-Boy"), a manufacturer and distributor of various models of lawn mowers. Lawn-Boy manufactured the lawn mowers at issue in this proceeding for sale to consumers for use around permanent or temporary households or residences. These lawn mowers are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. § 2051(a)(1).

5. Between approximately October 1, 1987 and August 29, 1989, Lawn-Boy manufactured and distributed over 160,000 lawn mowers, identified as "L" series lawn mowers, for sale to consumers throughout the United States. During 1989 and 1990, Lawn-Boy also manufactured lawn mowers under the "M" series and "Model 8157" designations, respectively, for sale to consumers throughout the United States. Lawn-Boy, therefore, is a "manufacturer" of consumer products which are "distributed in Commerce", as those terms are defined in sections 3(a)(4) and (11) of the CPSA, 15 U.S.C. § 2052(a)(4) and (11).

6. After its acquisition by Toro, Lawn-Boy operated as a wholly-owned subsidiary of Toro until July 31, 1992, when its assets and liabilities were transferred to Toro. Since its acquisition of Lawn-Boy, Toro has been responsible for controlling the acts and practices of Lawn-Boy, including assuring that Lawn-Boy complied with the requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and the regulations issued thereunder, 16 C.F.R. § 1115, *et seq.*

III. The Products

7. The products at issue in this matter are walk-behind lawn mowers.

IV. Staff Allegations Concerning the "L" Series, "M" Series and "Model 8157" Lawn Mowers and the Failure of Toro To Assure That its Subsidiary, Lawn-Boy Complied With the Reporting Requirements of Section 15(b) of the CPSA

8. Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or that the product creates an unreasonable risk of serious injury or death to inform the Commission immediately of the defect or risk.

The "L" Series Lawn Mowers

9. Between October, 1987 and August, 1989, Lawn-Boy's "L" series lawn mowers were equipped with gas tanks that were susceptible to leakage because of improper bonding of the tank halves during a hot-plate welding process. Lawn-Boy learned of the leakage problem in 1988 and replaced leaking gas tanks on lawn mowers brought in for service through 1990. In early 1989, Lawn-Boy's fuel tank supplier modified the

tank design to improve bonding of the gas tank halves. In August 1989, Lawn-Boy authorized its tank supplier to build new machinery to improve the hot-welding process to correct the leakage problem.

10. After Toro's acquisition of Lawn-Boy in 1989, Lawn-Boy continued to receive complaints about seam leakage on "L" series mower gas tanks, and Lawn-Boy dealers continued to replace leaking tanks on mowers brought in for service. In its capacity as corporate parent of its wholly-owned subsidiary, Lawn-Boy, Toro knew or, with the exercise of due diligence, should have known that the tanks were defective and that the defect could expose consumers to a substantial risk of injury from fire.

11. Despite the pattern of tank seam failures that continued after Toro's acquisition of Lawn-Boy, Toro failed to provide any information concerning the failures to the Commission until a Commission investigator inspected Lawn-Boy in November, 1990. Toro did not file an initial report under section 15(b) until March, 1991.

12. Toro failed to report information concerning gas tank seam failures on "L" series mowers to the Commission in a timely manner as required by section 15(b) of the CPSA, as amended, 15 U.S.C. § 2064(b).

The "M" Series Lawn Mowers

13. During 1989 and 1990, Lawn-Boy manufactured and distributed "M" series lawn mowers that experienced gas tank leakage. The method of mounting and attaching the tanks to the mower engines resulted in wear on the tanks that caused the tanks to fail and leak. Lawn-Boy received complaints of leakage after its acquisition by Toro, redesigned the mounting system, and, in 1990, included redesigned brackets and tanks in an "upgrade kit" to be installed by Lawn-Boy distributors and dealers on "M" series mowers brought in for service.

14. In its capacity as the corporate parent of its wholly-owned subsidiary, Lawn-Boy, Toro knew, or with the exercise of due diligence, should have known that the method of mounting the tanks caused wear on the tanks and could expose consumers to a substantial risk of injury from fire. Despite the pattern of tank failures, Toro failed to provide any information concerning the failures to the Commission until a Commission investigator inspected Lawn-Boy in November, 1990.

15. Toro failed to report information relating to gas tank failures on the "M" series lawn mowers to the Commission in a timely manner as required by section 15(b) of the CPSA, as amended, 15 U.S.C. § 2064(b).

The "Model 8157" Series Lawn Mowers

16. In 1987 and 1988, Lawn-Boy manufactured and distributed Model 8157 series lawn mowers. In 1989, Lawn-Boy received complaints that the gas tanks on these lawn mowers were experiencing gas leakage as a result of fractures in the fuel tank nipples. In 1990, a revised fuel tank nipple was incorporated in replacement tanks for the Model 8157 series.

17. In its capacity as the corporate parent of its wholly-owned subsidiary, Lawn-Boy, Toro knew, or, with the exercise of due diligence, should have known that gas tank fuel nipples were fracturing and could expose consumers to a substantial risk of injury from fire. Despite the pattern of tank failures, Toro failed to provide any information concerning the failures to the Commission until a Commission investigator inspected Lawn-Boy in November, 1990.

18. Toro failed to report information relating to gas tank failures on the Model 8157 series lawn mowers to the Commission in a timely manner as required by section 15(b) of the CPSA, as amended, 15 U.S.C. § 2064(b).

V. Response of Toro

19. Toro denies each and all of the staff allegations with respect to the mowers identified in this agreement. Further, Toro denies the allegations that the Lawn-Boy "L" series lawn mowers identified in paragraph 9 of this agreement, the "M" series lawn mowers identified in paragraph 13, and the "Model 8157" series lawn mowers identified in paragraph 16 contained defects which created or could have created a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a). Toro further denies that any of these lawn mowers created an unreasonable risk of death or serious injury. Accordingly, Toro contends that it had no obligation to report to the Commission under section 15(b).

20. Toro contends further that the complaints relating to the Model 8157 mowers were as a result of a local manufacturer-distributor dispute and that no unusual reports of problems were received when the same mowers were redistributed to other parts of the country.

21. Toro further asserts that it has received no reports of injuries from the use of any of the products enumerated in this agreement. Toro makes no admission whatsoever of any fault, liability, or statutory violation in the event any person should claim injuries resulting from the use of these products.

22. Toro further contends that, to the extent there were any leakage problems with any of these lawn mowers, those problems arose prior to Toro's acquisition of Lawn-Boy. Lawn-Boy's prior corporate parent, Outboard Marine Corporation, failed to disclose any such problem to Toro, despite representing in the agreement with Toro to purchase the stock of Lawn-Boy that (1) Lawn-Boy had no liabilities or obligations which would be required to be disclosed on a Financial Statement prepared in conformity with generally accepted accounting principles, (2) Lawn-Boy was not in violation of any applicable law, statute, order, rule or regulation, which, if violated, would be reasonably likely to have a material adverse effect, and (3) since September 30, 1988, no material adverse change or event that was reasonably likely to result in a material adverse change in the assets, liabilities, financial condition, or business of Lawn-Boy had occurred. Toro acted reasonably and with due diligence in relying on these representations to conclude that its newly acquired subsidiary, Lawn-Boy, was in full compliance with the requirements of section 15(b) of the CPSA.

VI. Agreement of the Parties

23. The parties enter this agreement solely for the purposes of settlement. Toro and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

24. Toro agrees to pay the Commission a civil penalty in the amount of one hundred and seventy thousand dollars ($170,000) payable within twenty (20) days after service of the Final Order. This payment is made in settlement of the staff allegations that Toro violated the reporting requirements of section 15(b) of the CPSA with regard to the lawn mowers described above. In agreeing to this settlement, Toro affirms that it does not accept the Commission staff allegations as factual, nor does Toro admit to any liability in this matter.

25. Toro further agrees to assist the Commission staff in any further investigation of this matter by providing, upon specific request and without the issuance of a *subpoena duces tecum*, such testimony and evidence as Toro would otherwise be required to produce if such a subpoena issued. Toro reserves the right to contest any specific request for information that it believes it would not be required to be produced in response to such a subpoena, and further reserves the right to assert any claims of confidentiality or privilege that would be available in the course of a proceeding by the staff to enforce such a subpoena.

26. The agreement to settle this matter is based on the information provided to the Commission staff by Toro as of May 20, 1994. The Commission reserves the right to seek an additional penalty if it acquires information that establishes that, between November 7, 1989 and November 28, 1990, Toro or its authorized representatives received information from its subsidiary, Lawn-Boy, that reasonably supported the conclusion that gas tank seam separation and leakage in the "L" series mowers (a) constituted a defect which could create a substantial product hazard, as that term is defined in section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), or (b) created an unreasonable risk of serious injury or death.

27. Payment of the full amount of the penalty shall settle fully the staff's allegations set forth in paragraphs 9 through 18 above, subject to the reservation contained in paragraph 26.

28. For the purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued.

29. Upon provisional acceptance of this Settlement Agreement and Order, the agreement and order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedure set forth in 16 CFR 1118.20(e). If, within 15 days of publication, the Commission has not received any written request not to accept the Settlement Agreement and Order, The Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the Federal Register (16 CFR 1116.20(f)).

30. Upon final acceptance of this Settlement Agreement and Order by the

Commission, Toro knowingly, voluntarily, and completely waives any rights it might have: (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge to or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. § 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

31. The parties further agree that the Commission shall issue the incorporated Order under the CPSA, 15 U.S.C. § 2051 *et seq.*, and that a violation of the Order will subject Toro to appropriate legal action.

32. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement may be used to vary or contradict its terms.

Dated: June 13, 1994.

The Toro Company

J. David McIntosh,

Vice President and General Manager Consumer Division

The Consumer Product Safety Commission

David Schmeltzer

Associate Executive Director, Office of Compliance and Enforcement

Eric C. Stone

Director, Division of Administrative Litigation, Office of Compliance and Enforcement

Michael J. Gidding

Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement

Order

In the Matter of THE TORO COMPANY, INC., a corporation. CPSC Docket No. 94–C0013.

Upon consideration of the Settlement Agreement entered between respondent The Toro Company, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and The Toro Company; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further *Ordered*, that upon final acceptance of the Settlement Agreement, The Toro Company shall pay to the order of the Consumer Product Safety Commission a civil penalty in the amount of one hundred and seventy thousand dollars ($170,000), within twenty (20) days after receipt of the Final Order and Decision in this matter.

Provisionally accepted and Provisional Order issued on the 8th day of August, 1994.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–19800 Filed 8–15–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Board Meeting

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday 30 and 31 August 1994 (0900 to 1600).

ADDRESSES: The Defense Intelligence Agency (DIAC), Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: August 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–19951 Filed 8–15–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, as amended, (5 U.S.C. app. § 10 (1972)) notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved recommendations made by the Committee at the DACOWITS 1994 Spring Conference, review the Subcommittees Issues Agenda, and discuss other issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: September 12, 1994, 8:30 a.m.–4 p.m.

ADDRESSES: PBC Conference Room 3A682, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN, Office of DACOWITS and Military Women Matters, OUSD (Personnel and Readiness), The Pentagon, Room 3D769, Washington, DC 20301–4000, Telephone (703) 697–2122.

Dated: August 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–19952 Filed 8–15–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Notice; Correction

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice; correction.

SUMMARY: The Department of Defense is administratively correcting a notice previously published on July 28, 1994, at 59 FR 38442.

Supplementary Information, first column on page 38443, last line of second paragraph, correct the telephone number to read "(303) 676–7805".

Paragraph F, first column on page 38444, after the word "repeated", correct "annually" to read "semi-annually".

Dated: August 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–19950 Filed 8–15–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Patent Licenses, Solvay Enzymes, Prospective Exclusive License

AGENCY: U.S. Troop Support Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(i), announcement is made of prospective exclusive licenses of a cellulase-producing microorganism.

DATES: Written objections must be filed within 60 days from the date of

publication of this Notice in the Federal Register.

ADDRESSES: U.S. Army Aviation and Troop Command, ATTN: AMSAT–C–JGP, 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Lamming, Patent Counsel, (314) 263–9150.

SUPPLEMENTARY INFORMATION: The cellulase-producing microorganism was invented by Mr. Benedict J. Gallo (U.S. Patent Number 4,275,163, issued June 23, 1981). Rights to this invention are owned by the U.S. Government as represented by the U.S. Army Natick Research, Development and Engineering Center (Natick RD&E Center). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35 U.S. Code, the Department of the Army as represented by Natick RD&E Center intends to grant an exclusive license on the cellulase-producing microorganism to Solvay Enzymes, Inc., P.O. Box 4859, 1003 Industrial Parkway, Elkhart, Indiana 45616.

Pursuant to 37 CFR 404.7(a)(i), any interested party may file written objections to this prospective exclusive license arrangements. Written objections should be directed to Mr. John H. Lamming at the above address.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–19956 Filed 8–15–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. 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 3517 of the Paperwork Reduction Act of 1980 (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 Director of the Information Resources Management Service, publishes this 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) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 10, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Final Regulations—Client Assistance Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 238.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This package describes new and revised reporting and recordkeeping requirements for the Rehabilitation Services Administration Client Assistance Program that are needed to meet statutory and administrative objectives. The Department will use the information for program management, to make budget projections and to report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Written Request for Assistance or Application for Client Assistance Program.
Frequency: Every three years.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 9.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State educational agencies to apply for funding under the Client Assistance Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.
Title: Guarantee Agency Monthly Claims and Collection Report.
Frequency: Monthly.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 576.
Burden Hours: 2,880.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by a guaranty agency to request payments of reinsurance for default, bankruptcy, death, disability, closed school, false certification, lender-of-last-resort loan (default) claims on which reinsurance has been paid, and for refunding amounts previously paid for reinsurance claims. It is also used to report collections on claims paid under federal reinsurance. The Department uses the information to reimburse agencies for claims paid to lenders and for refunds to borrowers in connection with the IRS federal tax refund offset program.

[FR Doc. 94–19955 Filed 8–15–94; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 7, 1994.

TIME: 11 a.m. (e.t.).

LOCATION: National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet September 7, 1994 from 11 a.m. until adjournment, approximately 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting will be to discuss budget options and decisions for NAEP. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC., from 8:30 a.m. to 5 p.m.

Dated: August 11, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–19980 Filed 8–15–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; University of Illinois at Chicago

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award a grant based upon an unsolicited application.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Chicago Support Office, announces, pursuant to DOE Financial Assistance Rules 10 CFR 600.14 (f), its intent to award a grant to the University of Illinois at Chicago, Energy Resources Center. The purpose of the grant is to provide partial funding to underwrite the cost of organizing a "Chicago Energy Consortium of Cultural Arts Institutions."

SUPPLEMENTARY INFORMATION: The University of Illinois at Chicago, Energy Resources Center has proposed organizing a consortium involving many of Chicago's best known and most frequently visited cultural arts institutions. The purpose of this consortium is to provide these institutions with a forum to increase the awareness and facilitate the use of energy efficiency technologies and practices. The consortium will leverage public and private expertise and resources to accomplish this objective. Activities of the consortium will include the development and execution of energy conservation facility management workshops, an invitational conference for representatives of all Chicago area cultural arts institutions and the development of a communications network for ongoing information sharing.

The unsolicited application for support of this activity has been accepted by DOE as a result of DOE's determination that the proposed activity is meritorious, likely to be effective and successful, and offers a unique opportunity for DOE to advance its mission of deploying and demonstrating the use of energy efficiency technologies and practices in highly visible settings. The project period for the award is twelve months, expected to begin September 1994. DOE plans to provide funding in the amount of $10,000. This award will not be made for at least 14 calendar days after publication of this notice to allow for public comment.

ADDRESSES: Comments and questions should be directed to: Juli A. Pollitt, U.S. Department of Energy, Chicago Regional Support Office, 9800 South Cass Avenue, Argonne, Illinois 60439, 708/252–2313.

Issued in Golden, Colorado on August 1, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–20053 Filed 8–15–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Utility Biomass Energy Commercialization Association (UBECA)

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; 36–94GO10025.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with the Utility Biomass Energy Commercialization Association (UBECA) for the development of a Biomass Energy Development Plan for the development of sustainable biomass resources and competitive biomass energy conversion technologies.

ADDRESSES: Comments and questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: W. Webb, Contract Specialist. The telephone number is 303–275–4724. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR § 600.14, the unsolicited proposal entitled "Biomass Energy Development Plan" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with § 600.14 of the Federal Assistance Regulations.

This proposal is in support of the DOE Biomass Power Program and the President's Climate Change Action Plan. The Climate Change challenge addresses (1) meeting the energy needs of the Nation, (2) promoting energy efficiency and renewable energy, and (3) promoting energy policy that protects the environment, as well as supporting the development of energy efficient measures and low-emission and non-emitting power generation technologies.

This project involves cost sharing with the Utility Biomass Energy Commercialization Association (UBECA) for the development of a multi-year industry supported "Biomass Energy Development Plan" that encourages the development of economically sustainable biomass resources and economically competitive biomass energy conversion technologies.

The proposed award will provide funding to UBECA for the formation of the association, development of the Biomass Energy Development Plan, and initial execution of the program. The objectives of UBECA include: (1) creating an industry supported Biomass Energy Development Plan, (2) providing a voice for developing biomass power technologies and biomass energy crops in the United States, (3) coordinating consideration of technology requirements, analyzing the costs and benefits of biomass power, developing new applications and disseminating information, (4) expanding utility interest and project involvement, (5) developing a market/user interface for biomass technology developers, and (6) coordinating market interests with other organizations.

The use of biomass fuels and technologies offers the opportunity for decreased emissions both through modification of fossil-fired boilers for co-firing wood resources and by creating closed cycled biomass systems whereby the resources are grown specifically for biomass power production. These "energy crops" offer a CO_2 sink during growth and a fuel source to displace carbonaceous fuels. The proposed association offers a forum for utilities to develop a market-driven program for technology development and commercialization of those technologies.

The steering committee formed for the incorporation of UBECA is composed of a group of utilities that are representative of the market. The initial plans are well conceived for the recruitment of members, development of the multi-year biomass energy development plan and the successful creation of an industry supported program. The Utility Biomass Energy Association would have the capability to drive market introduction, increase technology development and biomass resource production, and increase the probability for commercial success.

The planning, management, and initial utility group support should provide a high probability of meeting associations objectives. UBECA's goals are consistent and supportive of the DOE Collaborative Strategy for Commercialization of Solar Electric Technologies and provides a unique opportunity for the acceleration of biomass electric technologies by utilities. The total program cost is estimated to be $249,200, with the DOE share being $56,000 or 22.5%. This award will not be made for at least 14 days after publication of this notice to allow for public comment.

Issued in Golden, Colorado, on August 1, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–20054 Filed 8–15–94; 8:45 a.m.]

BILLING CODE 6450–01–M

Office of Environmental Management; Innovative Technologies To Accelerate or Enhance Characterization, Treatment, Remediation, and Storage/Disposal of Mixed (Radioactive/Hazardous) or Hazardous Waste at Federal Facilities

AGENCY: Office of Environmental Management, U.S. Department of Energy (DOE).

ACTION: Notice of reopening of Request for Information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) has decided to extend for an additional thirty days, the period for receipt of information from private companies regarding their capabilities to demonstrate innovative technologies that may accelerate or enhance site activities in regard to characterization, treatment, remediation, and storage/disposal of hazardous waste or mixed waste, or (waste that is both radioactive and hazardous) at DOE facilities in the Western United States. The original Request for Information appeared at **Federal Register** / Vol. 59, No. 105 / Thursday, June 2, 1994 / Notice 28519. This notice is to reopen the Request for Information from August 31, 1994 to September 30, 1994, allowing more time for the interested parties to submit a short paper not to exceed five (5) pages.

DATES: Information should be submitted by September 30, 1994.

ADDRESSES: Information should be submitted to Dr. George Coyle, Office of Technology Development, EM–50, U.S. Department of Energy, 1000 Independence Avenue, SW., room 5B–014, Washington, DC 20585. FAX 202–586–6773.

FOR FURTHER INFORMATION CONTACT: Dr. George Coyle, at the above address, or by phone at 202–426–2086.

Issued in Washington DC on August 8, 1994.

Clyde Frank,

Deputy Assistant Secretary, Office of Technology Development.

[FR Doc. 94–20055 Filed 8–15–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Application Filed With the Commission

August 1, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Approval of Plan to Construct a Canoe Portage Facility at Warren Dam.

b. Project No.: 2391–003.

c. Date Filed: June 30, 1994.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Warren Hydroelectric Project.

f. Location: Warren County, Virginia.

g. Filed Pursuant to: 791(a)—Federal Power Act, 16 U.S.C. 825(r).

h. Applicant Contact: Mr. William E. Cannon, Allegheny Power System, Bulk Power Supply, 800 Cabin Hill Drive, Greensburg, PA 15601–1689, (412) 830–5609.

i. FERC Contact: Jean Potvin, (202) 219–0022.

j. Comment Date: September 16, 1994.

k. Description of Project: The licensee requests approval to amend its license and not build a parking lot and hand-carried boater access facility but will build a canoe portage path around its Warren power station. Land for this facility will be acquired through easements.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in

all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19977 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

August 1, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Approval of Plan to Construct a Canoe Portage Facility at Luray and Newport Dams.

b. Project No: 2425–003.

c. Date Filed: June 30, 1994.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Luray/Newport Hydroelectric Project.

f. Location: Page County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. William E. Cannon, Allegheny Power System, Bulk Power Supply, 800 Cabin Hill Drive, Greensburg, PA 15601–1689, (412) 830–5609.

i. FERC Contact: Jean Potvin, (202) 219–0022.

j. Comment Date: September 16, 1994.

k. Description of Project: The licensee requests approval to build one canoe portage path around its Luray power station and one canoe portage path around its Newport power station. Land for these facilities will be acquired through easements.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTESTS" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19978 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

August 1, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Proposed Revised Recreation Plan.

b. Project No.: 2916–013.

c. Date Filed: See Item 'K' Below.

d. Applicant: East Bay Municipal Utilities District.

e. Name of Project: Lower Mokelumne Project.

f. Location: San Joaquin, Amador and Calaveras Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Sec. 791(a)–625(r).

h. Applicant Contact: Mr. Marcell Hall, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607–4240, (510) 287–1121.

i. FERC Contact: Dan Hayes, (202) 219–2660.

j. Comment Date: September 12, 1994.

k. Description of Project: East Bay Municipal Utilities District has filed amendments on September 7, 1993 and April 18, June 16, and July 15, 1994 to a recreation plan filed April 12, 1990. The revision were required by an Order on Proposed Revised Recreation Plan and Complaint issued July 9, 1993 and an Order on Rehearing issued February 9, 1994. The licensee intends to rehabilitate recreation facilities at the project, exclude certain residential areas from the project boundary, and eliminate operation of a horse stable.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and

local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19979 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP94–691–000]

Request Under Blanket Authorization; Colorado Interstate Gas Company

August 10, 1994.

Take notice that on July 29, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP94–691–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a new delivery facility under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to construct facilities to provide fuel gas to Amoco Energy Trading Corporation (Amoco) for the start-up of a compressor station. The delivery facility will consist of a 2-inch meter run and appurtenant facilities at an estimated cost of $2,500 to be financed from funds on hand. The new facility will be located in Section 35, Township 33 South, Range 66 West, Las Animas County, Colorado. Amoco will need approximately 200 Mcf per day of start-up fuel gas which is within certificated entitlements. The proposed facility will not have an impact on CIG's peak day and annual deliveries as the service will be provided on an interruptible basis and only when start up fuel is required.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20075 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–689–000, et al.]

Tennessee Gas Pipeline Corp., et al.; Natural Gas Certificate Filings

August 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Corporation

[Docket No. CP94–689–000]

Take notice that on July 28, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–689–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate facilities to upgrade a delivery point to serve East Tennessee Natural Gas Company (East Tennessee) in Perry County, Tennessee, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to upgrade its existing facilities at its Lobelville Meter Station No. 2 by replacing the existing 10-inch meter tubes and appurtenant facilities with 12-inch meter tubes and appurtenant facilities. Tennessee states that the purpose of the proposed upgrade is to facilitate inspections and/or plate changes. It is estimated that the cost of the upgrade would be $214,000. It is asserted that the upgraded facilities will not result in any increase in capacity and that there will be no impact on Tennessee's peak day or annual deliveries. It is further asserted that the replacement of the meter tubes is not prohibited by Tennessee's currently effective tariff and that the replacement can be accomplished without detriment or disadvantage to any of Tennessee's customers.

Comment date: September 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company Southern Natural Gas Company

[Docket No. CP94–697–000]

Take notice that on August 2, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 (jointly referred to as Applicants), filed in Docket No. CP94–697–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a natural gas exchange service between ANR and Southern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they propose to abandon an exchange service initiated pursuant to an agreement dated August 15, 1972. Applicants indicate that ANR provides its service under its Rate Schedule X–35, and Southern provides its service under its Rate Schedule X–22. Applicants further state that the service was authorized for ANR and Southern in Docket No. CP73–84 and Docket No. CP73–92, respectively. It is indicated that the agreement provided for the exchange of gas in the event of an emergency on the pipeline system of either party. Applicants state that deliveries and redeliveries would be made through the interconnection between the two systems at Southern's Shadyside Compressor Station in St. Mary Parish, Louisiana. Applicants further indicate that the service was never used; however, the facilities constructed for the service are not proposed to be abandoned.

Comment date: August 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission

Docket No. CP94–700–000

Take notice that on August 3, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–700–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery for firm transportation service to Columbia

Gas of Ohio, Inc. (COH) in Licking County, Ohio, under authorization issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate an additional point of delivery for firm transportation service and will provide such service pursuant to its blanket certificate issued in Docket No. CP86–240–000 under existing authorized Rate Schedules and within certificated entitlement. Columbia states that service may be provided under firm capacity released by other shippers.

Columbia states that the additional point of delivery has been requested by COH for firm transportation service for residential service. Columbia states that COH has not requested an increase in its peak day entitlement in conjunction with this request for a new point of delivery. Columbia states that the estimated volumes to be delivered at the proposed new point of delivery will be 22 dth per day—8,030 dth annually. Columbia states that the construction of the new point of delivery will be utilized to serve Roland Estates, a new subdivision. Columbia states that there is no impact on its existing peak day obligation to its other customers as a result of the construction and operation of the proposed new point of delivery.

Columbia states that the estimated cost to establish this point of delivery will be approximately $14,100 which COH has agreed to reimburse Columbia for the total cost, plus any gross-up for tax purposes. Columbia further states that it will comply with all of the environmental requirements of Section 157.206(d) prior to the construction of any facilities.

Comment date: September 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP94–701–000]

Take notice that on August 4, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–701–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new delivery point in the City of Scenery Hill, Washington County, Pennsylvania, for service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), under Equitrans' blanket certificate issued in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to construct and operate facilities for service to Equitable, which will deliver gas to a retail customer in Pennsylvania. Equitrans estimates that the facilities would be used for the delivery of 1 Mcf of gas on a peak day. It is stated that the estimated volume is within Equitable's existing certificated entitlement from Equitrans. It is further stated that Equitrans' tariff does not prohibit the proposed addition of a delivery point. It is asserted that Equitrans can accomplish the deliveries without detriment to its other customers.

Comment date: September 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designees on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave is intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notices of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19976 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM95–1–84–000]

Proposed Changes in FERC Gas Tariff; Caprock Pipeline Company

August 10, 1994.

Take notice that on August 5, 1994, Caprock Pipeline Company, (Caprock Pipeline) filed proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1994:

Second Revised Sheet No. 4
Second Revised Sheet No. 5

Caprock Pipeline states that the purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1994.

Caprock Pipeline states that a copy of this filing has been served upon all of Caprock Pipeline's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20071 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–705–000

Application; Centra Pipelines Minnesota Inc.

August 10, 1994.

Take notice that on August 8, 1994, Centra Pipelines Minnesota Inc. (Centra Minnesota), 200 Yorkland Boulevard, North York, Ontario, Canada M2J 5C6, filed on Docket No. CP94–705–000 an application pursuant to Section 3 of the Natural Gas Act requesting authority to construct a new delivery tap and appurtenant facilities in order to directly supply an existing customer of Northern Minnesota Utilities (NMU), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Centra Minnesota states NMU, an existing customer of Centra Minnesota, has requested Centra Minnesota to provide such service because it would be uneconomical for NMU to serve the customer from its distribution system. Centra Minnesota requests that the Commission issue an order granting such authority by August 21, 1994, so that the construction can take place over Labor Day weekend, September 3–5, 1994, at which time a major customer of NMU and/or Centra Minnesota Ontario, both of which are Centra Minnesota's customers, will shutdown for maintenance, and throughput on the Central Minnesota system will be at the low point for the year.

Specifically, Centra Minnesota proposes to construct a high pressure service tap, 30 feet on 2-in pipeline, a two-inch valve and meter downstream from the pressure regulator station that will be install by NMU. Centra Minnesota advises that the proposed facilities will cost approximately $9,000 to construct and Centra Minnesota will be responsible for all costs involved. Centra Minnesota states that such facilities will be constructed within an existing right of way and will not result in an increase in the quality of gas that Centra Minnesota is authorized to transport on behalf of NMU. Centra Minnesota further states that no additional revenue will be generated by this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 25, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Centra Minnesota to appear or be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 94–20073 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–12–59–000]

Proposed Changes in Rates; Northern Natural Gas Co.

August 10, 1994.

Take notice that on August 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, Thirteenth Revised Sheet No. 53, with an effective date of August 1, 1994.

Northern states that it is filing Thirteenth Revised Sheet No. 53 to establish the July 1994, Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20072 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–698–000]

Application; Sea Robin Pipeline Company

August 10, 1994.

Take notice that on August 3, 1994, Sea Robin Pipeline Company (Sea Robin) located at AmSouth-Sonat Tower Birmingham, Alabama 35203, filed in Docket No. CP94–698–000 an application pursuant to Section 7(b) of the Natural Gas Act. Sea Robin requests authorization to abandon the transportation service it renders under its X–32 rate schedule on behalf of Texas Gas Transmission Corporation (Texas Gas) effective as of July 29, 1994, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Sea Robin states that it has provided firm transportation service on behalf of Texas Gas from production areas in offshore Louisiana to delivery points onshore at Erath, Louisiana pursuant to the terms of a Gas Transportation Agreement (Agreement). Texas Gas has requested abandonment of the service under Sea Robin's Rate Schedule X–32. Accordingly, Sea Robin requests the abandonment of Rate Schedule X–32, effective July 29, 1994. Sea Robin states that the proposed effective date is appropriate since it is the intent of the parties and, from that date forward, Texas Gas should not be obligated to

pay Sea Robin demand charges under the Agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20074 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–353–000]

Proposed Changes to FERC Gas Tariff; Southern Natural Gas Company

August 10, 1994.

Take notice that on August 5, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective September 1, 1994:

Second Revised Sheet No. 3
Second Revised Sheet No. 139
Original Sheet No. 139a
Second Revised Sheet No. 144
Original Sheet Nos. 403a-o

Southern states that the purpose of this filing is to revise the allocation methodologies in its transportation tariff to allow it to enter into balancing agreements with operators at pipeline interconnects so that shippers can be allocated their nominations and any imbalances at the point of interconnection can be resolved between the interconnecting pipelines under a mutually agreeable Pipeline Balancing Agreement.

Southern has requested all waivers necessary to make these sheets effective September 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests should be filed on or before August 17, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20076 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62133A; FRL–4906–8]

Lead Hazard Information Pamphlet; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On March 9, 1994, EPA issued a notice announcing the availability of its draft lead hazard information pamphlet, entitled *Lead-Based Paint: Protect Your Children*, for public review and comment. The pamphlet, required under section 406(a) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, will be distributed to owners and occupants of pre-1978 housing before the commencement of renovations by paid renovators, and will be distributed to purchasers and lessees of pre-1978 housing before sale or lease. The comment period for the pamphlet closed on May 9, 1994. Based on the comments received, and on information obtained during focus group tests in several cities, EPA has revised the pamphlet. In the spirit of maximizing responsiveness to the general public and regulated community, EPA is scheduling a public meeting to augment the publics' opportunity to provide input on the pamphlet. Because of the time constraints imposed by the statutory deadline, however, no additional comment period will be allowed beyond the public meeting date.

DATES: The meeting will take place on August 29, 1994, from 9 a.m. to noon. Written requests to participate in the meeting must be received no later than August 30, 1994.

ADDRESSES: The meeting will be held in the EPA auditorium at 401 M St., SW., Washington, DC 20460. The request to participate in the meeting, identified with docket number OPPTS–62133A must be submitted to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, NE– G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Requests for a waiver to participate in the meeting by those organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 1900, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Charles Franklin, Program Development Branch, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1781.

SUPPLEMENTARY INFORMATION:

I. Meeting Participation

Each person or organization desiring to participate in the public meeting must file a written request to TSCA Docket Receipt at the address listed above. The request must be received by the Agency no later than August 30, 1994.

An impartial moderator shall preside at the meeting, on behalf of a panel of EPA representatives, and solicit feedback on a revised draft pamphlet. Individuals will also receive an opportunity to leave informal written comments on specific issue areas.

Following the public meeting, EPA will consider the feedback provided and develop the final version of the pamphlet. Attendees of the meeting will receive notification of the final pamphlet's availability. Individuals and

organizations who are unable to attend the meeting may request inclusion on the final mailing list by mailing a request, including name, organization, and mailing information, to Charles Franklin at the address listed under FOR FURTHER INFORMATION CONTACT.

II. Background

Under the Congressional mandate in section 406(a) of TSCA, EPA has developed a lead hazard information pamphlet, for use in association with several regulations mandated by the Residential Lead-Based Paint Hazard Reduction Act [Pub. L. 105–550]. As required by the statute, EPA is developing the pamphlet in consultation with the Centers for Disease Control and Prevention (CDC) and the Department of Housing and Urban Development (HUD).

Section 406(a) of TSCA also requires that EPA issue the pamphlet for notice and comment. EPA issued a notice in the **Federal Register** of March 9, 1994 (59 FR 11119), announcing the draft pamphlet's availability for public comment. EPA made the draft pamphlet available through the National Lead Information Clearinghouse, as well as the TSCA Docket. During the 60–day public comment period, 69 parties submitted comments. EPA also conducted a series of focus group tests in five different cities, Atlanta, GA, Birmingham, AL, Chicago, IL, Hayward, CA, and Washington, DC. EPA has used these focus tests to solicit general feedback on the presentation of the material from individuals with a high school education or lower. The results of the focus tests, combined with the technical and stylistic comments provided by the public commenters, will help EPA develop a final pamphlet that meets the informational needs of a broad range of readers.

III. Role of Pamphlet

This pamphlet will be disseminated as a result of several Congressional directives that will be implemented in separate rulemaking initiatives.

Section 406(b) of TSCA requires that EPA promulgate regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner(s) and occupant(s) of such housing prior to commencing the renovation. In addition, this pamphlet may be used by other Federal Programs to support their educational and outreach goals and obligations. EPA issued proposed regulations under section 406(b) on March 9, 1994 (59 FR 11108), for a 60–day public comment period that closed on May 9, 1994. EPA is currently reviewing public comments and preparing the final rulemaking.

Section 1012 of the Residential Lead-Based Paint Hazard Reduction Act (also known as "Title X") requires that the Department of Housing and Urban Development (HUD) provide the pamphlet to purchasers and tenants of housing receiving Federal assistance. These regulations are under development by HUD.

Section 1018 of Title X requires that EPA and HUD promulgate regulations requiring sellers or lessors of target housing to provide purchasers and lessees with the lead hazard information pamphlet. EPA and HUD expect to issue the proposed regulations for this rulemaking in late summer or early fall of 1994. Commenters should be aware, however, that comments received on the pamphlet during the comment period for the proposed section 1018 regulation will not be used in developing the final draft of the pamphlet, due by October 28, 1994. Where appropriate, EPA may consider those comments when developing subsequent revisions to the pamphlet, as authorized by section 406 of TSCA.

List of Subjects

Environmental protection, Lead.

Dated: August 9, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–20034 Filed 8–15–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5052–5]

Science Advisory Board; Notification of Public Advisory Committee Meetings; Open Meetings

(1) Radiation Environmental Futures Subcommittee Teleconference—August 29, 1994

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) and its Radiation Environmental Futures Subcommittee (REFS) of the Science Advisory Board (SAB) will conduct a teleconference meeting on Monday, August 29, 1994 from 11 a.m. to 1 p.m. eastern time. In this teleconference meeting, the RAC intends to concur on technical edits to its draft report on review of the topic of radiation environmental futures for the purpose of closure by the full committee and to forward the revised report to the SAB's Environmental Futures Committee (EFC) for final approval at their September 13 and 14 meeting in Washington, DC (see **Federal Register**, Vol. 59, No. 134, Thursday, July 14, 1994, pp. 35927–35928). The August working draft will be made available to the Agency or the public. The teleconference meeting is open to the public and teleconference lines will be assigned on a first come basis. Previous public meetings to discuss the topic of future issues in environmental radiation include those held on May 4–6, 1994 (See **Federal Register**, Vol. 59, No. 68, Friday, April 8, 1994, pp. 16809–16811), June 20, July 11 and July 13 (See **Federal Register**, Vol. 59, No. 106, Friday, June 3, 1994, pp. 28856–28857).

Any member of the public wishing further information, such as a proposed agenda for the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Ms. Dorothy Clark, Staff Secretary; Science Advisory Board (1400–F); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118. Members of the public who wish to make a brief oral presentation at the teleconference should contact Dr. Kooyoomjian or Ms. Clark no later than August 24, 1994 in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at the teleconference meeting will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of three minutes. Written comments (at least 24 copies) received by the SAB by August 22, 1994 may be mailed to the SAB's RAC and REFS prior to the meeting; comments received after that date will be provided to the RAC and the REFS as logistics allow.

(2) Marsh Management Subcommittee Meeting—September 7–8, 1994

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Marsh Management Subcommittee of the Ecological Processes and Effects Committee (EPEC) will meet on September 7–8, 1994, at the Gangplank Restaurant, 600 Water Street, Washington, DC 20024, telephone (202) 554–5000. On September 7, the meeting will begin at 8:30 a.m. and end no later than 5 p.m. On September 8, the meeting will begin at 8 a.m. and end no later than 4 p.m. Both days of the meeting will be open to the public. Due to limited space, seating will be on a first-come basis.

On July 21, the Marsh Management Subcommittee met to begin a review of the science underlying marsh management, defined as the use of water control structures, berms, dikes etc. to modify the hydrology of marsh systems. At the request of the Agency's Office of Water, the Subcommittee has been established to evaluate the ecological implications of marsh management practices in various types of marsh ecosystems. EPA has formed a Marsh Management Steering Committee, consisting of federal agencies with responsibilities for marsh management, to refine a set of technical questions to be addressed by the Subcommittee. On July 21, the Subcommittee heard presentations from various federal and state agencies regarding relevant federal and state policies and technical issues of concern and received public comments on marsh management issues.

At the September 7–8 meeting, the Subcommittee will begin developing written recommendations in response to the six questions posed in the Charge to the Subcommittee: (1) Does structural marsh management protect or create emergent vegetated wetlands? (2) To what extent does structural marsh management impact the physical, biological and/or chemical aspects of natural marsh-sustaining processes? (3) What are the impacts of marsh management, if any, to estuarine fisheries, waterfowl, and other fish and wildlife? (4) What are the cumulative effects of numerous large-scale marsh management projects with respect to emergent vegetation, accretion, fish and wildlife, and other resources? (5) What are the gaps and the highest priorities for research studies related to the effects of structural marsh management projects, and for routine monitoring of such projects? (6) What scientific or technical criteria should EPA use as part of the basis for case-specific decision-making; or, as an alternative, what approach should EPA take to develop such criteria?

Additional Information

Single copies of the briefing materials provided to the Marsh Management Subcommittee may be obtained by calling the EPA Wetlands Hot Line at 1–800–832–7828. Copies of these documents are NOT available from the Science Advisory Board. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Clark.Dorothy@EPAMAIL.EPA.GOV.

Anyone wishing to submit written comments must forward at least 35 copies to Ms. Stephanie Sanzone, Designated Federal Officer, no later than August 24 for distribution to the Subcommittee and the interested public.

Dated: August 5, 1994.

Stephanie Sanzone,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–20039 Filed 8–15–94; 8:45 am]

BILLING CODE: 6560–50–P

[FRL–5052–9]

Oklahoma; Amended Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination on Application of Oklahoma for Full Program Adequacy Determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) that may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under 40 CFR Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria.

On August 10, 1993, Oklahoma applied for a determination of adequacy under Section 4005 of RCRA. After review, publication and consideration of all public comments, EPA temporarily approved Oklahoma's Municipal Solid Waste Landfill Permitting program on December 28, 1993 (58 FR 68643, 68644) good through June 30, 1994 allowing Oklahoma time to promulgate permanent rules. On June 20, 1994, the State of Oklahoma submitted permanent rules which were approved by the Governor on May 3, 1994 and became effective July 1, 1994. Today, EPA is issuing an amended final determination that the State's rules are permanent and Oklahoma's Municipal Solid Waste program is adequate to meet the requirements of 40 CFR Part 258.

EFFECTIVE DATE: This amended determination of adequacy for Oklahoma shall be effective on August 16, 1994.

FOR FURTHER INFORMATION CONTACT: Becky Weber, Chief, Solid Waste Section, US EPA Region 6, Dallas, Texas 75202; (214) 655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

On August 10, 1993, Oklahoma submitted an application for adequacy determination for Oklahoma's municipal solid waste landfill permit program. This application included temporary solid waste rules which expired on June 30, 1994. On September 16, 1993, EPA published a tentative determination of adequacy for all portions of Oklahoma's program at 58 FR 48516, 48518. On December 28, 1993, after review and consideration of all public comments, EPA published a final determination for full program adequacy at 58 FR 68643, 68644 which expired June 30, 1994. On March 23, 1994, the Oklahoma Department of Environmental Quality board adopted revised solid waste regulations. These new regulations were signed on May 3, 1994 by the Governor of Oklahoma. Since the Legislature of the State of Oklahoma did not act to change these regulations on or before May 17, 1994, the permanent regulations are effective automatically on July 1, 1994.

B. Decision

EPA has reviewed the minor changes made to the Oklahoma Solid Waste Regulations by the Department of Environmental Quality Board on March 23, 1994. EPA has found no substantial changes from the rules approved on December 28, 1994 that affect Oklahoma's ability to adequately conduct the permitting and enforcement of Subtitle D of the Resource Conservation and Recovery Act (RCRA) on Municipal Solid Waste Landfills in the State of Oklahoma, therefore, EPA concludes that Oklahoma's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in

40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new compliance requirements on the regulated community. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority:

This notice is issued under the authority of Section 2002, 4005, 4006, and 4010(c) of the Solid Waste Disposal Act, as amended.

A.M. Davis,

Acting Regional Administrator.

[FR Doc. 94–20041 Filed 8–15–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 94–854]

Comments Invited on Northern California Area Public Safety Plan Amendment

August 9, 1994.

On November 20, 1990, the Commission accepted the Public Safety Plan for the Northern California area (Region 6). On May 9, 1994, Region 6 submitted a proposed amendment to its plan that would, in part, revise the current channel allotments. Because the proposed amendment is a major change to the Region 6 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before September 15, 1994 and reply comments on or before September 30, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to Gen Docket 90–287 Northern California—Public Safety Region 6.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19936 Filed 8–15–94; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200200–001.

Title: Port of Vancouver/Marine Terminals Corporation Management Agreement.

Parties:

Port of Vancouver
Marine Terminals Corproation

Synoposis: The proposed amendment extends the term of he Agreement and increases the annual guarantee.

Agreement No.: 224–200877.

Title: Tampa Port Authority/ American Horizon Cruise Lines, Inc. Terminal Agreement.

Parties:

Tampa Port Authority ("Port")
American Horizon Cruise Liens, Inc. ("AHCLI")

Synopsis: The proposed Agreement provides for the Port to construct a marine passenger terminal facility and provide non-exclusive preferential berthing privileges or use by AHCLI.

Dated: August 11, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–19983 Filed 8–15–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension with revisions, of the following reports:

1. *Report title:* Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits.

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001.

OMB Docket number: 7100–0087.

Frequency: Weekly, Quarterly, Daily—dependent upon request.

Reporters: Depository institutions.

Annual reporting hours: 1,767,743.

Report	Estimated number of respondents	Estimated hours per response
FR 2900	8,764 (weekly) 4,934 (quarterly)	1 to 12 (3.50 avg.) 1 to 12 (3.50 avg.)
FR 2950/2951	693 (weekly) 1 (quarterly)	.2 to 5 (1.00 avg.) .2 to 5 (1.00 avg.)
FR 2000	186	.3 to 2.4 (.84 avg.)
FR 2001	540	.3 to 3 (.96 avg.)

Small businesses are affected.

General Description of Report

This information collection is mandatory [12 U.S.C. 248(a), 461, 603, 615, and 1305(b)(2)] and is given confidential treatment [5 U.S.C. 552b(4)].

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements ("nonexempt institutions") (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, FR 2951); and selected items on the FR 2900 in advance from samples of commercial banks on a daily basis (FR 2000) and on a weekly basis (FR 2001). The Federal Reserve proposes that the single deposit cutoff ($44.8 million) (and one of two determinants of deposits reporting category) be replaced by two separate deposit cutoffs ($44.8 million and $55.0 million). The higher cutoff would be applied to nonexempt reporters, resulting in a shift of over 1,000 reporters from weekly to quarterly FR 2900 reporting and a significant reduction in annual reporting burden. The lower cutoff would continue to apply to fully-exempt institutions (see Item 1 below). In the future, both cutoffs would be indexed annually. Also, the Federal Reserve proposes to broaden the entity coverage of the daily FR 2000 to include large thrift institutions, and recommends that eighteen thrifts be added to the reporting panel. No revisions to the content of any of the reports are proposed. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates; or both.

Final approval under OMB delegated authority of the extension without revisions, of the following reports:

1. *Report title:* Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities; and Annual Report of Total Deposits and Reservable Liabilities.

Agency form number: FR 2910q; FR 2910a.

OMB Docket number: 7100–0175.

Frequency: Quarterly; Annually.

Reporters: Depository institutions.

Annual reporting hours: 7,194.

Report	Estimated number of respondents	Estimated average hours per response
FR 2910q	534	2.00
FR 2910a	5,843	.50

Small businesses are affected.

General Description of Reports

This information collection is mandatory [12 U.S.C. 248(a) and 461] and is given confidential treatment [5 U.S.C. 552b(4)].

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. No changes are proposed for these reports.

2. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form number: FR 2930; FR 2930a.

OMB Docket number: 7100–0088.

Frequency: Annually, and on occasion.

Reporters: Depository institutions.

Annual reporting hours: 126.

Estimated average hours per response: .25.

Estimated number of respondents: 502.

Small businesses are affected.

General description of reports: This information collection is mandatory [FR 2930: 12 U.S.C. 248(a), 461, 603, and 615; FR 2930a: 12 U.S.C. 248(a) and 461] and is given confidential treatment [5 U.S.C. 552b(4)].

This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected by these reports are needed for the calculation of required reserves. No changes are proposed for these reports.

Board of Governors of the Federal Reserve System, August 10, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc 94–19988 Filed 8–15–94; 8:45am]

BILLING CODE 6210–01–P

Peggy Hall Tatum Childers, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for

processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Peggy Hill Tatum Childers, and Kathy Ann Tatum Shappley, both of Ripley, Mississippi; each to acquire an additional 12.5 percent, for a total of 25 percent, of the voting shares of Falkner Capital Corporation, Falkner, Mississippi, and thereby indirectly acquire Bank of Falkner, Falkner, Mississippi.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Joe Edwin Ford, Hamlin, Texas; to acquire an additional 10.69 percent, for a total of 34.54 percent, of the voting shares of Hamlin Financial Corporation, Hamlin, Texas, and thereby indirectly acquire Hamlin National Bank, Hamlin, Texas.

Board of Governors of the Federal Reserve System, August 10, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19992 Filed 8-15-94; 8:45 am]

BILLING CODE 6210-01-F

Regions Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 9, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of Union Bank & Trust Company, Montgomery, Alabama.

Board of Governors of the Federal Reserve System, August 10, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19993 Filed 8-15-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. 9232]

Schering Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey manufacturer of the diet product, Fibre Trim, from making any representation about the weight loss benefits, nutrient content, or nutrient related health benefits of any food, food supplement, or drug without competent and reliable scientific evidence to substantiate the claim.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Theodore Hoppock or Susan Cohn, FTC/S–4002, Washington, D.C. 20580. (202) 326–3087 or 326–3053.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of Schering Corporation, a corporation. Docket No. 9232.

The agreement herein, by and between Schering Corporation, a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Schering Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 2000 Galloping Hill Road, Kenilworth, New Jersey, 07033.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Sections 5(a) and 12 of the Federal Trade Commission Act, and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claims under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it

will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the compliant issued by the Commission, or that the facts as alleged in said compliant, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the compliant and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Schering Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling packaging, offering for sale, sale or distribution of Fiber Trim or any other food, food supplement or drug in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any misrepresentation, directly or by implication,

a. about the amount of fiber or any other nutrient or dietary constituent contained in the product, whether described in quantitative or qualitative terms; or

b. that the product is a high, rich, excellent or superior source of fiber or any other nutrient or dietary constituent using those words or words of similar meaning.

Provided that nothing in this Part shall prohibit any representation as to the amount of fiber or any other nutrient or dietary constituent in any product if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the United States Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990.

II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of any food, food supplement or drug in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication,

a. regarding the actual or comparative amount of fiber or the type(s) of fiber, or the actual or comparative amount of any other nutrient or dietary constituent in the product;

b. that the product provides any appetite suppressant, weight loss, weight control, or weight maintenance benefit; or

c. that the product provides any health benefit associated with the intake of fiber, or any other nutrient or dietary constitutent

unless, at the time that it makes such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

Provided that, for purposes of any representation covered by subpart (b) of this Part that a fiber supplement or any other food supplement or drug is an effective appetite suppressant or that it effectuates weight loss, weight control, or weight maintenance through reduction in appetite or any other physiological mechanism, "competent and reliable scientific evidence" shall mean at least two adequate and well-controlled, double-blinded clinical studies that conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies.

Provided further that nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Provided further that nothing in subparts (a) or (c) of this Part shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of any food, food supplement or drug in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, whenever a product's fiber content is described in advertising or labeling, directed or by implication, in quantitative or qualitative terms, disclose clearly and prominently in immediate proximity to such description the number of grams of dietary fiber contained per serving of the product.

Provided that is such fiber content descriptor is a term defined by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, compliance with said regulations will be deemed compliance with Part III of this Order.

IV

It is further ordered that, for three (3) years from the date that the representation is last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any representation covered by this Order; and

2. All test reports, studies, surveys, demonstrations or other evidence in respondent's possession or control, or of which it has knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions responsible for the preparation or placement of advertisements, promotional materials, product labels, or other such sales materials covered by this Order.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Schering Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of Fibre Trim, a fiber containing tablet, that were disseminated between 1985 and 1991. These advertisements and promotional materials were disseminated in magazines, newspapers, television, radio, direct mail correspondence and in-store displays.

The Commission's complaint, issued on September 22, 1989, alleged that Schering's advertisements and promotional materials represented that: (1) Fibre Trim is an effective appetite suppressant, weight loss, weight control or weight maintenance product; (2) Fibre Trim provides the health benefits associated with a fiber-rich diet or a high intake of dietary fiber from food; (3) Fibre Trim is a high fiber supplement; (4) the recommended daily dosage of Fibre Trim provides most of a person's daily requirements of dietary fiber; and (5) the recommended dosage of Fibre Trim provides about 2.35 grams of dietary fiber per serving or about seven grams of dietary fiber per day. The complaint alleged that Schering did not have a reasonable basis for these representations, and that the latter three representations were false.

The complaint allegations were tried before an Administrative Law Judge (ALJ) between January 22 and March 29, 1991. In an opinion dated September 16, 1991, the ALJ upheld the first, second and fifth allegations described above. With respect to the third allegation, the ALJ ruled that Schering's claim that Fibre Trim is a high fiber supplement was false as to the product's weight maintenance dosage, but true as to its weight loss dosage. The ALJ rejected the fourth allegation described above. The ALJ's decision was appealed to the Commission. Subsequently, the parties agreed to the proposed consent order and the appeal was withdrawn from adjudication.

The proposed consent order contains provisions which are designed to remedy the advertising violations charged and to prevent Schering from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Schering from misrepresenting the amount of fiber or any other nutrient or dietary constituent in Fibre Trim or any other food, food supplement or drug product. Part I also prohibits the misrepresentation of such products as being high, rich, excellent or superior sources of fiber or any other nutrient or dietary constituent. Part I also contains a safe harbor stating that it does not prohibit any representation as to the amount of fiber or any other nutrient or dietary constituent in any product if that representation is specifically permitted in labeling, for the serving size being advertised, by regulations promulgated by the United States Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990 (NLEA). The Commission's recently adopted Enforcement Policy Statement on Food Advertising (May 1994) (Food Policy Statement) provides additional guidance on what may constitute a misrepresentation of nutrient content.

Part II of the proposed consent order requires Schering to rely upon competent and reliable scientific evidence if it makes claims for any food, food supplement or drug product regarding the product's (1) Fiber content or type or the amount or content of any other nutrient or dietary constituent; (2) provision of any health benefit associated with the intake of fiber or any other nutrient or dietary constituent; or (3) provision of any appetite suppressant, weight loss, weight control or weight maintenance benefit. Part II requires that Schering possess and rely on tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results in making the first two categories of claims. For the third (weight loss-related) category of claims, Schering is required to rely upon at least two adequate and well-controlled, double-blinded clinical studies that conform to acceptable designs and protocols and are conducted independently by different persons qualified by training and experience to conduct such studies.

Part II also contains two safe harbor provisions. First, the proposed order does not prohibit any claims for drugs that are permitted in labeling under an FDA tentative final or final standard, or under an approved new drug application. Second, the proposed order does not prohibit any nutrient content or health benefit claims covered by Part II that are specifically permitted in labeling by FDA regulations under the NLEA.

Part III requires Schering, when making a fiber content claim for any food, food supplement or drug product, to disclose, clearly, prominently and in close proximity to that claim, the number of grams of dietary fiber contained per serving of the product. If the description of the fiber content of such a product is a term defined by FDA regulations issued pursuant to the NLEA

(*e.g.*, "high fiber"), then compliance with those regulations constitutes compliance with Part III and no additional disclosure of the amount of dietary fiber is required under Part III.

The litigation and the negotiation of the settlement of this case occurred prior to the Commission's issuance of its Food Policy Statement. Depending on the nature of the fiber content claim, the disclosure requirement in Part III may not be identical to the provisions of the Commission's Food Policy Statement. For example, Part III covers comparative fiber claims (*e.g.*, "25% more fiber") for which the Food Policy Statement likely would require additional disclosures, such as the basis for comparison. Part III of the proposed consent order does not explicitly require those additional disclosures. However, the prohibition on misrepresentations of fiber content in Part I of the proposed order and Part II's requirement that such claims be substantiated would require such disclosures as are necessary to prevent a claim from being misleading. Thus, unless such claims adequately adhere to the guidance of the Food Policy Statement, they likely would violate Parts I and II of the proposed order.

Parts IV, V, VI and VII of the proposed order relate to Schering's obligation to maintain records, distribute the order to its operating divisions responsible for advertising activities, notify the Commission of changes in business or corporate structure and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 94–20022 Filed 8–15–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 921–0101]

Trauma Associates of North Broward, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Dr. Johnson, the president of a Florida corporation, to dissolve Trauma Associates within 180 days after the order becomes final, and would prohibit the ten surgeons from entering into, organizing, or implementing any agreement to: refuse to provide surgical services in connection with any effort to fix the level of fees for such services; prevent the delivery of surgical services; or deal on collectively determined terms with anyone who pays for health services.

DATES: Comments must be received on or before September 15, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Markus Meier, FTC/S–3115, Washington, D.C. 20580. (202) 326–2756 or 326–2781.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Trauma Associates of North Broward, Inc. a corporation, Richard A. Johnson, M.D., individually and as President of said corporation, and Carl Amko, M.D., Lucien Armand, M.D., Frantz Chery, M.D., William Cohen, M.D., Sergio Gallenero, M.D., Kwang-Jae Joh, M.D., J. R. Nabut, M.D., Aiden O'Rourke, M.D., Santiago Triana, M.D., individually; Agreement Containing Consent Order to Cease and Desist

[File No. 921–0101]

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between the proposed respondents and counsel for the Federal Trade Commission that:

1. Proposed respondent Trauma Associates of North Broward, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2170 Southeast 17th Street, Suite 305, Fort Lauderdale, Florida 33316.

The proposed individual respondents, named in the caption above, are general surgeons, licensed to practice medicine in the State of Florida and are generally engaged in the business of providing surgical services to patients for a fee in Broward County, Florida. Their respective business addresses are:

Carl Amko, M.D., 412 Southeast 17th Street, Fort Lauderdale, Florida 33316;

Licien Armand, M.D., 4330 West Broward Boulevard, Suit 308, Plantation, Florida 33324;

Frantz Chery, M.D., 4101 Northwest 4th Street, Suite 302, Plantation, Florida 33317;

William Cohen, M.D., 8251 West Broward Boulevard, Suite H, Plantation, Florida 33317;

Sergio Gallenero, M.D., 9750 Northwest 33rd Street, Coral Springs, Florida 33065;

Kwang-Jae Joh, M.D., One West Sample Road, Suite 207, Pompano Beach, Florida 33064;

Richard A. Johnson, M.D., 1625 Southeast 3rd Avenue, Suite 721, Fort Lauderdale, Florida 33316;

J.R. Nabut, M.D., 1500 Hillsboro Boulevard, Suite 207, Deerfield Beach, Florida 33441;

Aiden O'Rourke, M.D., 315 Southeast 13th Street, Fort Lauderdale, Florida 33316;

Santiago Triana, M.D., Medical Building, 150 Northwest 70th Avenue, Suite 7, Plantation, Florida 33317.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the

Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that, for purposes of this order, the following definitions shall apply:

A. "Trauma Associates" means Trauma Associates of North Broward, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2170 Southeast 17th Street, Suite 305, Forth Lauderdale, Florida 33316, its Board of Directors, committees, officers, members, representatives, agents, employees, successors, and assigns.

B. "Surgeon respondents" means Carl Amko, M.D., Lucien Armand, M.D., Frantz Chery, M.D., William Cohen, M.D., Sergio Gallenero, M.D., Kwang-Jae Joh, M.D., Richard A. Johnson, M.D., J.R. Nabut, M.D., Aiden O'Rourke, M.D., and Santiago Triana, M.D., each of whom is a general surgeon licensed to practice medicine in the State of Florida, and is engaged in the business of providing surgical services to patients for a fee in Broward County, Florida.

C. "The District" means the North Broward Hospital District, a tax-supported hospital authority, with its principal offices located at 1625 Southeast Third Avenue, Fort Lauderdale, Florida 33316, its subsidiaries, affiliates, commissioners, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

D. "Broward General" means the Broward General Medical Center, one of the hospitals of the North Broward Hospital District, located at 1600 South Andrews Avenue, Fort Lauderdale, Florida 33316, its subsidiaries, affiliates, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

E. "North Broward" means the North Broward Medical Center one of the hospitals of the North Broward Hospital District, located at 201 Sample Road, Pompano Beach, Florida 33064, its subsidiaries, affiliates, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

F. "Integrated joint venture" means a joint arrangement to provide health-care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.

II

It is further ordered that each surgeon respondent directly or indirectly, or through any corporate or other device, in connection with the provision of health-care services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement, or understanding, express or implied, for the purpose or with the effect of:

A. Preventing the offering or delivery of surgical services by the District, Broward General, North Broward, or any other provider of health-care services, including, but not limited to, any agreement to refuse to deal or threaten to refuse to deal with the District, Broward General, North Broward, or any other provider of health-care services;

B. Dealing with the District, Broward General, North Broward, or any other provider of health-care services on collectively determined terms; or

C. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action prohibited by this order.

Provided that nothing in this order shall be construed to prohibit any individual surgeon respondent from:

1. Entering into an agreement or combination with any other physician with whom the surgeon respondent practices in partnership or in a professional corporation, or who is employed by the same person as the surgeon respondent, to deal with any third party on collectively determined terms; or

2. Forming, facilitating the formation of, or participating in an integrated joint venture and dealing with any third party on collectively determined terms through the joint venture, as long as the surgeons participating in the joint venture remain free to deal individually with third parties.

III

It is further ordered that respondent Richard A. Johnson, M.D., shall:

A. Dissolve Trauma Associates within one hundred and eighty (180) days after the date on which this order becomes final; and

B. file a verified written report demonstrating how he has complied with Section III.A. above, within two hundred and ten (210) days after the date on which this order becomes final.

IV

It is further ordered that respondent Trauma Associates shall:

A. Within thirty (30) days after the date on which this order becomes final, and prior to the dissolution provided for in Section III.A. above, distribute by first-class mail a copy of this order and the accompanying complaint to each party with whom Trauma Associates has entered into contract negotiations or finalized a contract concerning the provision of trauma surgical services; and

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in Section III.A. above, file a verified written report demonstrating how it has complied with Section IV.A. above.

V

It is further ordered that each surgeon respondent shall:

A. File a written report with the Commission within ninety (90) days after the date the order becomes final, and annually thereafter for three (3) years on the anniversary of the date order became final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the surgeon respondent has complied and is complying with the order;

B. For a period of five (5) years after the date on which this order becomes final, notify the Commission in writing within thirty (30) days after the surgeon respondent forms or participates in the formation of, or joins or participates in, any integrated joint venture; and

C. For a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by this order.

Trauma Associates of North Broward, Inc., et al. Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Trauma Associates of North Broward, Inc. ("Trauma Associates"), and ten surgeons in Broward County, Florida ("surgeon respondents"). The agreement would settle charges by the Federal Trade Commission that Trauma Associates and the surgeon respondents violated Section 5 of the Federal Trade Commission Act by, among other things, combining or conspiring to (1) Fix or increase the fees received by the surgeon respondents for the provision of trauma services and (2) threaten and carry out a concerted refusal to deal.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order to modify their terms in any way.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The proposed complaint alleges that the North Broward Hospital District ("the District"), a hospital authority in Broward County, Florida, resolved in March, 1992, to seek a state license to operate trauma centers at two District hospitals. According to the complaint, the surgeon respondents, who compete among themselves and with other general surgeons in Broward County, signed individual statements committing themselves to participate in the District's trauma program.

The complaint further alleges that the surgeon respondents, who have not integrated their practices, refused to contract with the District individually, and agreed on price proposals prior to submitting them to the District. On May 1, 1992, the surgeon respondents began providing trauma services to the District, and several days later Dr. Richard A. Johnson, the surgeon respondents' leader, signed a letter of intent with the District outlining the terms under which the surgeon respondents would provide services at the District's trauma centers. Dr. Johnson also reached an understanding with the District on the prices to be paid for the surgeon respondents' services.

The complaint alleges that Dr. Johnson incorporated Trauma Associates on May 7, 1992, and is its sole owner. Trauma Associates served as the vehicle for the surgeon respondents to engage in collective negotiations on fees and other contract terms to be sought from the District.

The complaint alleges that in July 1992, the District decided not to contract with the surgeon respondents as a group, and that in response the surgeon respondents: (1) refused to deal with the District individually; (2) sent the District a letter with a list of demands, including price terms; (3) threatened to cease providing services at the District's trauma centers if their demands were not met; and (4) walked out of the District's trauma centers. As a direct result of the walkout, one of the two trauma centers had to be shut down, and the other was adversely affected.

The complaint alleges that the above actions of the proposed respondents have had the purpose or effect in Broward County, Florida, of:

(1) Restraining competition among general surgeons;

(2) Fixing or increasing the prices that are paid to general surgeons who provide trauma services;

(3) Raising the cost, lowering the quality, and reducing access to and the quality-adjusted output of the District's trauma services; and

(4) Depriving the District and its patients of the benefits of competition among general surgeons.

Finally, the complaint alleges that the above actions of the proposed respondents constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Proposed Consent Order

The proposed consent order would prohibit the surgeon respondents from entering into, organizing, or implementing, any agreement to:

(1) Refuse to provide surgical services in connection with any effort to fix the level of fees for such services;

(2) Prevent the offering or delivery of surgical services;

(3) Deal on collectively determined terms with anyone who pays for health services; and

(4) Encourage any person to engage in any action prohibited by the order.

The order provides that it does not prevent the following:

(1) Surgeon respondents who practice together as partners or employees in the same professional corporation or partnership dealing with any third party on collectively determined terms; or

(2) Surgeon respondents who participate in the same integrated joint venture dealing with others on collectively determined terms through the joint venture, so long as they remain free to deal individually with others that decline to deal with the joint venture. (The consent order defines "integrated joint venture" as a joint arrangement to provide health care services in which surgeons participating in the venture

who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.)

The proposed order would require respondent surgeon Richard A. Johnson, M.D., to dissolve Trauma Associates within 180 days after the order becomes final. Furthermore, before such dissolution takes place, the order would require Trauma Associates to distribute copies of the complaint and order to each person with whom it has entered into contract negotiations concerning the provision of trauma surgical services.

The order also requires the proposed surgeon respondents to file compliance reports with the Commission, notify the Commission if they form or participate in the formation of an integrated joint venture, and maintain certain files relating to their compliance with the order.

The proposed respondents agreed to the order for settlement purposes only, and their agreement to the order does not constitute an admission by them that the law has been violated as alleged in the complaint.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 94–20021 Filed 8–15–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement 505]

Health Activities Recommendation Panel Site-Specific Health Activities; Availability of Funds for Fiscal Year 1995

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the anticipated availability of fiscal year (FY) 1995 funds for a cooperative agreement/grant program for Health Activities Recommendation Panel Site-Specific Health Activities. This program will conduct site-specific health activities related to human exposure to hazardous substances at waste sites or releases. The activities will be conducted in communities near hazardous waste sites for which ATSDR (or a State under cooperative agreement) has prepared a preliminary public health assessment, public health assessment, public health advisory, health consultation, or other site-related report and the Health Activities Recommendation Panel (HARP) has determined that specific public health actions are warranted. Emphasis will be given to the sites rated as "Urgent Public Health Hazard" and "Public Health Hazard."

Note: This announcement is a continuation of a previously announced initiative, Program Announcement No. 407—Health Activities Recommendation Panel Site-Specific Health Activities, which was published in the **Federal Register** on August 9, 1993 [58 FR 42327].

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the Section "Where to Obtain Additional Information.")

Authority

This program is authorized under Sections 104(i)(1)(E),(7),(9), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604 (i)(1)(E) (7), (9), and (15)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-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.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $2,000,000 is expected to be available in FY 1995 to fund an estimated 10 competing new awards and 10 noncompeting continuation awards. It is expected that the awards will range from $75,000 to $125,000. Awards are funded for a 12-month budget period within a project period of up to 2 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the program is to assist public health agencies in conducting site-specific health activities recommended by HARP to assess the public health impact of human exposure to hazardous substances in communities located near hazardous waste sites or releases. A current list of sites in the applicant's State rated as Urgent Public Health Hazard, Public Health Hazard, and Indeterminate Public Health Hazard may be obtained from Wendell Webb, Agency for Toxic Substances and Disease Registry, Public Health Practice Coordination Group, telephone (404) 639–0566.

Program Requirements

Applicants *must* specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement from the funding agency. Therefore, the grantee's application should be presented in a manner that demonstrates the applicant's ability to conduct the study. Applications should include a protocol which will undergo scientific peer review as required by ATSDR. The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis of the test specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected. The applicant must include in the application a methodology for ongoing community interaction/involvement. By comparison, the activities of the recipient and the ATSDR relating to a cooperative agreement are different and are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, the funding agency will assist the collaborator in conducting the study. The application should be presented in a manner that demonstrates the applicant's ability to address the health study in a collaborative manner with the funding agency. The cooperative activities of the recipient agency and the funding agency are:

1. Recipient Activities

a. The recipient will develop a protocol and conduct the recommended study. This protocol will undergo scientific peer review as required by ATSDR.

b. The recipient is required to provide proof by citing a State code or regulation or other State pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

c. The recipient will develop a mechanism for ongoing interaction with the affected community.

2. ATSDR Activities

a. ATSDR will provide assistance in both the planning and implementation phases of the field work called for under the study protocol.

b. ATSDR will provide consultation and assist in monitoring the data and specimen collection.

c. ATSDR will participate in the study analysis.

d. ATSDR will collaborate in interpreting the study findings.

e. ATSDR will conduct technical and peer review.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Scientific and Technical Review Criteria of New Applications

1. Proposed Program—50%

The extent to which the applicant's proposal and protocol addresses (a) the study as recommended by HARP; (b) the approach, feasibility, adequacy, and rationale of the proposed project design; (c) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the "Purpose" section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (d) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (e) the proposed community involvement strategy; and (f) the proposed method to disseminate the results to State and local public health officials, community residents, and other concerned individuals and organizations.

2. Program Personnel—30%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts—20%

The extent to which the proposal has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant/cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, Room 300, Mailstop E13, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, Room 300, Mailstop E13, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.203, Health Programs for Toxic Substances and Disease Registry.

Other Requirements

A. Human Subjects:

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Cost Recovery:

CERCLA as amended by the SARA provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient will agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten years after submission of a final Financial Status Report, unless there is a litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Paperwork Reduction Act:

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

D. Third Party Agreements:

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review and technical review as required by ATSDR, release of data, ownership of data and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. State that the contractor must comply with all peer review and technical review requirements. The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility.

Application and Submission Deadlines

The original and two copies of the application Form PHS 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, in accordance with the submission schedule below.

This is a continuous announcement and the proposed timetable for receiving new applications and making awards is shown below:

Submission deadlines new applications	Review dates	Award dates
October 14, 1994.	November 15, 1994.	January 16, 1995
January 17, 1995.	February 15, 1995.	March 30, 1995
April 14, 1995	May 15, 1995	July 1, 1995
July 14, 1995	August 14, 1995.	September 30, 1995

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (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.)

B. Late Applications

Applications which do not meet the criteria in A. above are considered late applications. Late applications will not be considered in the current competition and may either be returned to the applicant or held for the next review cycle.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E31, Atlanta, Georgia 30333, telephone (404) 639–6200.

Please refer to Announcement Number 505 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 10, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–20011 Filed 8–15–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 1 and 2, 1994, 8:30 a.m., Parklawn Bldg., conference rms. G, H, and I, 5600 Fishers Lane, Rockville, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD. Attendees requiring overnight accommodations may contact the hotel at 301–468–1100 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, September 1, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed presentation of data, 3:30 p.m. to 5:30 p.m.; open public hearing, September 2, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1180.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 29, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 1, 1994, the committee will discuss general issues relating to devices to aid breast self exams. On September 2, 1994, the committee will discuss general issues relating to home uterine activity monitors.

Closed presentation of data. On September 1, 1994, the committee will discuss trade secret and/or confidential commercial information regarding various medical devices used in obstetrics and gynecology that are currently being evaluated by FDA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 2, 1994, 10 a.m., Holiday Inn Crowne Plaza, Plaza III Ballroom, 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn Crowne Plaza. Attendees requiring overnight accommodations may contact the hotel at 301–468–1100 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Closed committee deliberations, 10 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4:30 p.m.; Michael G. Bazaral, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2623.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 29, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a revision to the guidance document for clinical data to support premarket notification for apnea monitors.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding present and future device applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Oncologic Drugs Advisory Committee

Date, time, and place. September 12, 1994, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 12 m.; closed committee deliberations, 12 m. to 4:30 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) New drug application (NDA) 20–452, Photofrin® (Sterile Porfimer Sodium, QLT Phototherapeutics, Inc.), "for the reduction of obstruction and palliation of dysphagia in patients with completely or partially obstructing esophageal cancer."

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information

relevant to investigational new drug applications and pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Neurological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 16, 1994, 9:45 a.m., Piccard Bldg., conference rm. 100, 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9:45 a.m. to 10:15 a.m.; open public hearing, 10:15 a.m. to 11:15 a.m., unless public participation does not last that long; open committee discussion, 11:15 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 4 p.m.; Levering Keely, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1523.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss proposed guidance for biocompatibility of implanted neurological devices and the clinical utility of electroencephalograph devices.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 21, 1994, 8 a.m., Holiday Inn—Gaithersburg, Whetstone Rm., Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been blocked at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 5 p.m.; Daniel G. Schultz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2092.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the following draft guidance documents: (1) Electrosurgical devices, (2) medical lasers, (3) noninteractive wound and burn dressing, (4) interactive wound and burn dressing, and (5) sun protective clothing. Single copies of the draft guidance documents are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041 or 301–443–6597.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding issues related to new technologies currently under review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Joint Meeting of the Clinical Chemistry and Clinical Toxicology Devices Panel and the Microbiology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 22, 1994, 1 p.m., and September 23, 1994, 9 a.m., Holiday Inn—Gaithersburg, Whetstone/Walker Rms., Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been blocked at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Closed committee deliberations, September 22, 1994, 1 p.m. to 5 p.m.; open public hearing, September 23, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; Cornelia B. Rooks or Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243 or 594–2096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 8, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the use of alternate matrices: saliva, sweat, tears, hair, etc., for in vitro diagnostic devices, and replacement reagents for devices already cleared by the 510(k) process or approved by premarket approval application. In addition, the committee will discuss a draft document: "Points to Consider for Collection of Data in Support of In Vitro Diagnostic Device Submissions for 510(k)'s." These documents will be available at the meeting.

Closed committee deliberations. The committee will discuss trade secret and/

or confidential commercial information regarding pending or future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dermatologic Drugs Advisory Committee

Date, time, and place. September 22 and 23, 1994, 8:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, September 22, 1994, 8:30 a.m. to 12 m.; open committee discussion, 12 m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, September 23, 1994, 8:30 a.m. to 12 m.; Ermona B. McGoodwin or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 16, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss onychomycosis and determination of endpoints for clinical trials investigating treatment of onychomycosis.

Closed committee deliberations. On September 22, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational

or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19984 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the agenda of the joint subcommittee meeting of the Nonprescription Drugs Advisory Committee and Arthritis Advisory Committee on Over-the-Counter Internal Analgesic, Antipyretic, and Antirheumatic Drug Products, which was announced in the **Federal Register** of July 11, 1994 (59 FR 35375). The change is being made to add an additional topic for discussion. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1994, FDA announced that a joint subcommittee meeting of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee would be held on September 8 and 9, 1994. On page 35375, in the second column, the "open committee discussion" portion of this meeting is amended to read as follows:

Open committee discussion. On September 8 and 9, 1994, the joint subcommittee will discuss effectiveness data requirements and proposed labeling indications for OTC analgesic drug products. The joint subcommittee will address topics such as: (1) Data requirements to support specific types of indications for OTC analgesic drug products; (2) recommendations for labeling indications for OTC analgesics; and (3) the current state of scientific knowledge in the areas of pain receptors, mechanism(s) of pain perception, and the basis for response to analgesic drug classes. On the afternoon of September 9, 1994, the joint subcommittee will also discuss the proposed changes in the format of labeling for OTC drug products.

Dated: August 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–20064 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Generic Drugs Advisory Committee with Dermatologic Drugs Advisory Committee representation. This meeting was announced in the **Federal Register** of July 27, 1994 (59 FR 38196). The amendment is being made to add an agenda item for discussion on Tuesday, September 13, 1994. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 27, 1994, FDA announced that a meeting of the Generic Drugs Advisory Committee with Dermatologic Drugs Advisory Committee representation would be held on September 12 and 13, 1994. On page 38196, in the third column, under *Open committee discussion* the agenda for the meeting is amended to read as follows:

Open committee discussion. In April 1992, the Generic Drugs Advisory Committee met to consider methods for documenting the bioequivalence of topical corticosteriods. Subsequently, on July 1, 1992, the Office of Generic Drugs issued a guidance document entitled "Interim Guidance for Topical Corticosteriods: *In Vivo* Bioequivalence and *in Vitro* Release Methods." The purpose of the September 1994 meeting is to reexamine the 1992 interim guidance in light of new experimental data and methods of analysis. On September 12, 1994, the committee will discuss the pharmacodynamic (i.e., vasoconstrictor) measurement of bioequivalence. On September 13, 1994, this topic will be further discussed along with other issues related to the documentation of equivalence according to the interim guidance. Discussion will be limited to dermatologic products and will not include ophthalmic or inhaled corticosteroid products. Pilot data will be presented on the development of pharmacodynamic and pharmacokinetic assays to demonstrate tretinoin bioequivalence. Also, on September 13, 1994, there will be a review of the current status of topics discussed at previous Generic Drugs Advisory Committee meetings.

Dated: August 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–20065 Filed 8–15–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting; Forum on Cooperative Research and Development Agreements

Notice is hereby given that a second Forum on Cooperative Research and Development Agreements (CRADAs), convened as an *ad hoc* group of consumer consultants to the Advisory Committee to the Director, NIH, will meet in public session on September 8, 1994, from 8:30 am to 5:30 pm, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland, 20814. This Forum is convened in follow-up to a previous Forum on this topic July 21, 1994.

The purpose of the second Forum is to elicit consumer and other public interest perspectives which will be used in NIH's development of policy on the "reasonable pricing" clause, which is currently required in its Cooperative Research and Development Agreements (CRADAs) under the Federal Technology Transfer Act of 1986 and exclusive commercialization licenses. The Forum Panel members will discuss how best to ensure that the public investment in products developed through licensing NIH technologies is adequately reflected. Discussion will include an analysis of the clause and the Panel will advise on whether the clause has been useful to ensure that the public investment in collaborative research is adequately considered in the

subsequent commercial development of technology arising under such research.

At the conclusion of the Forum, the Panel will develop and transmit its report to the Advisory Committee to the Director, NIH, for review.

Concerned organizations and individuals are invited to present their views at the Forum or submit written views of any length to the Panel. Please submit requests for a 5 minute presentation time, or written views to: Ms. Elyssa Tran, Office of Science Policy and Technology Transfer, National Institutes of Health, Building 1, Room 218, 9000 Rockville Pike, Rockville, MD 20892, (301) 402–0280 (fax).

Written views submitted by September 1 will be distributed to the Panel. Comments and questions related to the proposed Forum may also be addressed to Ms. Tran at (301) 496–1454.

Dated: August 8, 1994.

Ruth Kirschstein, M.D.,

Deputy Director, NIH.

[FR Doc. 94–19940 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–P

National Cancer Institute; Opportunity for a Cooperative Research Agreement (CRADA) for the Scientific and Commercial Development of Monoclonal Antibodies to a Tumor-Specific Growth Factor for the Diagnosis and Prognosis of Premalignant Lesions and Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical or biotechnology company that can effectively pursue the scientific and commercial generation and development of a panel of monoclonal antibodies against an epidermal growth factor (EGF)-related peptide, cripto-1 (CR–1). The project is of scientific importance because CR–1 is a protein that exhibits structural homology to the EGF/transforming growth factor α (TGFα) gene family peptides. As such, CR–1 might function as a growth factor or growth inhibitor. Therefore, CR–1 may be important as an autocrine or paracrine modulator in such processes as tumor cell growth, wound repair, neovascularization, and inflammation.

NCI has successfully isolated and cloned the gene that encodes CR–1, an EGF-related peptide growth factor that does not function through the EGF receptor. The NCI has also obtained a rabbit anti-peptide polyclonal antibody that can detect the expression of CR–1 in formalin-fixed, paraffin-embedded human tissue sections. CR–1 has been shown to be preferentially and differentially expressed in several different human premalignant lesions and cancers. The selected sponsor will purify a recombinant CR–1 protein and use this material as an immunogen to generate anti-CR–1 monoclonal antibodies for use in the diagnosis and prognosis of human cancers.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to either Michael Christini or Mark Noel (Tel# 301–496–0477 Fax# 301–402–2117), Office of Technology Development, National Cancer Institute, Bldg. 31, Room 4A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

DATES: Proposals must be received at the above address by 5 P.M. September 9, 1994.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company which, after obtaining a license in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR part 404), can purify a recombinant CR–1 protein for which patents are pending or have been issued and to utilize this purified recombinant CR–1 protein as an immunogen to generate a panel of mouse monoclonal antibodies. The immunoreactive CR–1 protein has been detected by immunoperoxidase staining using a rabbit anti-peptide polyclonal CR–1 antibody in a majority of human colon cancers, breast cancers, gastric cancers and pancreatic cancers. Little or no staining was detected in surrounding, noninvolved colon, breast or gastric epithelial cells. In addition, a majority of premalignant colonic adenomas, breast ductal carcinomas *in situ* and gastric intestinal metaplasia express immunoreactive CR–1.

A recombinant CR–1 protein has been generated using a yeast expression vector in *Pichia pastoris* and a partially purified protein obtained. This protein as well as synthetic, refolded peptides that correspond to the EGF-like domain in CR–1 are mitogenic for human breast cancer cells yet fail to bind to the EGF receptor or other type I receptor tyrosine kinases. Expression of CR–1 antisense mRNA using a recombinant, replication defective retroviral expression vector in colon cancer cells that expresses CR–1 inhibits the growth of these cells *in vivo* in nude mice. In order to utilize the diagnostic and therapeutic potentials of CR–1, it will be necessary to purify a significant amount of the recombinant CR–1 protein to more fully define its biological properties and to identify the receptor through which it functions. In addition, mouse monoclonal antibodies against the purified CR–1 recombinant protein will expedite screening studies for CR–1 expression in other human premalignant lesions and cancers and should exhibit more specificity and sensitivity for the detection of CR–1 in tissues by immunocytochemistry (ICC) or in tissue extracts or serum samples by ELISA.

The role of the National Cancer Institute, the Division of Cancer Biology, Diagnosis and Centers includes:

1. NCI will provide expression vectors that encode CR–1 and can be used to produce CR–1 in *E. coli*.
2. NCI will provide expression vectors that encode CR–1 in yeast *Pichia pastoris* containing several milligrams of recombinant CR–1 protein.
3. NCI will provide a rabbit polyclonal anti-CR–1 antibody for monitoring CR–1 recovery during the purification from the yeast conditioned medium.
4. NCI will assay the purified recombinant CR–1 protein for bioactivity.
5. NCI will screen anti-CR–1 monoclonal antibodies for reactivity by Western blot analysis against native CR–1 protein from CR–1 positive human embryonal carcinoma or colon carcinoma cells.

The role of the successful corporate partner will include:

1. Obtain background license in appropriate fields of use to the relevant Government patent rights.
2. Purify to homogeneity 30–50 milligrams of CR–1 from *Pichia pastoris* conditioned medium.
3. Provide the purified recombinant CR–1 protein.
4. Utilize the purified recombinant CR–1 protein to generate mouse anti-CR–1 monoclonal antibodies.
5. Screen anti-CR–1 monoclonal antibodies for specificity, reactivity, and sensitivity towards recombinant CR–1 protein.
6. Ascertain whether monoclonal anti-CR–1 antibodies can detect native CR–1 protein in CR–1 positive human colorectal or embryonal carcinoma cells by radioimmunoprecipitation analysis and by ELISA.
7. Determine whether anti-CR–1 antibodies can be used for ICC on formalin-fixed, paraffin embedded tissues known for CR–1 expression.
8. Provide funds to support a postdoctoral fellow and associated expenses.

Criteria for choosing the collaborating company will include:

1. Ability to obtain background license to relevant patent rights.

2. Experience in producing and purifying recombinant proteins, particularly growth factors or cytokines.

3. Experience in generating and screening monoclonal antibodies.

4. Willingness to cooperate with the NCI in the collection and evaluation of data.

5. Willingness to cost share in laboratory studies.

6. An agreement to be bound by the DHHS rules involving the use of human and animal subjects, and human tissue.

7. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: August 8, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–19943 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Pub. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, September 29–30, 1994, to held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 29, from 8:00 a.m. to 3:30 p.m. for a status report by the Director, NIA; a report on the Geriatrics Program; a discussion with the Director of the National of Health; a report on the Working Group on Program; a discussion of program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on Friday, September 30 from 8:30 a.m. to adjournment for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19948 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 20–21, 1994. The meeting of the full Council will be open to the public September 20, from 8:30 a.m. to 12 noon and again on September 21, from 11:30 a.m. to 1 p.m., Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland, to discuss administrative details relating to Council business and special reports. The following subcommittee meetings will be open to the public September 20 from 1 p.m. to 2 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Conference Room 6, Building 31; Digestive Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 8, Building 31. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 20, from 2 p.m. to 5 p.m. and on September 21, from 8:30 a.m. to 10 a.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney Urologic and Hematologic Diseases Subcommittee. The full Council meeting will be closed on September 21, from 10:30 a.m. to 11:30 a.m. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contract Dr. Walter Stolz, Executive Secretary, National Diabetes and digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 594–7527, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6623.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology, Research, National Institutes of Health)

Dated: August 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19949 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse on September 19–20, 1994, at the National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on September 19 from 9 a.m. to 5 p.m. for announcements and reports of

administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 20 from 9 a.m. to 1 p.m. for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting..

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: August 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19946 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 8 and 9, 1994, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 4 p.m. on Thursday, September 8, 1994. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public from approximately 4 p.m. on Thursday, September 8 until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meeting will be closed on Friday, September 9 from 8:30 a.m. until adjournment at approximately noon.

Ms. Louis DeNinno, Committee Management Officer, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision research: National Institutes of Health)

Dated: August 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19944 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council meeting will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

Name of committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council

Date: September 21, 1994

Place: National Institutes of Health, Building 31, Conference Room 8A28, 900 Rockville Pike, Bethesda, MD 20892

Open: 1:30 p.m.—3 p.m.

Agenda: To discuss program planning and fiscal matters.

Closed: 3 p.m.—recess

Agenda: To discuss specific grant applications.

Name of committee: National Advisory Neurological Disorders and Stroke Council

Date: September 22–23, 1994

Place: Ramada Bethesda Hotel, 8400 Wisconsin Avenue, Embassy III, Conference Room, Bethesda, MD 20814

Open: September 22, 9 a.m.—1 p.m.

Agenda: A report by the Acting Director, NINDS, a report by the Acting Director, Division of Extramural Activities, NINDS, and a presentation by an NINDS grantee.

Closed: September 22, 1 p.m.—recess; September 23, 8:30 a.m.—adjournment

Agenda: To review grant applications.

Executive Secretary: Constance W. Atwell, Ph.D., Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The entire meeting will be totally closed for each of the following committees.

Name of committee: Neurological Disorders Program Project Review B Committee

Date: October 17–19, 1994
Time: October 17, 8 a.m.—recess; October 18, 8, a.m.—recess; October 19, 8 a.m.—adjournment
Place: Hotel Washington, 515 15th Street NW., Washington, DC 20004
Contact person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C14, Bethesda, MD 20892, (301) 496–9223
Purpose/agenda: To review and evaluate grant applications.
Name of committee: Neurological Disorders Program Project Review A Committee
Date: October 24–26, 1994
Time: October 24, 8 p.m.—recess; October 25, 8 a.m.—recess; October 26, 8 a.m.—adjournment
Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814
Contact person: Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C14, Bethesda, MD 20892, (301) 496–9223
Purpose/Agenda: To review and evaluate grant applications.
Name of committee: Training Grant and Career Development Review Committee
Date: November 10–11, 1994
Time: November 10, 8 a.m.—recess; November 11, 8:30 a.m.—adjournment
Place: Castle Beach Club, 5445 Collins Avenue, Miami, FL 33140
Contact person: Dr. Alfred Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C14, Bethesda, MD 20892, (301) 496–9223
Purpose/agenda: To review and evaluate grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: August 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–19947 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Acetylcholinesterase Inhibitors for the Treatment of Alzheimer's Disease and Cognitive Disorders

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide licenses to practice the inventions embodied in U.S. Patent 5,171,750, entitled "Substituted Phenserines as Specific Inhibitors of Acetylcholinesterase" and U.S. Patent Applications SN 07/861,329 and 08/096,207, both entitled "Phenylcarbamates of (-)-Eseroline, (-)-N1-Noreseroline and (-)-N1-Benzylnoreseroline: Selective Inhibitors of Acetyl and/or Butyrylcholinesterase," 07/765,766, entitled "Thiapysovenine and Carbamate Analogs, Pharmaceutical Compositions and Method for Inhibiting Cholinesterases," 07/845,081 and 08/182,301, both entitled "Carbamate Analogs of Thiaphysovenine, Pharmaceutical Compositions, and Method for Inhibiting Cholinesterases," and 07/980,399, entitled "Method for Treating Cognitive Disorders With Phenserine" to CURE, Inc. of Baltimore, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent and patent applications disclose several novel, potent and long-acting anti-cholinesterase agents that enhance cognition and are highly promising drug candidates for the treatment of Alzheimer's disease and other neurological disorders as well as methods for treating these conditions. The two series of drugs are based loosely on the first-generation cholinesterase inhibitor, physostigmine. Physostigmine has produced demonstrable but small clinical improvements in patient's with Alzheimer's disease, but these are severely limited by (i) its short half-life (approximately 30 minutes) and (ii) its high incidence of toxic side-effects at doses that produce only modest enzyme inhibition. It is widely accepted that the narrow therapeutic index of physostigmine and some other first generation acetylcholinesterase inhibitors limits the administration of these at adequate doses to affect cognition. The present drug candidates are long-acting and highly selective for acetyl- (AChE) as opposed to butyrylcholinesterase (BChE). Whereas AChE is involved in the metabolism of ACh, and inhibiting AChE augments the action of ACh and thereby cholinergic function and memory in Alzheimer's disease, BChE has been proposed to be involved in lipid and phospholipid metabolism, in permeability control and transport of ions across membranes, and in slow nerve conduction. Co-inhibition of BChE in Alzheimer's patients, as a consequence of anticholinesterase therapy, probably is not of clinical value, and may be deleterious.

ADDRESSES: Requests for copies of the patent and the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the any field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: August 9, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–19941 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–P

National Eye Institute; National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Institute of Child Health and Human Development; Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Use of Antiflammins

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA partners for the further development and commercialization of its patent portfolio for antiflammins. The inventions claimed in the following patent applications are available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more

CRADAs in several clinically important applications as described below in the Supplementary Information:

Anti-Inflammatory Agents, Mukherjee, A. B. (NICHD), Filed 19 Nov 1987 Serial No. 07/122,379, U.S. Patent No. 5,266,562 issued 30 Nov 1993

Method of Treating Ocular Inflammatory Diseases Using Antiflammins, Chan, C. C. (NEI), Filed 7 Jun 1993, Serial No. 08/073,380

To speed the research, development and commercialization of this new class of drugs, the National Institutes of Health is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Any proposal to use antiflammins in the treatment of inflammatory disease processes will be considered.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Ms. Karen Wright, Office of Technology Development, National Eye Institute, Building 10, Room 10N202, Bethesda, MD 20892 (301/496–9463). CRADA proposals must be received by the date specified below.

Licensing proposals and questions about this opportunity should be addressed to: Ms. Carol Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, MD 20852 (301/496–7735 ext. 287). Information on the patent and patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

DATES: There is no deadline by which license applications must be received. CRADA proposals must be received on or before November 14, 1994.

SUPPLEMENTARY INFORMATION: Antiflammins are biologically active synthetic oligopeptides, derived from the sequence similarity between lipocortin-1 and uteroglobin, an anti-inflammatory protein. These peptides have antiphospholipase A_2 and immunomodulatory properties. Because of the great therapeutic potential of specific and potent antiflammin drugs that may be developed, scientists in several Institutes at the National Institutes of Health are examining the use of antiflammins in the treatment of a variety of inflammatory processes, including acute anterior ocular inflammation (uveitis), psoriasis, neonatal respiratory distress syndrome (RDS) and bronchopulmonary dysplasia (BPD).

Dr. Chi-Cho Chan and Dr. Scott Whitcup, clinical investigators at the National Eye Institute (NEI), have an IND for the use of antiflammin 2 in acute anterior uveitis, and seven patients have already been enrolled in a clinical trial. To date, no toxicity has been observed in patients treated with this drug. The NEI is interested in developing new topical formulations of antiflammins and the initiation of multi-center randomized clinical trials of antiflammins for the treatment of anterior uveitis, post-operative ocular inflammation, and allergic conjunctivitis.

Dr. John diGiovanna, an investigator in the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), is studying the use of antiflammins to treat psoriasis, a hyperproliferative inflammatory skin disease. Dr. diGiovanna would like to continue and expand these studies to include other inflammatory skin diseases such as atopic and contact dermatitis, as well as develop animal and *in vitro* models to study the effects of antiflammins on skin.

Dr. Anil Mukherjee, an investigator in the National Institute of Child Health and Human Development (NICHD), is interested in determining whether endotracheal administration of aerosolized recombinant human uteroglobin (UG) or antiflammins derived from the sequence of this protein in combination with surfactant prevents the development of the inflammatory lung disease bronchopulmonary dysplasia (BPD) in (a) non-human primate models of neonatal respiratory distress syndrome (RDS) and (b) human neonatal RDS in a multi-center study, provided the non-human primate study results show no toxicity and considerable improvement as a result of combination therapy with surfactant plus human uteroglobin.

CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner(s) will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will be expected to advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the NEI, NIAMS, and NICHD in these CRADAs will be as follows:

1. Provide the Collaborator(s) with samples of the subject compounds for pharmaceutical evaluation.

2. Continue the detailed physicochemical characterization of the test compounds as well as research on their mechanism of biological action, and publish these results and provide all data to the Collaborator as soon as they become available.

3. Conduct controlled clinical trials of antiflammin formulations that have been determined to have therapeutic potential in ocular, skin and respiratory inflammatory diseases.

The role of the Collaborator(s) will be to:

1. Perform an exhaustive evaluation of these compounds with respect to their biological activities and to develop appropriate vehicles for drug delivery for disease processes covered under the CRADA. The Collaborator(s) will supply data to the NEI, NIAMS, and/or NICHD in a timely fashion.

2. Synthesize and formulate structural variants of these subject compounds to optimize desired effects.

3. Expand the basic toxicological data as needed in preparation for additional clinical studies.

4. Conduct basic studies designed to better understand the potential for antiflammins in the treatment of inflammatory diseases, bioavailability and how to best administer these agents.

5. Support the execution of clinical trials designed to evaluate efficacy and toxicity. This may include providing pharmaceutical grade compound, equipment and supplies, and support personnel.

6. Provide new and improved formulations in appropriate vehicles.

Selection criteria for choosing the CRADA partner(s) will include but not be limited to:

1. Ability to complete the quality pharmacological evaluations required according to an appropriate timetable to be outlined in the Collaborator's proposal. The target commercial application as well as the strategy for evaluating the test agents' potential in that capacity must be clearly delineated therein.

2. The level of financial support the Collaborator will supply for CRADA-related Government activities.

3. A willingness to cooperate with the NEI, NIAMS, and NICHD in publication of research results.

4. An agreement to be bound by the DHHS rules involving human subjects, patent rights, ethical treatment of animals, and randomized clinical trials.

5. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA(s). Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: August 8, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–19942 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–P

Prospective Grant of Partially Exclusive Licenses: Inhibition of Cell Proliferation Using Antisense Oligonucleotides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of partially exclusive world-wide licenses to practice the invention embodied in U.S. Patent Applications SN 07/821,415 and 08/187,785, both entitled "Inhibition of Cell Proliferation Using Antisense Oligonucleotides" to Lynx Therapeutics, Inc. of Hayward, California and to Genta Incorporated of San Diego, California jointly with CV Therapeutics, Inc. of Mountain View, California. The patent rights in this invention have been assigned to the United States of America.

The prospective partially exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. These prospective partially exclusive licenses may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent applications disclose a novel strategy that uses antisense oligonucleotides to prevent the renarrowing of heart valves or peripheral vessels (i.e., restenosis) following coronary balloon angioplasty. The antisense oligonucleotides employed inhibit the proliferation of the smooth muscle cells (SMCs) that cause restenosis by targeting specific mRNAs that encode certain cell cycle regulatory proteins. The oligonucleotides are delivered locally via the slow biodegradation of polymers that have been saturated with the antiproliferative compounds.

ADDRESSES: Requests for copies of these patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20892–3804. Telephone: (301) 496–7735 ext. 284; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the any field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: August 9, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–19937 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 38513–5, July 29, 1994), is amended to reflect the following organizational change in the National Institute of Deafness and Other Communication Disorders (NIDCD): (1) Retitle the Division of Communication Sciences and Disorders (HN34) as the Division of Human Communication (HN34). The Division serves as an interface between NIDCD, NIH, other Federal agencies and, most importantly, with scientists in the fields of hearing balance, smell, taste, voice, speech, and language. The revised title will more effectively state to the public that this Division is the focal point for all of the seven research areas named above.

Section HN–B, Organization and Functions, is amended as follows: (1) under the heading National Institute of Deafness and Other Communication Disorders (HN3), Division of Communication Sciences and Disorders (HN34), delete the title and functional statement in their entirety and substitute the following:

Division of Human Communication (HN34). (1) Plans and directs a program of grant and contract support for research and research training in the normal processes and diseases and disorders of hearing, balance, smell, taste, voice, speech and language to insure maximum utilization of available resources in attainment of institute objectives; (2) assesses needs for research and research training in program areas; (3) determines program priorities and recommends funding levels for programs to be supported by grants; (4) determines priorities and funding levels for research to be supported by contracts; (5) collaborates with intramural programs in the Institute and NIH-wide and maintains an awareness of national research efforts in program areas; (6) prepares reports and analyses to assist institute staff and advisory groups in carrying out their responsibilities; and (7) consults with voluntary health organizations and with professional associations in identifying research needs and developing programs to meet them.

Dated: August 5, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–19945 Filed 8–15–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3801; FR 3750–N–01]

Notice of Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

SUMMARY: This NOFA announces the availability of funds for grants under Section 108(q) of the Housing and Community Development Act of 1974, as amended. HUD reserves the right to award grants under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject

to funding availability, HUD intends to award at least $19 million in EDI funds.

Communities which may obtain Section 108 loan guarantee commitments to carry out qualifying projects also may be eligible under this NOFA to receive EDI grants to enhance the security of the guaranteed loan or to improve the feasibility of proposed projects through techniques such as interest rate subsides, loan loss reserves, etc. The NOFA sets out program guidelines which will govern the application, application review, and award process for EDI grants.

DATES: Applications are due in HUD Headquarters at the address stated below under **ADDRESSES**, by September 16, 1994, 4:30 pm Eastern Daylight time. HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission.

ADDRESSES: Completed applications should be submitted to the Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7180, Washington, DC 20410.

Interested persons are invited to submit comments on the program guidelines for the Economic Development Initiative. Comments should be submitted to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Department of Housing and Urban Development, room 7178, Washington, DC 20410. Telephone (202) 708–1871. The TDD number is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has requested that OMB complete its review within 10 days from the date of this publication. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

I. Purpose and Substantive Description

(A) Authority. Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (the "Act"); 24 CFR part 570.

(B) Definitions.

CDBG funds means, in addition to those funds specified at § 570.3(e), grant funds received pursuant to Section 108(q).

Economic Development Initiative (EDI) means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (P.L. 103–233) (the "1994 Act").

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR § 570.703, and that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization.

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this NOFA shall have the respective meanings given thereto in that part.

(C) Background.

EDI is intended to complement and enhance the Section 108 Loan Guarantee program (see 24 CFR §§ 570.700–710 for regulations governing the Section 108 program). This provision of the Community Development Block Grant (CDBG) program provides communities with a source of financing for economic development, housing rehabilitation, and large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and nonentitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M.

Additionally, assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). Section 3 requires that to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance be directed to low- and very-low income persons. The eligible activities for which funding is provided under this NOFA are consistent with the objectives of section 3. Public entities awarded funds under this NOFA and that intend to use the funds for housing rehabilitation, housing construction, or other public construction should consult the regulations published on June 30, 1994, to determine applicable requirements.

The Section 108 program is authorized at $2.054 billion in loan guarantee authority in Fiscal Year 1994. Under this program communities and (States, if applicable) pledge future years' CDBG allocations as security for loans guaranteed by HUD. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. The Section 108 program, however, does not require CDBG funds to be escrowed for loan repayment, which means that the community can continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment. Further, EDI minimizes the potential loss of future CDBG allocations by lowering the cost of borrowing under Section 108, reducing the risk that the pledged annual CDBG allocation would be required to fund repayment shortfall, and enhancing the ability of communities to leverage federal resources and private funds.

An EDI grant can reduce the risk to future CDBG funds:

(1) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan),

(2) By directly enhancing the security of the guaranteed loan, or

(3) Through a combination of these risk mitigation techniques.

HUD envisions that the following project structures could be typical.

Provision of financing to for-profit businesses at a below market rate— While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by many businesses. The EDI grant can be used to make Section 108 financing affordable, as illustrated in the following example:

A public entity wishes to make financing available for businesses located in a distressed neighborhood. The public entity applies for Section

108/EDI assistance to carry out a $5.75 million economic development (ED) program. The ED loans will be funded from a financing package that includes a $5,000,000 Section 108 loan and a $750,000 EDI grant. If the rate on the Section 108 loan is 7.25 percent and the term is 15 years, the rate on the ED loans can be reduced to 5.1 percent (a level which is approximately 30% lower than the Section 108 rate). Thus, the EDI grant serves to "buy down" the interest rate on the ED loans, thus reducing the income the business needs to generate to provide program income to the public entity to repay the Section 108 loan. (Note that the extent to which rates on ED loans can be reduced depends on the maturity of the Section 108 loan and the amount of the EDI grant.)

Direct enhancement of the security of the Section 108 loan—The EDI grant can be used to cover the cost of providing enhanced security. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

Funding reserves—The cash flow generated by an economic development project may be expected to be relatively thin in the early stages of the project. The EDI grant can make it possible for debt service or operating reserves to be established in a way that does not jeopardize the economic feasibility of the project.

An example is a supermarket or neighborhood shopping area that is designed to provide basic services to and jobs in a distressed neighborhood. The public entity must be prepared for a period after completion during which space in that shopping center is not fully leased. It may therefore require the developer to establish with a trustee a reserve account (or accounts) that would be available to cover operating expenses and/or debt service during the lease-up period. While such reserves are commonplace, their cost may be so high as to make an already risky neighborhood shopping center project economically infeasible. The increased cost resulting from establishing such reserves may be defrayed by the EDI grant. As with the letter of credit example above, the reserves protect the CDBG program against the risk that CDBG funds will have to be used to cover shortfalls in the intended source for repayment of the Section 108 loan.

Over-collateralizing the Section 108 loan—The use of EDI grant funds may be structured in appropriate cases so as to improve the chances that cash flow will be sufficient to cover debt service on the Section 108 loan and directly enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

An example is the project which involves the joint use of a Section 108 loan and EDI grant to fund a loan pool project. For instance, a community might borrow $5 million under Section 108 and obtain an EDI grant of $500,000. It can then make $5.5 million in loans to various businesses at a rate equal to or greater than the rate on the Section 108 loan. The total loan pool of $5.5 million would be pledged to the repayment of the $5 million Section 108 loan. Since the program income from the $5.5 million will be greater than the debt service on the Section 108 loan, the community can accumulate a loss reserve that will further mitigate the risk to future CDBG funds. This kind of loan pool project has the added benefit of reducing the risk to future CDBG funds through diversification of the community's loan portfolio.

(D) Timing of Grant Awards

EDI applications will be evaluated concurrently with requests for Section 108 guarantee commitments or for the approval of amendments to previously approved Section 108 applications that will be enhanced by the EDI assistance. (See II.B. of this NOFA.)

(E) Limitations on Grant Amounts

HUD expects to approve EDI grant amounts with respect to any application generally in the range of 7 to 15 percent of the related Section 108 guaranteed loan. In certain instances HUD may award more than 15 percent of the related Section 108 loan. Applicants, however, cannot request grants exceeding 15 percent. In the case of requested amendments, the EDI assistance will be determined on the increased amount of Section 108 loan guarantee assistance. HUD reserves the right to determine a maximum amount of any EDI award per project and to modify requests, accordingly.

(F) Eligibility to Apply for Grant Assistance

Any public entity eligible to apply for loan guarantee assistance pursuant to § 570.702 may apply for grant assistance under Section 108(q). Eligible applicants are entitlement units of general local government and nonentitlement units of general local government eligible to receive loan guarantees under § 570.702.

(G) Eligible Activities

EDI grant funds may be used for:

(1) Activities listed at § 570.703, provided such activities are carried out as part of an economic development project.

(2) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by § 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes.

II. The Application Process

Public entities seeking EDI assistance must make a specific request for that assistance, in accordance with this NOFA. The EDI application shall be accompanied by a request for a Section 108 loan guarantee commitment, as further described in Section II.B. of this NOFA below. Application guidelines for the Section 108 program are found at § 570.704.

(A) Timing of Submission

Applications for EDI assistance shall be received at HUD Headquarters at the address listed above at "Addresses" by September 16, 1994 by 4:30 p.m. Eastern Daylight time. HUD will not accept applications which are submitted to HUD via facsimile (FAX) transmission.

(B) Submission Requirements

The EDI application shall be accompanied by a request for loan guarantee assistance under Section 108. The request for Section 108 loan guarantee can be either:

(1) A formal application for Section 108 loan guarantee, including the documents listed at § 570.704(b);

(2) A description, not to exceed three (3) pages, of a Section 108 loan guarantee application to be submitted within one month of a notice of EDI selection (EDI awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

(3) A copy of a Section 108 loan guarantee application which was approved after the date of this NOFA; or

(4) A request for a Section 108 loan guarantee amendment (analogous to subparagraph (1) or (2) above) which proposes to increase the amount of a previously approved application. However, a Section 108 loan guarantee

application approved before the date of this NOFA is not eligible for EDI awards.

In addition, the public entity shall submit for EDI grant assistance the following:

(i) SF 424, Application for Federal Assistance.

(ii) The certification regarding lobbying required under 24 CFR part 87 (Appendix A).

(iii) A narrative statement describing the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the criteria in paragraph II.(C) below. The narrative statement shall not exceed one 8.5" by 11" page for the description of the activities to be carried out with the EDI grant funds and one page for each of the listed selection criteria.

(C) Selection Criteria

All applications will be considered for selection based on the following criteria that demonstrate the quality of the proposed project, and the applicant's creativity, capacity and commitment to maximize the use of the EDI funds, in accordance with the purposes of the Act.

(1) Distress—(up to 20 points). The level of distress in the immediate community to be served and/or the jurisdiction applying for assistance. This may include factors indicative of distress such as poverty, income, unemployment, drug use, homelessness and other indicators of distress.

(2) Extent of need for assistance—(up to 15 points). This may include factors such as:

(i) Projects costs and financial requirements.

(ii) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project.

(iii) The reasonableness of the costs of any credit enhancement paid with EDI grant funds.

(iv) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan.

(v) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate).

(vi) Underwriting guidelines used (or expected to be used) in determining project feasibility

(vii) Other relevant information

(3) The extent to which the proposed activities effectively support important National interests—(up to 15 points). These activities include:

(i) The provision of jobs for low- and moderate-income individuals with special consideration for participants in any of the following programs: Jobs Training Partnership Act (JTPA), Jobs Opportunities for Basic Skills (JOBS), or Aid to Families with Dependent Children (AFDC);

(ii) The provision of jobs for participants in Unemployment Insurance programs;

(iii) The provision of jobs for residents of Public and Indian Housing or other assisted housing units;

(iv) The provision of jobs for homeless persons;

(v) The provision of jobs that provide clear opportunities for promotion for low- and moderate-income individuals, such as through the provision of training;

(vi) The establishment, stabilization, or expansion of microenterprises that employ low- and moderate-income individuals;

(vii) The stabilization or revitalization of a neighborhood that is predominantly low and moderate income;

(viii) The provision of assistance to a community development financial institution whose service area is predominantly low and moderate income;

(ix) The provision of assistance to a neighborhood-based nonprofit organization serving a neighborhood that is predominantly low and moderate income;

(x) The provision of employment opportunities that are an integral component of a community's strategy to promote spatial deconcentration of low- and moderate-income and minority families;

(xi) The provision of assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty; or

(xii) Other innovative approaches that provide substantial benefit to low-and moderate-income persons.

(4) Quality of the plan—(up to 45 points). HUD will consider the quality of the plan, including but not limited to the extent to which the applicant's proposed plan for the EDI grant/Section 108 loan guarantee will address its described need in the applicant's immediate community and/or its jurisdiction, and the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose.

(5) The capacity or potential of the public entity to successfully carry out the plan—(up to 15 points). This may include factors such as the public entity's performance in the administration of its CDBG program; its previous experience, if any, in administering a section 108 loan guarantee; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; and its capacity to manage and service loans made with the guaranteed loan funds or EDI grant funds.

(6) The extent to which the proposed plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the public entity and furthers neighborhood revitalization—(up to 20 points).

(7) Innovation and creativity—(up to 20 points). The extent to which the applicant incorporated innovation and/or creativity in the design and proposed implementation of the proposed activities carried out with Section 108/EDI funds.

HUD, in its discretion, may choose to award EDI assistance to a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of grants approved under this part.

Timing of grant awards—In most cases, EDI grants will be obligated contemporaneously with HUD approval of the related Section 108 loan guarantee commitment. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act. EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

III. Technical Assistance

To the extent permitted by law, HUD may advise applicants of technical deficiencies in the EDI applications and permit them to be corrected. Due to the requirements of the HUD Reform Act, HUD staff is limited in the assistance it is permitted to provide regarding applications for EDI grants. The assistance and advice that can be provide includes such activities as explaining and responding to questions about program regulations, identification of those parts of an application that need substantive improvement, the dates by which decisions will be made and procedures that are required to be performed to process an application. This term, however, does not include advising the applicant how to make those improvements.

In addition, any information published in the Federal Register and in this NOFA and any information that has been made public through a means

other than the **Federal Register** or NOFA, may be discussed.

HUD staff will be available throughout the EDI application period to provide extensive advice and assistance, as is currently provided, to develop 108 loan applications since the 108 program is not subject to the HUD Reform Act. Staff providing such assistance may provide technical advice to the EDI selection panel but in no case will such staff participate in the panel's voting process for EDI awards under this NOFA.

IV. Other Matters

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA offers financial assistance to units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

Family. The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel. Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

Dated: August 10, 1994.

Andrew Cuomo,

Assistant Secretary for Community, Planning and Development.

[FR Doc. 94–19981 Filed 8–15–94; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Development of Permit Policy for Import of Giant Pandas; Suspension of Consideration of Giant Pandas Import Permit Applications, and a Review of Existence Policy on Giant Panda Import Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the development of the policy for import of giant panda will be reopened for 60 days to obtain further comments, and a public working meeting or meetings will be used to assist the Service in formulating the draft policy.

DATES: Public comments on this notice will be accepted until August 30, 1994. A public working meeting will be held August 23, 1994, at 8:30 a.m. in Room 200 at 4401 North Fairfax Drive, Arlington, Virginia 22203 and at its conclusion, a second meeting may be scheduled prior to the close of the comment period.

ADDRESSES: Comments may be submitted to the Chief of the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, or call (703) 358–2093.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 1994 (59 FR 23077–23078), the Service announced the suspension of the review and processing of all future import permit applications of giant pandas (*Ailuropoda melanoleuca*) for temporary exhibition and/or captive-breeding loans until it has completed an evaluation of available information and existing policies and guidelines relating to the import of giant pandas and has published a new policy. A public meeting was held May 26, 1994, to assist the Service in formulation of the draft policy. The original comment period ended on June 30, 1994. The Service received a request from the World Wildlife Fund, Washington, D.C., to extend the comment period to allow for broader input on multiple issues related to giant panda conservation and trade. Interested organizations and the public are invited to comment on concerns as outlined in the May 4

Federal Register and any other issues related to panda conservation.

As part of the extended review process, the Service will convene a public working meeting on August 23, 1994 (see DATES section) and perhaps another meeting to be announced at the end of the August 23, 1994, meeting and whose time, date, and location may also be learned by contracting Dr. Charles Dane, Chief, Office of Scientific Authority at 703–358–1708 during the morning on August 24, 1994.

Authority: The authority for this action is the Convention on International Trade in Endangered Species (TIAS 8249) and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: August 9, 1994.

Robert P. Davison,

Deputy Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 94–20051 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–964–4230–05–P; F–19155–99]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 4,065 acres. The lands involved are within T. 3 N., R. 19 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 15, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–20020 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–JA–P

[AK–964–4230–05P; F–14872–A]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Gana-a 'Yoo, Limited for approximately 20 acres. The lands involved are in the vicinity of Kaltag, Alaska, within Sec. 35, T. 13 S., R. 1 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 15, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–20019 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–JA–P

[CA–068–02–1560–10]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Emergency closure of certain public lands in the Juniper Flats Area of San Bernardino County, California for a period of up to five years or until rehabilitation of fire damage, whichever occurs first.

SUMMARY: In accordance with title 43, Code of Federal Regulations, 8341.2, 8364.1 and 4110.3–3, notice is hereby given that lands and roads administered by the Bureau of Land Management (BLM) that were affected by the Devil Fire in the Juniper Flats/Grapevine and Arrastre Canyon area have been closed to all access and use until posting of signs and clearing of potentially dangerous hazards. When posting the area and marking and clearing of hazards has occurred, pedestrian use only will be permitted in the affected area until rehabilitation occurs to specified criteria. This closure applies to all motorized vehicle and nonmotorized use, including permitted uses, unless specifically excepted by the authorized officer; except for BLM operation and maintenance vehicles, law enforcement vehicles and other vehicles specifically authorized by an authorized officer of the Bureau of Land Management.

This closure affects ALL of the public lands and roads located within the following lands of the Arrastre Canyon and Grapevine Canyon area of San Bernardino County, located to the north of the San Bernardino National Forest, including and to the east of Coxey Truck Trail, including and to the west of Grapevine Canyon Road, and including and to the south of the powerline road:

San Bernardino Meridian

T. 3 N., R. 2 W.
Secs. 2, 3, 4, 5, and 8.
T. 4 N., R. 2 W.
Secs. 26, 27, 28, 29, 31, 32, 33, 34, and 35.
A total of approximately 4,800 acres.

This closure affects only public lands. Private lands are unaffected. The closed routes include the following:

(1) Grapevine Canyon Road (4N16), through public lands in Sections 26 and 35 of T. 4 N., R. 2 W. and Section 2 of T. 3 N., R. 2 W.

(2) "Coxey" Truck Road east of Arrastre Canyon, southeast off of Bowen Ranch Road, through public lands in Section 31 of T. 4 N., R. 2 W. and Section 5 of T. 3 N., R. 2 W.

DATES: The emergency closure action goes into effect upon publication of this notice and will remain in effect for 5 years or until rehabilitation criteria for the area have been met, whichever comes first; or until the Authorized Officer determines it is no longer needed. This closure will be reevaluated on an annual basis.

SUPPLEMENTARY INFORMATION: This emergency closure is required to

facilitate the rehabilitation of the area affected by the Devil Fire which burned out of control from July 3 through July 8, 1994, as specified in the fire rehabilitation plan. The affected area includes burned over potentially dangerous snags, shallow, highly erodible soils, and valuable riparian areas downstream of the fire area. Most of the transmountain vegetative regime normally present in the area has been eliminated by the fire and will need time to reestablish itself undisturbed by the activities of man. Criteria established to evaluate the rehabilitation effort specified in the fire rehabilitation plan will be used to determine the continuing need for the closure.

PENALTIES: Failure to comply with this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Erika Schumacher of the Barstow Resource Area (619–256–2729). Maps of the closure area and affected roads will be posted at the closest Hesperia, Lucerne Valley, and Apple Valley Post Offices to the area, and may also be obtained from the Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311.

Dated: August 3, 1994

Karla K.H. Swanson,

Area Manager.

[FR Doc. 94–20027 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–04–332A–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., September 20, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, Township 4 North, Range 1 East, Boise Meridian, Idaho, Group No. 892, was accepted August 5, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho, 83706.

August 5, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–20018 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–G–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 256X)]

Chicago and North Western Railway Company—Abandonment Exemption—In Des Moines, Polk County, IA

Chicago and North Western Railway Company (C&NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 1.28 miles of rail line between milepost 216.1 and milepost 217.38 in Des Moines, Polk County, Iowa.

C&NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 26, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to C&NW's representative: Thomas F. Flanagan, Commerce Counsel, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606–1551.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

C&NW has filed an environmental report which addresses the abandonment's effects, if any, on environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 19, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20058 Filed 8–15–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–3 (Sub-No. 118X)]

Missouri Pacific Railroad Company—Discontinuance of Trackage Rights Exemption—Perry County, IL

Missouri Pacific Railroad Company (MP), has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to discontinue its trackage rights over approximately 7.2 miles of rail line owned by Illinois Central Railroad Company (IC)[1] between milepost G–59.20 (Valuation Station 3132+45) in Pinckneyville, and milepost G–66.43 (Valuation Station

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

[1] The trackage rights were granted in an agreement between IC and MP dated May 7, 1929.

280+79) in Pyatts, both in Perry County, IL.[2]

MP indicates that operations by other carriers will continue on a portion of the line. IC intends to abandon a portion of the line by notice of exemption filed July 26, 1994, in Docket No. AB–43 (Sub-No. 164X).

MP has certified with respect to the trackage rights involved here that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by August 29, 1994. Petitions to reopen must be filed by September 6, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Decided: August 9, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20057 Filed 8–15–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–333X]

Unity Railways Company—Abandonment Exemption—In Allegheny County, PA

Unity Railways Company (Unity) has filed a notice of exemption, under 49 CFR 1152 Subpart F—Exempt Abandonments, to abandon its entire line between survey station 3+50 at Unity Junction and the end of its line at survey station 205+82 at Renton Road, a distance of approximately 3.9 miles, located in Plum Borough, Allegheny County, PA.[1]

Unity has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

Where as here, the carrier is abandoning its entire line, the Commission does not normally impose labor protection under 49 U.S.C. 10505(g) unless the evidence indicates the existence of a corporate affiliate that will: (1) continue rail operations; or (2) realize significant benefits in addition to being relieved of the burden of deficit operations by its affiliated railroad. See T and P Rwy.—Aband.—in Shawnee, Jefferson, and Atchison Counties, KS, Docket No. AB–381, et al. (ICC served Apr. 27, 1993). Because these conditions do not appear to exist here, employee protective conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 26, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 6, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Unity has filed an environmental report that addresses the abandonment's effect, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 19, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 11, 1994.

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[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of September 14, 1994. Because the verified notice was not filed until July 27, 1994, consummation should not have been proposed to take place prior to September 15, 1994. Applicant's representative has confirmed that the correct consummation date is on or after September 15, 1994.

[3] No environmental or historical documentation is required here under 49 CFR 1105.6(b)(3).

[4] Because this is a discontinuance proceeding only and other carriers will continue to provide service over a portion of the line, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

[1] Unity states that it intends to consummate this abandonment on or after August 30, 1994. Because the notice must be filed with the Commission at least 50 days before the abandonment is to be consummated, consummation could not in any event take place before September 13, 1994. See 49 CFR 1152.50(d)(2). As noted subsequently in this notice, however, the exemption will not be effective until September 15, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20056 Filed 8–15–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Revocation of Registration; Franz A. Arakaky, M.D.

On May 16, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Franz A. Arakaky, M.D., of Arlington, Virginia. The Order to Show Cause proposed to revoke Dr. Arakaky's DEA Certificate of Registration, BA1999727, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

On May 17, 1994, the Order to Show Cause was sent to Dr. Arakaky by registered mail and was returned to DEA unclaimed, with no forwarding address. The Order to Show Cause was then mailed to Dr. Arakaky's last known home address on July 25, 1994, and was also returned unclaimed. Subsequent repeated attempts by DEA to contact Dr. Arakaky have been unsuccessful.

Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Arakaky has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Deputy Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Deputy Administrator finds that on April 19, 1993, Dr. Arakaky was indicted by the Grand Jury for the Arlington County Circuit Court on four counts of sexual battery. The indictment arose from allegations by three female patients who alleged that Dr. Arakaky performed inappropriate sexual acts under the guise of legitimate medical treatment. as a result of the indictment, on April 29, 1993, the Virginia Board of Medicine (Board) informed Dr. Arakaky of the Board's intention to hold a formal administrative hearing to determine whether Dr. Arakaky violated certain laws governing the practice of medicine in the Commonwealth of Virginia. On that same date, the Board issued an Order of Summary Suspension of Dr. Arakaky's license to practice medicine.

Following the administrative hearing, the Board issued its decision on June 10, 1993. The Board found that Dr. Arakaky behaved in an unprofessional and sexually inappropriate manner towards one female patient, and made similar findings with respect to three other female patients. The Board therefore ordered that Dr. Arakaky's license to practice medicine in the Commonwealth of Virginia be revoked.

The Deputy Administrator finds that as of June 10, 1993, Dr. Arakaky's license to practice medicine in the Commonwealth of Virginia has been revoked, and as a result, he is not authorized to handle controlled substances. The Drug Enforcement administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Arakaky's DEA Certificate of Registration must be revoked. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, BA1999727, previously issued to Franz A. Arakaky, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 16, 1994.

Dated: August 10, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–20031 Filed 8–15–94; 8:45 am]

BILLING CODE 4410–09–M

Revocation of Registration; Stephen A. Richards, D.D.S.

On March 11, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stephen A. Richards, D.D.S., of Sterling, Colorado. The Order to Show Cause proposed to revoke Dr. Richards' DEA Certificate of Registration, BR2567266, and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

On March 14, 1994, the Order to Show Cause was sent to Dr. Richards' registered location by registered mail and was returned to DEA unclaimed, with no forwarding address. The Order to Show Cause was then mailed to Dr. Richards' last known address on July 25, 1994, and was also returned unclaimed. Subsequent repeated attempts by DEA to contact Dr. Richards have been unsuccessful.

Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Richards has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Deputy Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Deputy Administrator finds that on July 20, 1990, Dr. Richards' dental license was summarily suspended by the Colorado State Board of Dental Examiners (Board), based in part upon his unsatisfactory care of several patients. In October 1990, Dr. Richards entered into a Stipulation and Order with the Board in which he agreed that his license would remain suspended for a total of five months (July 20, 1990 to December 24, 1990); that his license would be reissued on or after December 24, 1990, subject to the completion of certain terms and conditions; and that upon resumption of his dental practice, Dr. Richards was to be placed on probation. However, Dr. Richards failed to reactivate his state dental license following its suspension, and as a result, his license to practice dentistry in the State of Colorado remained suspended.

In February 1993, Dr. Richards was called before the Board for a disciplinary hearing. The administrative law judge that presided over the hearing found, among other things, that Dr. Richards practiced dentistry at a number of locations for over two years when his dental license was suspended. As a result, on May 6, 1993, the administrative law judge recommended to the Board that Dr. Richards' dental license be revoked. On July 21, 1993, the Board voted to accept the administrative law judge's recommendation, and revoked Dr. Richards' dental license.

The Deputy Administrator finds that as of July 21, 1993, Dr. Richards' license to practice dentistry in the State of Colorado has been revoked, and as a result, he is not authorized to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Boby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Richards' DEA Certificate of Registration must be revoked. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, BR2567266, previously issued to Stephen A. Richards, D.D.S., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 16, 1994.

Dated: August 10, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–20032 Filed 8–15–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and use of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Pension Welfare Benefits Administration
Class Exemption—Transaction Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins 1210–0079
Recordkeeping
Individuals of households; Businesses or other for-profit 12 recordkeepers; 2,778 average hours per response; 33,333 total hours.

This class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Extension

Employment Standards Administration
Economic Survey Schedule
1215–0028; WH–1
Biennially
State or local governments; Business or other for-profit; Small businesses or organizations
65 respondents; 45 minutes per response; 49 total hours; 1 form.

The Wage Hour form WH–1 is used by the Department of Labor to collect data and prepare an economic report for the industry committee which sets industry wage rates in American Samoa.

Extension

Employment Standards Administration
29 CFR Parts 530—Employment of Homeworkers in Certain Industries; and 516—Records to be Kept by Employers 1215–0013; WH–46, WH–75
Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Form#	Respondents	Frequency	Average time per response
WH–46 ...	50	one time .	30 minutes.
WH–75 ...	14,400	four times	30 minutes.

Recordkeeping requirements	Recordkeepers	Frequency	Average time per filer
Price rate: Measurements.	50	three times.	30 minutes.
Homeworkers: Handbooks.	14,400	four times	½ minute.
29,456 total hours.			

These reporting and recordkeeping requirements for employers and employees in industries employing homeworkers are necessary to ensure employees are paid in compliance with the Fair Labor Standards Act.

Signed at Washington, D.C. this 4th day of August, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–20043 Filed 8–15–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–29,494; 494A]

Aileen's South Hill, VA; Aileen's New York, NY; Amended Certification Regarding Eligibility To Apply for Work Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on March 24, 1994, applicable to all workers of Aileen's, South Hill, Virginia. The notice was

published in the Federal Register on April 7, 1994 (59 FR 16663).

At the request of the company the Department reviewed the subject certification. The findings show that a few workers were laid off beginning in January, 1994 at the New York facility of Aileen's. The layoffs were the result of a reduced demand from the South Hill plant whose workers are currently certified for TAA. Therefore, the Department is amending the subject certification to include the New York location.

The intent of the Department's certification is to include all workers of Aileen's who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,494 is hereby issued as follows:

All workers of Aileen's South Hill, Virginia and New York, New York engaged in employment related to the production of ladies' pants, skirts, blouses, jackets and shirts who became totally or partially separated from employment on or after February 2, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–20044 Filed 8–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,383; 383A]

Aspen Imaging International Inc.; Lafayette, CO and AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 8, 1994, applicable to all workers of Aspen Imaging International, Inc., in Lafayette, Louisiana. The Notice was published in the Federal Register on March 18, 1994 (59 FR 12984).

The Company requested that the Department review its certification for workers of the subject firm. New information from the company shows some worker separations in Arizona who were engaged in employment related to the production of computer printer ribbons.

The intent of the Department's certification is to include all workers of Aspen Imaging International Inc., who were affected by increased imports of computer printer ribbons.

The amended notice applicable to TA–W–29,383 is hereby issued as follows:

All workers of Aspen Imaging International Inc., Lafayette, Colorado and in Arizona engaged in employment related to the production of computer ribbons who became totally or partially separated from employment on or after May 3, 1993 and before March 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all workers at Aspen Imaging International, Inc., Lafayette, Colorado engaged in the production of laser printer toner cartridges are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 5th day of August, 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–20045 Filed 8–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-27,920]

Bell Helicopter; Fort Worth, TX; Negative Determination on Remand

By an order dated April 29, 1994, the United States Court of International Trade (USCIT) in *Former Employees of Bell Helicopter Textron* v. *United States*, (USCIT 93–01–00024) remanded this case to the Department for further investigation.

The workers under this petition were initially denied eligibility to apply for trade adjustment assistance on December 18, 1992. The negative determination was published in the Federal Register on January 13, 1993 (58 FR 4186). The basis for that decision is the fact that the "contributed importantly" test of the group eligibility requirements of the Trade Act was not met. The findings show that Bell Helicopter does not import publications which are produced in Fort Worth. The findings show that the production of manuals is done either by Bell Helicopter or contracted to domestic vendors.

The court ordered the Department to investigate on remand where Bell Helicopters are now being produced and to determine whether any manuals are also being produced at the new helicopter production sites. The Court further ordered the Department to investigate whether manuals are being imported into the U.S. if it turns out that they are being produced abroad. The court also instructed the Department to obtain independent verification of Bell's statements that no English language manuals were being produced abroad and that no imported manuals were substituted for those formerly produced in Fort Worth.

Item #1 of the petition identifies the group of workers petitioning for TAA as the writers and illustrators of the Technical Publications Department, AR 2. however, plaintiffs assert that the production of helicopters is linked to the production of manuals.

Investigation findings show that during the period applicable to the petition, Bell Helicopter produced helicopters in Fort Worth, Texas and in Mirabel, Quebec, Canada. The Quebec facility products the commercial helicopters while the Fort Worth facility produces military and commercial helicopter components and assembles military helicopters for the U.S. Government, namely the Cobra and the OH58D—an observation helicopter.

New findings on reconsideration show that Bell Canada in Mirabel, Quebec was opened in 1984 and is the final assembly for commercial helicopter models. The final assembly for commercial models 206B, 206L, 212 and 412 was transferred to Bell Canada between June 1986 and September 1988. However, the manuals for models 206B, 206L, 212 and 412 are produced at Fort Worth except for the manuals of 100 helicopters (model 412) sold to the Canadian Government. The Canadian Government mandated that the manuals be produced in Western Canada. The first effort to produce these manuals began in October, 1993 some 16 months after the layoff of the petitioners in June, 1992. According to Bell Helicopter officials, the plaintiffs' layoffs had absolutely nothing to do with the Canadian government purchase of the model 412s. Furthermore, some of the technical writing for these 100 manuals was returned to Fort Worth and Bell Helicopter has two technical publications employees assisting in the creation of these manuals. The completion of the 100 technical manuals is scheduled for January 1995.

Bell Canada is also producing helicopter model 230 and will soon put model 430 into production. However, these models were never produced at Fort Worth. Furthermore, they are not like or directly competitive with the models that were transferred to Canada.

Bell Canada or their subcontractors produce the manuals for models 206B, 206L, 212 and 230. Changes to the manuals for the 230 model are, however, accomplished at Fort Worth. While some manuals for model 230 are being imported into the U.S. they are not being substituted for the manuals formerly produced at Fort Worth.

In response to the court's order, the Department asked the plaintiffs to provide evidence for their assertions that Bell has moved its manual production abroad and that imported manuals have replaced those formerly produced in Fort Worth. The plaintiffs asserted that some manuals are being produced in Alberta, Canada. However, according to Bell, these manuals are for model #230 which is not like or directly competitive with models formerly produced at Fort Worth. Furthermore, the plaintiffs also indicate that three Fort Worth employees are working on these manuals under a Canadian government contract. As noted above, this contract had nothing to do with the plaintiffs' layoffs. Consequently, the plaintiffs' responses do not provide a basis for certification.

Other findings on reconsideration show that the Technical Publications Department's layoffs in 1992 were the result of company-wide reduction in force caused by severe curtailments in production and cancellations or loss of programs from the Department of Defense.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Bell Helicopter, Fort Worth, Texas.

Signed at Washington, D.C., this 5th day of August 1994.

Stephen A. Wandner,

Deputy Director, Office of legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 94–20046 Filed 8–15–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than August 26, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than August 26, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C-4318, Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 9th day of August 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received at governor's office	Petition No.	Articles produced
D.P. Cajal's, Inc. (Co.)	El Paso, TX	07/25/94	NAFTA–00187	Apparel; mens and womens jeans.
Continental Airlines; Interline Accounting (Wkrs).	Houston, TX	07/26/94	NAFTA–00188	Data entry.
Hampton Manufacturers; Textiles (Wkrs)	Stuart, VA	07/22/94	NAFTA–00189	Clothing.
Scott Worldwide; Everett Pulp & Tissue Mill (AWPPW).	Everett, WA	07/29/94	NAFTA–00190	Pulp, tissue, raw wood chips and fiber.
Stephanies Fashions Inc. (Wkrs)	El Paso, TX	08/02/94	NAFTA–00191	Jeans; men's and women's.
ITT Cannon; Cannon (Co.)	Santa Ana, CA	08/02/94	NAFTA–00192	Electro-mechanical connectors.
Vikki, Inc. (Wkrs)	Arkansas, TX	08/03/94	NAFTA–00193	Commercial shrimp production.
R. Shrimp (Wkrs)	Arkansas Pass, TX	08/03/94	NAFTA–00194	Commercial shrimping production.
R&A, Inc. (Wkrs)	Arkansas Pass, TX	08/03/94	NAFTA–00195	Commercial shrimping production.
H.H. Rosinsky & Co., Inc. (Wkrs)	Philadelphia, PA	08/04/94	NAFTA–00196	Women's sportswear and dresses.
Larson Shingle Co. (Co.)	Forks, WA	08/04/94	NAFTA–00197	Red cedar shingle.
S. Madill, Ltd.; Kalama Division (IAM)	Kalama, WA	08/05/94	NAFTA–00198	Logging equipment.

LEGAL SERVICES CORPORATION

Grant Award for Legal Services State Support in the Territory of Guam

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to the Guam Legal Services Corporation (GLSC) for the purpose of planning for state support activities in its service area. The Corporation plans to award a grant in the amount of $15,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before September 16, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street NE., 11th floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. GLSC is a recipient of LSC funding for the provision of direct legal services to this service area. The amount of the 1994 state support planning grant is consistent with the 1994 LSC Appropriations Act.

Dated: August 11, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–20070 Filed 8–15–94; 8:45 am]

BILLING CODE 7050–01–P

Grant Award for Provision of Legal Services in the Fort Apache Area

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to Southern Arizona Legal Aid Society for the purpose of providing civil legal assistance to the LSC-eligible Native American client population in the Fort Apache Indian Reservation area. The Corporation plans to award a grant in the amount of $34,823 for the period October 1, 1994 to December 31, 1994.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before September 16, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street NE., 11th floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. The program is currently a recipient of LSC basic field and Native American funding for provision of direct legal services to another service area within the state of Arizona. The amount of this additional 1994 Native American grant is consistent with the 1994 LSC Appropriations Act.

It is LSC's intention to make Southern Arizona Legal Aid Society the annualized recipient of future Native American funding for the Fort Apache area if performance is satisfactory under the one-time grant.

Dated: August 11, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–20068 Filed 8–15–94; 8:45 am]

BILLING CODE 7050–01–P

Grant Award for a Special Project to Center on Social Welfare Policy and Law

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to the Center on Social Welfare Policy and Law (Center) for the Welfare Assistance and Collaboration Project (Project). The Corporation plans to award a grant in the amount of $45,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before September 16, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE, 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. The Center is a recipient of LSC funding for the provision of support services to all direct delivery legal services recipients. The Project envisions facilitating the work of legal services programs in gathering data on proposed changes in laws affecting recipients of public benefits and distributing information to affected programs.

Dated: August 11, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–20067 Filed 8–15–94; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341

Detroit Edison Company (Fermi, Unit 2); Exemption

I

Detroit Edison (the licensee) is the holder of Facility Operating License No. NPF–43, which authorizes operation of Fermi 2 at steady state reactor power levels not in excess of 3430 megawatts thermal. This license provides, among other things, that the licensee is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (NRC) now or hereafter in effect. The Fermi 2 facility consists of a boiling water reactor located at the licensee's site in Monroe County, Michigan.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.3 of Appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone. The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security; and (2) present

special circumstances. Section 50.12(a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from applicable regulation and the licensee has made good faith efforts to comply with the regulations.

III

By letter dated April 19, 1994, as supplemented June 23, 1994, the licensee requested an exemption from the schedule requirement of Section IV.F.3 of Appendix E to perform a partial participation emergency preparedness exercise for Fermi 2 during 1994. The licensee stated in the request that its response to the actual emergency event which occurred on December 25, 1993, demonstrated the adequacy of its emergency plan and its ability to successfully respond to an accident. Granting the exemption will allow the licensee to spend its resources to repair the damage to the plant and restart the facility.

In the area of emergency preparedness and planning, the licensee's performance has been excellent. In the last two SALP (systematic assessment of licensee performance) rating periods, Fermi 2 has received category 1 ratings in the Emergency Preparedness category and in the new Plant Support category, which includes emergency preparedness activities. This reflects a consistent high level of onsite emergency preparedness.

In addition, the licensee has demonstrated an ongoing commitment to support and maintain its emergency preparedness program. In the last 18 months, the licensee has conducted five full-scale drills and a medical drill, and conducted an annual partial participation exercise in July 1993.

On December 25, 1993, an accident occurred at the facility which resulted in the declaration of an Alert. There was a catastrophic failure of the turbine generator which caused a reactor scram, a fire, and significant damage to the turbine auxiliary systems. During the event, the licensee implemented its Fermi 2 emergency plan and activated a portion of its emergency response organization, including the technical support center, operations support center, and alternate operations support center. The AIT (augmented inspected team) report covering the event and the response to the event identified some problems with the licensee's ability to classify the event and perform personnel accountability. In response to these findings, the licensee has performed additional training in the simulator, modified and revised procedures, and conducted an integrated onsite drill on June 8, 1994, to verify the plant staff's capability to classify an event and to demonstrate personnel accountability.

In its letter requesting an exemption, Detroit Edison included letters from the two surrounding counties and the State of Michigan. All three letters concurred with the licensee's request as long as the licensee will continue to support the September 1994 offsite exercise. FEMA (Federal Emergency Management Agency) Headquarters and FEMA Region V have reviewed the request and agree with the position taken by the State and local officials. The licensee has committed to support the State and local support agencies by providing communication links, scenario data and interface staff at the JPIC (joint public information center).

IV

Based on a consideration of the facts presented in Section III above, the NRC staff finds that the following factors support the granting of the requested exemption:

a. The licensee demonstrated adequate response to the December 25, 1993, turbine-generator failure event.

b. FEMA, State and local agencies have indicated agreement with the proposed exercise exemption for 1994.

c. The licensee has a strong emergency preparedness program, as indicated by its last two SALP ratings. It has supported its program with a continuing series of drills to maintain its performance levels. In response to the AIT inspection and the concerns in the area of event classification and accountability, the licensee has instituted additional training, revised its procedures, and held an integrated drill on June 8, 1994, to demonstrate its ability to classify an event and account for its staff during an emergency.

d. The licensee has committed to support the State and local agencies in their September 1994 offsite exercise by supplying scenario data, communication links and staffing for the JPIC.

e. The licensee will conduct a utility-only exercise in July 1995. The requested exemption is a one-time event, which will result in cancelling the partial participation exercise scheduled for September 1994 and rescheduling a utility-only exercise in July 1995. The exemption will relieve the licensee of the resource burden of conducting an exercise while trying to repair the damage to the facility and return the plant to service. Based on the facters considered above, the Commission has concluded that granting the proposed exemption will not result in a decrease in the effectiveness of the licensee's emergency preparedness program.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part in 10 CFR 50.12(a)(2)(v), special circumstances are present when the exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation. The licensee has made a good faith effort to comply with the regulations by conducting the required full-participation exercises at Fermi 2 with the State and local government agencies since 1985. The licensee has taken into consideration the various concerns of FEMA and the local governments by supporting the September exercise being conducted by the State and local governments. All affected parties support the proposed exercise schedule change. Granting the proposed exemption provides a one-time only relief from the requirement of 10 CFR 50, Appendix E, Section IV.F.3. Therefore, the Commission concludes that special circumstances are present.

V

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12(a)(2), the exemption requested by the licensee's letter of April 19, 1994, as supplemented June 23, 1994, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The NRC further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(v) are present justifying the exemption. Therefore, the NRC hereby approves the following exemption:

Fermi 2 is exempt from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.3, for the conduct of a partial participation emergency preparedness exercise in 1994, provided that a utility-only exercise be conducted by July 1995.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will have no significant effect on the quality of human environment (59 FR 40626).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of August 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/VI, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20007 Filed 8–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Illinois Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. HPF–62, issued to the Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1, located in Dewitt County, Illinois.

The proposed amendment would modify Technical Specification (TS) Table 4.8.1.1.2–1, "Diesel Generator Test Schedule," to exclude three valid failures of the Division 1 emergency diesel generator (EDG) from contributing towards accelerated diesel generator testing.

The last three valid failures (occurring on August 3, 1993, June 7 and July 12, 1994) were determined not as the result of an actual surveillance test, but the confirmation of the failure of one of two CV–2 relays associated with the Division 1 EDG output breaker. The relays are checked each shift for visible indication of failure. Failure of the relay could cause premature closure of the breaker upon receipt of an automatic start signal due to or coincident with a loss of offsite power. The cause of these failures was subsequently attributed to undersized current-limiting resistors that were installed in the relays by the vendor. These resistors were replaced with appropriately sized resistors and testing has been performed to ensure operability. The relay is normally tested only during the 18-month shutdown test that assures proper functioning of the EDG and associated equipment upon receipt of a loss-of-offsite power test signal. Weekly testing, as required by TS Table 4.8.1.1.2–1, allows for manual loading which bypasses the CV–2 relay.

The valid failure of the Division 1 EDG on June 7, 1994, brought the number of failures in the last 100 valid tests up to seven. In addition, the valid failure of July 12, 1994, was the second failure in the last 20 tests. In accordance with TS Table 4.8.1.1.2–1, the frequency of testing increases from monthly to weekly until at least seven consecutive successful tests are performed and there is a maximum of only one failure in the last 20 tests. Weekly testing, which began following the failure of June 7, 1994, must now continue until at least the first week of October 1994.

In a letter dated August 5, 1994, the licensee requested an exigent technical specification change to modify TS Table 4.8.1.1.2–1 to exclude these three valid failures from contributing to accelerated testing of the Division 1 diesel generator. The licensee's basis for this request included the following:

- Additional weekly testing is inappropriate because the increased surveillance testing does not test the relay that failed;
- The undersized current-limiting resistors found in the CV–2 relays have been replaced which should eliminate similar failures in the future;
- Plant operators, who identified the previous three failures, will continue to tour the equipment once per shift and check for targets that may have dropped;
- Testing of the EDG at the Clinton power Station involve paralleling the diesel generators to the grid. NRC Information Notice 84–69 warns against operating diesel generators connected to offsite power unnecessarily as disturbances in the offsite power system can adversely affect availability of the EDG; and
- Excessive or unnecessary testing of diesel generators can cause unnecessary wear or degradation and thus contribute to their reduced reliability.

Approval of the proposed TS change will eliminate unnecessary testing of the diesel generator and will permit the licensee to resume a monthly test frequency. Prompt action by the staff is necessary to eliminate unnecessary testing and precludes the time available to permit the customary public notices in advance of this action.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change itself does not involve any changes to the plant design or operation and therefore does not affect any initiators of any previously evaluated accidents. Consequently the proposed change does not involve any significant increase in the probability of occurrence of any accident previously evaluated.

The proposed change only allows certain identified test failures of the Division 1 diesel generator to not be included in the total number of failure used to determine whether testing of the diesel generator should be increased. Because appropriate corrective action has been taken in response to those particular test failures, acceptable reliability of the Division 1 diesel generator is assured without increased testing in response to those failures. Further, the Clinton Power Station design includes redundancy and consideration of single-failure criteria such that alternate sources, both onsite and offsite, are provided to ensure safe shutdown of the facility in the event of an accident, including mitigation of the consequences of an accident. Based on the above, Illinois Power concludes that the proposed change will not increase the consequences of any accident previously evaluated.

(2) The proposed change does not involve any modification to plant design or operation which could introduce a new failure mode. The proposed change only impacts the frequency of testing of the Division 1 diesel generator as it does not directly affect operation or the design of the Division 1 diesel generator or any other plant structure, system or component. As a result, no new failure modes are introduced and the proposed change will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As noted above, other than the impact on the frequency of testing performed on the Division 1 diesel generator, the proposed change involves no changes to the plant design or operation. Therefore, as they are typically defined or established by the plant's accident analyses, no margins of safety are impacted by the proposed change. Notwithstanding, if diesel generator reliability is viewed as a margin of safety, Division 1 diesel generator reliability is the only margin of safety potentially impacted by the proposed change. However, as noted

previously, reliability of the Division 1 diesel generator is not adversely affected by the proposed change since the corrective actions taken in response to the noted failures provide assurance of acceptable diesel generator reliability without increased testing in response to these failures. Further, the proposed change will reduce the potential for excessive or unnecessary increased testing of the diesel generators which may adversely affect diesel generator reliability through wear and degradation. Precluding unnecessary testing of the diesel generators will also limit the potential reduction in plant safety resulting from disturbances in the offsite power system or in non-vital loads. In total, the proposed change does not therefore involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determinationis that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John Hannon, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 5, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 10th day of August 1994.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–20005 Filed 8–15–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34505; File No. SR–CHX–93–31]

August 9, 1994.

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of and Order Granting Accelerated Approval to Amendments 3, 4, 5, and 6 to Proposed Rule Change to Define Members' Rights and Obligations More Precisely

I. Introduction

On November 19, 1993, as subsequently amended on December 29, 1993,[1] May 5, 1994,[2] July 5, 1994,[3] July 26, 1994,[4] July 29, 1994,[5] and August 9, 1994,[6] the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[7] and Rule 19b–4 thereunder,[8] a proposed rule change to adopt a short sale rule, amend its summary suspension rule and adopt procedures for the review of summary suspensions, adopt provisions relating to suits against the Exchange and its employees, and adopt a provision to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

The proposed rule change and amendment nos. 1 and 2 were published for comment in Securities Exchange Act Release No. 34142 (June 1, 1994), 59 FR 29451 (June 6, 1994). No comments were received on the proposal.[9]

II. Description of the Proposal

Short Sale Rule

Currently, as a matter of just and equitable principles of trade, members must believe at the time they enter into a contract to sell stock that they will be able to perform the contract. The Exchange is adopting Rule 17 under Article IX of the Exchange's Rules to require that prior to effecting a short sale, members make arrangements to borrow the security or obtain other assurances that delivery can be made on settlement.[10] The new rule provides an exception for bona fide market making activities. To use the exception, specialists, market makers, and odd-lot dealers must show that the sale was part of their bona fide market making activities. The rule also requires specialists, market makers, and odd-lot dealers to notify the Exchange whenever they accumulate a position in a security that is greater than or equal to 5% of the outstanding public float of the security.

Summary Suspension

The Exchange is modifying Article VII of its Rules concerning summary suspension and reinstatement of members and member organizations (collectively "members").[11] Currently, Rule 2 of Article VII permits the emergency suspension of a member if it has failed to perform its contracts or is insolvent or is in such financial or operational condition or otherwise conducting its business in such a manner that it cannot be permitted to continue in business with safety to its customers, creditors, or the Exchange. The rule change codifies in Rule 2 the language of Section 6(d)(3) of the Act which allows national securities exchanges to summarily suspend

[1] *See* Amendment No. 1 to SR–CHX–93–31. Amendment No. 1 added a subsection (c) to proposed Rule 18 of Article I of the Exchange's Rules relating to suits against the Exchange.

[2] *See* Letter Amendment No. 2 from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated April 27, 1994. Amendment No. 2 made several substantive changes to the proposed rule change and added a proposed rule change to Article VIII, Rule 12 to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

[3] *See* Letter Amendment No. 3 from David T. Rusoff, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated July 5, 1994. Amendment No. 3 raised the amount of legal expenses which must be incurred by the Exchange before a member who fails in a law suit against the Exchange is obligated to pay such expenses from $20,000 to $50,000.

[4] *See* Letter Amendment No. 4 from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated July 26, 1994. Amendment No. 4 made several changes to the proposed rule change to Article VII, Rule 2 of the Exchange's Rules and a technical change to proposed Rule 18(c) of Article I of the Exchange's Rules.

[5] *See* Letter Amendment No. 5 from David T. Rusoff, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated July 27, 1994. Amendment No. 5 made some technical changes, but had no substantive effect on the rule proposal.

[6] *See* Letter Amendment No. 6 from David T. Rusoff, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated July 9, 1994. Amendment No. 6 excluded from proposed Rule 18 of Article I of the CHX's Rules (Limitation of Liability) violations of the federal securities laws.

[7] 15 U.S.C. 78s(b)(1) (1988).

[8] 17 CFR 240.19b–4 (1993).

[9] The CHX did submit a letter in support of certain provisions of their rule filing. *See* letter from George Simon, Foley & Lardner, to Sharon Lawson, Assistant Director, Division, dated June 24, 1994.

[10] This rule is similar to New York Stock Exchange Rule 440C.10, interpretation 01 (Short Sales).

[11] The rule change does not affect Article VII, Rule 1 of the Exchange's Rules regarding the automatic suspension of a member who fails to perform its contracts or is insolvent.

members, or limit members' or non-members' access to exchange services. Specifically, the Exchange is adding to Rule 2 of Article VII that the president may suspend a member if the member has been and is expelled or suspended from any self-regulatory organization, or barred or suspended from being associated with a member of any self-regulatory organization.[12] In addition, the rule change adds to Rule 2 that the President may limit or prohibit access to services offered by the Exchange whenever it appears that persons who are not members fail to meet the qualification requirements or other prerequisites for access to such services and cannot be permitted to continue to have access with safety to creditors, investors, members or the Exchange.[13] The rule change also clarifies that the CHX may find that the member cannot continue to do business as a member with safety to investors, creditors, other members, or the Exchange if there is a reasonable belief that a member is violating and will continue to violate any material provision of the Rules of the Exchange or the federal securities laws.[14]

The Exchange also is adopting procedures for review of the President's summary action when taken according to the new provisions.[15] Any person affected by the President's summary action will have the right to appeal the President's decision to a panel composed of three members of the Board.[16] All appeals will be expedited to the maximum extent possible and, in any event, will be heard within ten days. After consideration of the appeal, the panel will affirm, reverse, or modify the President's action. The decision of the panel is final.

Standard of Review

Currently, the Exchange's Rules do not contain a formal standard of review for the hearing of appeals. The Exchange is adopting a formal standard of review that prohibits an appeal panel from overturning the facts finder's decision if the factual conclusions are supported by substantial evidence and if the decision itself is not arbitrary, capricious, or an abuse of discretion.

Liability Provisions

The Exchange also is adopting several new provisions related to the liability of the Exchange and its officers, directors, or employees. First, new Rule 17 under Article I of the Exchange's Rules prohibits members from instituting a lawsuit or any other type of legal proceeding against any officer, director, employee or agent of the Exchange if that person was acting on Exchange business. The provision does not prohibit members from suing the Exchange itself, nor does it apply where there has been a violation of the federal securities laws.

Second, the Exchange is adopting a new rule that limits the liability of the Exchange to members for non-performance or misperformance of its duties and responsibilities, except where damages are suffered as a result of the willful misconduct, gross negligence, bad faith, or fraudulent or criminal acts of the Exchange or its officers, employees or agents, and except where there has been a violation of the federal securities laws. The Rule is in addition to the limitation of Exchange liability as a result of a member's use or enjoyment of Exchange facilities currently contained in the Exchange's Constitution.[17]

Finally, the Exchange is adopting a Rule that requires members who fail to prevail in a lawsuit or administrative adjudicative proceeding they institute against the Exchange or its officers, directors, and employees, to pay all of the Exchange's reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding. This provision is applied only in the event that the Exchange's expenses exceed $50,000. In addition, the new Rule does not apply to internal disciplinary actions by the Exchange or administrative appeals.

III. 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, with the requirements of Section 6(b) of the Act.[18] Specifically, the Commission believes that, in general, the proposal is consistent with Section 6(b)(5) of the Act[19] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to adopt a short sale rule is consistent with Section 6(b)(5) of the Act because it will help to ensure that members effecting short sales are in a position to complete the transaction. In addition, the Commission believes that the rule change will help facilitate the settlement of transactions by promoting the timely delivery of securities that are sold short.[20] The requirement that specialists, market makers and off-lot dealers report to the Exchange short and long positions in excess of 5% of the outstanding float will aid the exchange in monitoring compliance with its rule.

The Commission believes that the proposed rule change to the Exchange's summarily suspension provisions is consistent with Section 6(d)(3) of the Act.[21] Section 6(d)(3) permits a national securities exchange to summarily suspend members and non-members under certain circumstances. Specifically, an exchange may summarily suspend members from the exchange or limit or prohibit members with respect to access to services offered by the exchange if they (1) have been and are expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, or (2) are in such financial or operating difficulty that the exchange determines that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange. An exchange may limit or prohibit persons who are not members from access to exchange services if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and that the person cannot be permitted to continue to have access with safety to investors, creditors, members, or the exchange. The rule change to the CHX's summary suspension provision incorporates the language of Section 6(d)(3) described above.

In addition, the rule change clarifies that a member may be summarily suspended or denied access to Exchange services if there is a reasonable belief

[12] *See* Section 6(d)(3)(A) of the Act, 15 U.S.C. 8f(d)(3)(A) (1988).

[13] *See* Section 6(d)(3)(C) of the Act, 15 U.S.C. 8f(d)(3)(C) (1988).

[14] *See* Section 6(d)(3)(C) of the Act, 15 U.S.C. 8f(d)(3)(B) (1988).

[15] The new provision does not change the procedures for the review of automatic suspensions under Article VII, Rule 1 of the Exchange's Rules. *See supra* note 11.

[16] The members of the review panel will be appointed by the Board. No member of the panel may have any direct or indirect interest in the matter presented which might preclude the member from rendering an objective and impartial determination.

[17] *See* Article X, Section 5 of the CHX's Constitution.

[18] 15 U.S.C. 78f(b) (1988).

[19] 15 U.S.C. 78f(b)(5) (1988).

[20] *See, e.g.*, New York Stock Exchange Rule 440C.10, Interpretation .01.

[21] 15 U.S.C. 78f(d)(3) (1988).

that the member is violating and will continue to violate any material provision of the Rules of the Exchange or the federal securities laws or the rules promulgated thereunder, and if such violations indicate that the member cannot be permitted to continue to do business with safety to investors, creditors, other members, or the exchange. This provision is consistent with the summary suspension provisions of Section 6(d)(3) of the Act and merely codifies that material violations of Exchange rules and the Act can result in a finding that the member cannot be permitted to continue business with safety to customers, creditors or the Exchange. The Commission notes that in determining that a material violation of Exchange rules or the Act and rules thereunder warrant an emergency or summary suspension under Rule 2, the CHX must take into consideration the egregious nature of the conduct and the likelihood of continuing violations.

Proposed Rule 2 also sets forth new due process procedures for review of a summary suspension action by the CHX president under the rule. Those provisions ensure that a person aggrieved by a summary suspension will have a right to an expeditious review of the matter, including the final decision by the hearing panel. Under the new provisions, any person suspended under Rule 2 must be furnished with the reasons for the action within two business days of the suspension. In addition any appeal will be heard within 10 days. The Commission believes these provisions ensure adequate due process and that a suspension under these new provisions will be handled and treated in a timely manner, consistent with the requirements of Section 6(b)(7) of the Act.

The Commission also believes that the proposed rule change to adopt a formal standard of review that prohibits an appeal panel from overturning the fact finder's decision if the factual conclusions are supported by substantial evidence and if the decision itself is not arbitrary, capricious, or an abuse of discretion, is consistent with Section 6(b)(7) of the Act.[22] Section 6(b)(7) requires that the rules of the exchange provide fair procedures for disciplining members and denying access to services offered by an exchange. The Commission believes that adopting a formal standard for review will add certainty and consistency to the Exchange's appellate process.

[22] 15 U.S.C. 78f(b)(7) (1988).

The Commission further believes the liability provisions described above should be approved. Specifically, the rule change prohibiting members from suing Exchange officers, directors, employees, or agents of the Exchange will prevent those parties from having liability to members when acting on official Exchange business, while maintaining members' ability to pursue actions against the Exchange itself, as well as the ability to sue those persons and the Exchange for violations of the federal securities laws. Moreover, under the provisions, actions against Board members for breach of fiduciary duty consistent with Delaware law could still be pursued.[23] The Commission believes this provision is consistent with the Act because it will help to ensure that such persons will be able to carry out their duties under the Act and enforce compliance with the Act, the rules thereunder and Exchange rules without the threat of personal liability from a lawsuit.

In addition, limiting the liability of the Exchange to its members to willful misconduct, gross negligence, bad faith, or fraudulent or criminal acts of the Exchange or its officers, employees or agents, will preserve members' right to pursue actions against the Exchange in certain circumstances where the Exchange should be held accountable, or where there has been a violation of the federal securities laws. We find this provision consistent with the Act for the same reasons set forth in our order approving a limitation on Board of Governor liability for monetary damages for breach of fiduciary duty.[24]

Finally, the Commission believes that the rule change requiring that members who are unsuccessful in a suit against the Exchange to pay the Exchange's legal expenses if they exceed $50,000 is consistent with Section 6(b)(4) of the Act,[25] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members. Because the funds to pay the legal expenses incurred by the Exchange in defending legal suits are generated, in part, by membership fees, the Commission believes the rule change reflects a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances. Because the Exchange's legal expenses must be reasonable and must accrue to at least $50,000 before a member would be obligated to compensate the Exchange, the Commission believes the rule change should not provide an undue disincentive to litigation, in so far as it will permit the discovery needed to assess the merits of the members' cases. The Commission also notes that the provision specifically excludes internal disciplinary actions by the Exchange and administrative appeals. This will ensure that members will be able to freely pursue their right to appeal any disciplinary action brought by the Exchange for violations of its rules. The Commission also notes that if the minimum amount in the fee provision were substantially lower it might have a more difficult time concluding that the provision was consistent with Section 6(b)(4) because such a lower threshold amount could be found to represent an inequitable allocation of fees to the disadvantage of certain members.

The rule change and amendments nos. 1 and 2 were published in the Federal Register for the full statutory period and no comments were received.[26] Amendment nos. 3, 4, 5, and 6 generally narrowed the scope of the proposal as published in the Federal Register and made clarifying and technical changes. The Commission therefore finds good cause for approving amendment nos. 3, 4, 5, and 6 to the rule change prior to the thirtieth day after publication of notice of filing thereof.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning amendment nos. 3, 4, 5, and 6. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[23] The new rule does not conflict with the limitation of Board of Governor's monetary damages for breach of fiduciary duty approved by the Commission in Securities Exchange Act Release No. 33901 (April 12, 1994), 59 FR 18586 (April 19, 1994). That provision limits a governor's monetary liability for a breach of their fiduciary duty as a director to the full extent of Delaware state law. That rule, as well as the new provision being approved herein, will not prevent the imposition of other legal remedies for breach of fiduciary duty, such as rescission and injunction.

[24] *See* Securities Exchange Act Release No. 33901, note 23 *supra*. *See also* Securities Exchange Act Release No. 30346 (February 6, 1992), 57 FR 5195 (February 12, 1992).

[25] 15 U.S.C. 78f(b)(4) (1988).

[26] *See* Securities Exchange Act Release No. 34142 (June 1, 1994), 59 FR 29451 (June 6, 1994).

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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–31 and should be submitted by September 6, 1994.

V. Conclusion

Based on the above the Commission finds that the proposed rule change is consistent with the Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CHX–93–31) as amended, including amendments nos. 3, 4, 5, and 6 on an accelerated basis, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19961 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20461; 811–5933]

Equity Portfolio; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Equity Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1994 and amended on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is an open-end management investment company. On October 11, 1989, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities pursuant to the Securities Act of 1933.

2. Applicant was organized as a master fund in a master/feeder arrangement with Yankee Funds, another registered management investment company. Yankee Equity Fund, a portfolio of Yankee Funds, invested in applicant and owned substantially all of applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan of reorganization whereby all of applicant's assets would be transferred to Galaxy Equity Growth Fund, a portfolio of The Galaxy Fund. In accordance with rule 17a–8, the trustees of applicant and The Galaxy Fund determined that the reorganization was in the best interests of each trust, and that the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee Equity Fund's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee Equity Fund approved the reorganization at a meeting held on May 6, 1993, and Yankee Equity Fund, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Equity Growth Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Equity Growth Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Equity Growth Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $32,614. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19962 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20460; 811–6271]

Equity Income Portfolio; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Equity Income Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1994 and amended on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

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[27] 15 U.S.C. 78s(b)(2) (1988).

[28] 17 CFR 200.30–3(a)(12) (1993).

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is an open-end management investment company. On January 29, 1991, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities under the Securities Act of 1933.

2. Applicant was organized as a master fund in a master/feeder arrangement with Yankee Funds, another registered management investment company. Yankee Equity Income Fund, a portfolio of Yankee Funds, invested in applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan of reorganization whereby all of applicant's assets would be transferred to Galaxy Equity Growth Fund, a portfolio of The Galaxy Fund. In accordance with rule 17a–8, the trustees of applicant and The Galaxy Fund determined that the reorganization was in the best interests of each trust, and that the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee Equity Income Fund's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee Equity Income Fund approved the reorganization at a meeting held on May 6, 1993, and Yankee Equity Income Fund, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Equity Growth Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Equity Growth Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Equity Growth Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $24,429. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it proposed to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19963 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20462; 812–9070]

Hartford Life Insurance Company et al.

August 9, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company/Separate Account Three (the "Separate Account"), and Hartford Equity Sales Company, Inc. ("HESCO").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account which funds certain deferred variable annuity contracts called the Hartford Life Variable Annuity Contract (the "Contracts").

FILING DATE: The Application was filed on June 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by September 6, 1994, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests must state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Rodney J. Vessels, Counsel, Hartford Life Insurance Companies, 200 Hopmeadow Street, Simsbury, Connecticut 06070.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, or Michael V. Wible, Special Counsel, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Hartford Life was originally incorporated under the laws of Massachusetts on June 5, 1902, and subsequently was redomiciled in Connecticut. Hartford Life is a stock life insurance company engaged in the

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

business of writing health and life insurance, both ordinary and group, in all States of the United States and in the District of Columbia.

2. On June 13, 1994, the Board of Directors of Hartford Life passed a corporate resolution establishing the Separate Account under Connecticut law. On June 23, 1994, the Separate Account registered as a unit investment trust under the 1940 Act. The Contracts will be offered for sale by HESCO, the designated principal underwriter for the Contracts. HESCO is a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

3. The Contract Owner has the right to allocate purchase payments to several sub-accounts of the Separate Account, each of which invests in a corresponding series of Dean Witter Select Dimensions Investment Series, and open-end diversified investment company. A Contract Owner also may allocate purchase payments to Hartford Life's Fixed Account. The Contract offers a death benefit that is applicable prior to the annuity commencement date as well as four annuity options, including an annuity payable during the lifetime of the annuitant.

4. The Contract Owner will not pay a sales charge at the time of a premium payment, although a contingent deferred sales charge may be assessed against Contract values upon surrender. The length of time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge. Specifically, the contingent deferred sales charge equals 6% of a premium payment surrendered in the payment's first year, 6% during the second year, 5% during the third year, 5% during the fourth year, 4% during the fifth year, 3% during the sixth year, 2% during the seventh year, and 0% for all older premium payments.

5. During the first seven Contract years, on a non-cumulative basis, a Contract Owner may make a partial surrender of Contract values of up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without the application of the contingent deferred sales charge. After the seventh Contract year, the Contract Owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender or 100% of the Contract value less the premium payments made during the seven years prior to the surrender without the application of the contingent deferred sales charge.

6. Each Contract anniversary, Hartford Life will deduct a $30 maintenance fee from each Contract Owner's Contract value to reimburse it for expenses relating to administration and maintenance of the Contract and the sub-accounts of the Separate Account. There is no annual maintenance fee with respect to Contracts with more than $50,000 of Contract value on the Contract anniversary. In addition, Hartford Life will make a daily charge at the rate of .15% per annum against the assets of the Separate Account during both the accumulation and annuity phases of the Contracts for administration expenses. Neither of these charges may be increased during the life of the Contracts. Total revenues from all administrative charges under the Contracts are not expected to exceed Hartford Life's average expected costs of administering the Contracts.

7. The Contracts will provide for the deduction of a 1.25% annual asset charge that will be paid to Hartford Life on a daily basis for providing mortality and expense guarantees with respect to the Contracts. Hartford Life estimates that this charge will be composed of a .90% mortality risk component and a .35% expense risk component. The mortality undertaking provided by Hartford Life, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Mortality Table with ages set back one year and other provisions contained in the Contract) to Contract Owners regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. Hartford Life also incurs a mortality risk because of its liability to pay a minimum death benefit under the Contract. Hartford Life may experience a profit or a loss on the mortality component of the charge, depending on the actual mortality experience of Contract owners and Contract annuitants. The expense risk assumed by Hartford Life is the risk that the administrative fees may be insufficient to cover actual expenses. The rate of the mortality and expense risk charge cannot be increased. If the charge is insufficient to cover the actual cost of the expense risk undertaking, Hartford Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be surplus to Hartford Life and will be available for any proper corporate purpose. Hartford Life expects a reasonable profit from the mortality and expense risk charge.

8. Applicants ask that the requested order apply to the Separate Account and to future separate accounts issuing contracts that are substantially similar to the Contracts.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a trustee or custodian having the qualifications prescribed by Section 26(a)(1) of the 1940 Act and are held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Applicants' proposed mortality and expense risk charge would not be considered a bookkeeping and administrative expense.

2. Applicants have consented that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) may be made subject to the following representations:

(a) The mortality and expense risk charge is reasonable in relation to the risks assumed by Hartford Life under the Contracts.

(b) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. Applicants' Contract is comparable to the contracts of other insurance companies in that (i) current charge levels are approximately the same; (ii) all provide minimum death benefit guarantees the same as or lower than Applicants' Contract; (iii) all have guaranteed annuity purchase rates; (iv) all have the same special accounting system for separate account unit value administration; and (v) all are offered in the same market. Hartford Life undertakes to maintain at its Home Office available to the Commission upon request a memorandum setting forth in detail the methodology and contracts of other insurance companies underlying this representation.

(c) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the Contracts. Any

shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Therefore, Hartford Life has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and Contract Owners. Hartford Life undertakes to maintain at its Home Office and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(d) The Separate Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Applicants' Conclusion

Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in order that they may offer and sell the Contracts subject to the charge for mortality and expense guarantees described above. Applicants submit that, for all of the reasons stated herein, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) meet the standards set out in Section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19960 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20463; 812–9072]

ITT Hartford Life and Annuity Insurance Company et al.

August 9, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ITT Hartford Life and Annuity Insurance Company ("ITT Hartford"), ITT Hartford Life and Annuity Insurance Company/Separate Account Three (the "Separate Account"), and Hartford Equity Sales Company, Inc. ("HESCO").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account, which funds certain flexible premium deferred variable annuity contracts called the ITT Hartford Variable Annuity Contract (the "Contracts").

FILING DATE: The Application was filed on June 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by September 6, 1994, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests must state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Rodney J. Vessels, Counsel, Hartford Life Insurance Companies, 200 Hopmeadow Street, Simsbury, Connecticut 06070.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, or Michael V. Wible, Special Counsel, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. ITT Hartford, formerly ITT Hartford Life Insurance Corporation, is domiciled in the State of Wisconsin, and was incorporated on January 9, 1956. ITT Hartford is a stock life insurance company engaged in the business of writing both individual and group life insurance and annuities in all states of the United States (except New York) and in the District of Columbia.

2. On June 13, 1994, the Board of Directors of ITT Hartford passed a corporate resolution establishing the Separate Account under Connecticut law. On June 23, 1994, the Separate Account registered as a unit investment trust under the 1940 Act. The Contracts to be issued by the Separate Account will be offered for sale by HESCO, the designated principal underwriter for the Contracts. HESCO is a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

3. The Contract Owner has the right to allocate purchase payments to several sub-accounts of the Separate Account, each of which invests in a corresponding series of Dean Witter Select Dimensions Investment Series, an open-end diversified investment company. A Contract Owner also may allocate purchase payments to ITT Hartford's Fixed Account. The Contract offers a death benefit that is applicable prior to the annuity commencement date as well as four annuity options, including an annuity payable during the lifetime of the annuitant.

4. The Contract Owner will not pay a sales charge at the time of a premium payment, although a contingent deferred sales charge may be assessed against Contract values upon surrender. The length of time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge. Specifically, the contingent deferred sales charge equals 6% of a premium payment surrendered in the payment's first year, 6% during the second year, 5% during the third year, 5% during the fourth year, 4% during the fifth year, 3% during the sixth year, 2% during the seventh year, and 0% for all older premium payments.

5. During the first seven Contract years, on a non-cumulative basis, a Contract Owner may make a partial surrender of Contract values of up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without the application of the contingent deferred sales charge. After the seventh Contract year, the Contract Owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender or 100% of the Contract value less the premium payments made during the seven years prior to the surrender without the application of the contingent deferred sales charge.

6. Each Contract anniversary, ITT Hartford will deduct a $30 maintenance fee from each Contract Owner's Contract value to reimburse it for expenses relating to administration and

maintenance of the Contract and the sub-accounts of the Separate Account. There is no annual maintenance fee with respect to Contracts with more than $50,000 of Contract value on the Contract anniversary. In addition, ITT Hartford will make a daily charge at the rate of .15% per annum against the assets of the Separate Account during both the accumulation and annuity phases of the Contracts for administration expenses. Neither of these charges may be increased during the life of the Contracts. Total revenues from all administrative charges under the Contracts are not expected to exceed ITT Hartford's average expected costs of administering the Contracts.

7. The Contracts will provide for the deduction of a 1.25% annual asset charge that will be paid to ITT Hartford on a daily basis for providing mortality and expense guarantees with respect to the Contracts. ITT Hartford estimates that this charge will be composed of a .90% mortality risk component and a .35% expense risk component. The mortality undertaking provided by ITT Hartford, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Mortality Table with ages set back one year and other provisions contained in the Contract) to Contract Owners regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. ITT Hartford also incurs a mortality risk because of its liability to pay a minimum death benefit under the Contract. ITT Hartford may experience a profit or a loss on the mortality component of the charge, depending on the actual mortality experience of Contract owners and Contract annuitants. The expense risk assumed by ITT Hartford is the risk that the administrative fees may be insufficient to cover actual expenses. The rate of the mortality and expense risk charge cannot be increased. If the charge is insufficient to cover the actual cost of the expense risk undertaking, ITT Hartford will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be surplus to ITT Hartford and will be available for any proper corporate purpose. ITT Hartford expects a reasonable profit from the mortality and expense risk charge.

8. Applicants ask that the requested order apply to the Separate Account and to future separate accounts issuing contracts that are substantially similar to the Contracts.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a trustee or custodian having the qualifications prescribed by Section 26(a)(1) of the 1940 Act and are held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Applicants' proposed mortality and expense risk charge would not be considered a bookkeeping and administrative expense.

2. Applicants have consented that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) may be made subject to the following representations:

(a) The mortality and expense risk charge is reasonable in relation to the risks assumed by ITT Hartford under the Contracts;

(b) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. Applicants' Contract is comparable to the contracts of other insurance companies in that (i) current charge levels are approximately the same; (ii) all provide minimum death benefit guarantees the same as or lower than Applicants' Contract: (iii) all have guaranteed annuity purchase rates; (iv) all have the same special accounting system for separate account unit value administration; and (v) all are offered in the same market. ITT Hartford undertakes to maintain at its Home Office available to the Commission upon request a memorandum setting forth in detail the methodology and contracts of other insurance companies underlying this representation.

(c) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the Contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Therefore, ITT Hartford has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and Contract Owners. ITT Hartford undertakes to maintain at its Home Office and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(d) The Separate Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Applicants' Conclusion

Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act so that they may offer and sell the Contracts subject to the charge for mortality and expense guarantees described above. Applicants submit that, for all of the reasons stated herein, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) meet the standards set out in Section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19959 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20458; 811–5924]

Tax-Exempt Income Portfolio A; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Tax-Exempt Income Portfolio A.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks and order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1994 and amended on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is an open-end management investment company. On October 6, 1989, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities under the Securities Act of 1993.

2. Applicant was organized as a master fund in a master/feeder arrangement with Yankee Funds, another registered management investment company. Yankee Tax-Exempt Income Fund A, a portfolio of Yankee Funds, invested in applicant and owned substantially all of applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan of reorganization whereby all of applicant's assets would be transferred to Galaxy Tax-Exempt Bond Fund, a portfolio of The Galaxy Fund. In accordance with rule 17a–8a, the trustees of applicant and The Galaxy Fund determined that the reorganization was in the best interests of each trust, and that the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee Tax-Exempt Income Fund A's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee Tax-Exempt Income Fund A approved the reorganization at a meeting held on May 6, 1993, and Yankee Tax-Exempt Income Fund A, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Tax-Exempt Bond Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Tax-Exempt Bond Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Tax-Exempt Bond Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $19,678. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19965 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–20459; 811–5926]

Tax-Exempt Income Portfolio B; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Tax-Exempt Income Portfolio B.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1994 and amended on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is an open-end management investment company. On October 6, 1989, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities under the Securities Act of 1933.

2. Applicant was organized as a master fund in a master/feeder

arrangement with Yankee Funds, another registered management investment company. Yankee Tax-Exempt Income Fund B, a portfolio of Yankee Funds, invested in applicant and owned substantially all of applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan of reorganization whereby all of applicant's assets would be transferred to Galaxy Tax-Exempt Bond Fund, a portfolio of the Galaxy Fund. In accordance with rule 17a–8, the trustees of applicant and The Galaxy Fund determined that the reorganization was in the best interests of each trust, and that the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee Tax-Exempt Income Fund B's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee Tax-Exempt Income Fund B approved the reorganization at a meeting held on May 6, 1993, and Yankee Tax-Exempt Income Fund B, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Tax-Exempt Bond Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Tax-Exempt Bond Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Tax-Exempt Bond Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $25,252. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19964 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. IC–20453; 812–8844]

Thomson Fund Group et al.; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Thomson Fund Group (the "Trust"); Thomson Investors Services Inc. (the "Distributor"); Thomson Advisory Group L.P. (the "Manager"); any future registered open-end investment company whose principal underwriter is the Distributor or an entity controlling, controlled by, or under common control with the Distributor or whose investment adviser is the Manager or an entity controlling, controlled by, or under common control with the Manager; and any other registered open-end investment company whose investment adviser is a successor-in-interest to the Manager if such successor-in-interest is created as part of a restructuring of the Manager because of the lapse of the grandfather provision of the Internal Revenue Code (currently expiring on January 1, 1998) allowing the Manager to be taxed as a partnership.

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) of the Act for an order exempting applicants from sections 18(f)(1), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the Trust to issue an unlimited number of classes of each of its now existing or hereafter created series ("Funds") and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATE: The application was filed on February 22, 1994 and amended on June 17, 1994 and August 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o J.B. Kittredge, Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a diversified open-end management investment company organized as a Massachusetts business trust. It currently offers for sale to investors shares of eleven separate series representing interests in eleven corresponding Funds. Each Fund has its own investment objective and policies. The Distributor serves as the Trust's principal underwriter and the Manager serves as the Trust's investment adviser.

2. The Trust currently is permitted to offer two classes of shares for each of its Funds under an alternative purchase plan pursuant to a prior order [1] and to impose a contingent deferred sales load on one of its classes of shares and to waive the contingent deferred sales load in connection with certain redemptions pursuant to prior exemptive orders (the "Prior CDSC Orders").[2]

[1] *See Thomson McKinnon Investment Trust,* Investment Company Act Release Nos. 17608 (July 19, 1990) (notice) and 17680 (Aug. 16, 1990) (order).

[2] *See Thomson McKinnon Investment Trust,* Investment Company Act Release Nos. 13825 (Mar. 15, 1984) (notice) and 13877 (Apr. 10, 1984) (order); *Thomson McKinnon Global Trust,* Investment Company Act Release Nos. 15138 (June 6, 1986) (notice) and 15187 (June 30, 1986) (order); *Thomson McKinnon Investment Trust,* Investment Company Act Release Nos. 16574 (Sept. 27, 1988) (notice) and

Continued

3. Applicants seek an order, which will supersede the prior orders, to allow the Trust to issue and sell an unlimited number of classes of shares of each of its Funds pursuant to an alternative purchase plan (the "Alternative Purchase Plan"). Existing classes now will be sold under the Alternative Purchase Plan in reliance upon any order issued on this application. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the impact of any rule 12b–1 plan payments (which may include servicing fees or distribution fees, or both) or non-rule 12b–1 shareholder servicing plan ("Shareholder Servicing Plan") payments made by a class and any other expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (viii) Trustees' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order (all of the foregoing expenses are collectively referred to herein as "Class Expenses"); (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plans, except as provided in condition 16; (c) the different exchange privileges of the various classes of shares as may be described from time to time in any prospectus of the Trust; (d) the fact that only certain classes will have a conversion feature; and (e) the designation of each class of shares of a Fund.

16609 (Oct. 25, 1988) (order); *Thomson Fund Group*, Investment Company Act Release Nos. 19363 (Mar. 29, 1993) (notice) and 19430 (Apr. 22, 1993) (order). A reduction in the CDSC with respect to purchase payments made on or after July 1, 1991 was implemented pursuant to no-action relief granted to the Trust. Thomson Fund Group (pub. avail. Apr. 29, 1991).

4. Under the Alternative Purchase Plan, shares of different classes would be sold under different sales arrangements including, for example, sales at net asset value, subject to a front-end sales charge, or subject to a CDSC. Different classes of shares could be subject to different rule 12b–1 plans. For any class, the sum of any initial sales charges, asset-based sales charges, and CDSCs will not exceed the maximum sales charge provided for in Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers.

5. The Trustees of the Trust may determine that any of the Class Expenses listed above are to be borne by the class to which they are attributable. The Manager and/or the Distributor may choose to reimburse or agree not to impose Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses reimbursed or not imposed by the Manager and/or the Distributor may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or agree not to impose Class Expenses at different levels for different classes of the same Fund or series.

6. In addition, the Manager and/or Distributor may waive or reimburse expenses attributable to a particular Fund ("Fund Expenses") (with or without a waiver or reimbursement of Class Expenses for such Fund) but only if the same proportionate amount of Fund Expenses are waived or reimbursed for each class of that Fund. Thus, any Fund expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. The amount of Fund Expenses reimbursed or not imposed by the Manager and/or the Distributor may vary from Fund to Fund, however. Fund expenses apply equally to all classes of a Fund. Accordingly, it may not be appropriate to waive or reimburse Fund expenses at different levels for different classes of the same Fund. Fund expenses will be allocated among the classes of a Fund on the basis of the relative net assets of each class of that Fund. The income of a Fund will be allocated among the classes of that Fund on the basis of the relative net assets of such class.

7. Under the Alternative Purchase Plan, any class may be given exchange privileges. Shares of such a class generally will be permitted to be exchanged only for shares of a class with similar characteristics in another Fund. All such exchanges will be allowed only between funds that are within the same "group of investment companies" as that term is defined in rule 11a-3 under the Act. At the discretion of the Trustees, exchanges may also be permitted among dissimilar classes. All permitted exchanges will comply with the provisions of rule 11a-3.

8. Any class of shares may offer a conversion feature. A conversion feature will automatically convert shares of one class ("Purchase Class") to shares of another class with different features ("Target Class") after the expiration of a specified period, subject to terms fully disclosed in the Fund's then-current prospectus. For purposes of the conversion, all Purchase Class shares in a shareholder's account that were acquired through the reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account ("Dividend Purchase Shares"). Each time any Purchase Class shares in the shareholder's account convert, an equal portion of Dividend Purchase Shares then in the sub-account will also convert and will no longer be considered held in the sub-account. The portion will be determined by the ratio that the shareholder's converting Purchase Class shares bears to the shareholder's total Purchase Class shares, subject to the conversion feature, but excluding Dividend Purchase Shares. Any conversion will be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue Service to the effect that the conversion does not constitute a taxable event under federal income tax law. Conversions might be suspended if such an opinion or ruling were no longer available.

9. Any Fund or class may be subject to a Shareholder Servicing Plan whereby the Trust may enter into agreements on behalf of a Fund with certain financial institutions, securities dealers, and other industry professionals providing for the performance of services such as answering client inquiries, servicing client accounts, and other services to existing shareholders.

10. Under the Alternative Purchase Plan, applicants expect to offer at least four classes of shares: Class A shares; Class B shares; Class C shares; and Class Y shares. The Funds may create additional classes of shares, which will differ only with respect to attributes described above. No Fund, however,

will be required to offer all or any number of the classes.

11. Class A shares are offered at net asset value plus a front-end sales load, and are assessed an ongoing service fee under a servicing plan adopted by the Trust pursuant to rule 12b-1. Certain Class A shares that are offered without a front-end sales load to certain classes of purchases may be subject to a 1% CDSC if such shares are redeemed within eighteen months of purchase.

12. Class B shares will be offered at net asset value per share without the imposition of a sales load at the time of purchase. Pursuant to a distribution and servicing plan adopted pursuant to rule 12b-1, the Trust would pay to the Distributor with respect to each Fund a service fee of up to 0.25% per annum and a distribution fee of up to 0.75% per annum of the average daily net asset value of that Fund's Class B shares. In addition, an investor's proceeds from a redemption of Class B shares made within five years of his or her purchase may be subject to a CDSC which is paid to the Distributor. The rate of the CDSC is expected to be approximately 5% on shares redeemed in the first year after purchase, 4% on shares redeemed in the second year, 3% on shares redeemed in the third year, and 2% on shares redeemed in the fourth and fifth years. Class B shares may also be subject to a conversion feature whereby such shares automatically would convert to Class A shares after a specified number of years from the date the Class B shares were purchased.

13. Class A shares are offered at net asset value and will be identical in all respects to the Class B shares except that the Class C shares will be subject to a lower CDSC and will never convert to Class A shares. The Class C shares are designed as a so-called "level load" series. The Class C shares will be subject to a 1% CDSC if the shares are redeemed within one year of purchase.[3]

14. The Trust may also offer Class Y shares, which will not be subject to any servicing fees under any rule 12b-1 plan, will not be subject to any front-end sales load or CDSC, and may bear lower transfer agency fees and other operating expenses than some other classes. The Class Y may be designated as a class of shares ("Institutional Shares") which will be offered only to "Institutional Investors".[4] Only Institutional Investors will be eligible to purchase any class of Institutional Shares, if created. All other investors will be permitted to purchase only non-institutional classes of shares. No Institutional Investor that is eligible to purchase any class of Institutional Shares, if any, will be permitted to invest in any class of non-institutional shares. Accordingly, there will be no overlap between the investors eligible to purchase any class of Institutional Shares and investors eligible to purchase any class of non-institutional shares.

15. Applicants seek an order of the Commission to allow the Trust to impose a CDSC on any appropriate class of shares subject to the terms and in the circumstances appropriate to that class and to waive such a CDSC in certain circumstances. Under the proposed CDSC arrangement, some or all shares of certain classes of a Fund may be subject to a CDSC if such shares are redeemed or repurchased within a prescribed period of time after their purchase. No CDSC will be imposed with respect to: (a) The portion of redemption or repurchase proceeds attributable to increases in the value of the shares due to capital appreciation; (b) shares acquired through the reinvestment of income dividends or capital gain distributions; or (c) shares held for more than a certain time after their purchase. Any CDSC would be imposed on the lesser of (a) the net asset value of the shares at the time of purchase, and (b) the net asset value of the shares at the time of repurchase or redemption. In determining whether a CDSC will be payable, it will be assumed that shares, or amounts representing shares, that are not subject to a CDSC are redeemed or repurchased first and for other shares it will be assumed that a redemption is made of shares held by the investor for the longest period of time. This will result in any such charge being imposed on the fewest number of shares and at the lowest possible rate. The amount of the CDSC and the circumstances and timing of its imposition may vary among classes and may be changed with respect to any class. Any change in the terms of a CDSC will be reflected in the affected shares' prospectus. In addition, any such change will not affect the shares that have already been issued unless such change would result in terms more favorable to the holders of such shares, in which case the change may, but need not, apply to already-issued shares. No CDSC will be imposed on any shares purchased prior to the effective date of the order requested by this application, except as permitted under the Prior CDSC Orders.

16. Applicants propose to vary or waive the CDSC in connection with certain categories of transactions. The conditions in paragraphs (a) through (d) of rule 22d–1 will be satisfied with respect to any category of transaction for which a CDSC is waived.

17. If the Funds waive or reduce a CDSC, such waiver or reduction will be applied uniformly to all shares in the specified category. If a Fund which has been waiving or reducing a CDSC determines not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Any such change will not affect shares that have already been issued. A CDSC imposed on any given class of shares may be waived in all or any number of the circumstances listed above and the waivers applicable to the CDSC on one class may differ from the waivers applicable to another class.

Applicants' Legal Analysis

1. Applicants seek exemption from (a) sections 18(f)(1) and 18(g) of the Act to the extent that the issuance and sales of multiple classes of shares may result in a "senior security" prohibited by section 18(f) and (b) section 18(i) of the Act to the extent that the different voting rights associated with such classes may be deemed to result in one or more classes of shares having unequal voting rights with other classes of shares. In addition, applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

2. Applicants believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement will not involve borrowing and will not affect the Funds' existing assets or reserves; it also will not

[3] The Class C shares described here are currently offered by the Trust as "Class B" shares. This existing class of shares converted from a declining CDSC class to a level load class pursuant to no-action relief obtained by the Trust. *See* Thomson Fund Group (pub. avail. Apr. 29, 1991). Shares purchased before July 1, 1991 are subject to the previous CDSC structure.

[4] "Institutional Investors" will include only (a) unaffiliated benefit plans, such as qualified retirement plans, other than individual retirement accounts and self-employed retirement plans, with total assets in excess of $10,000,000 or such other amounts as the Funds may establish and with such other characteristics as the Funds may establish; provided, that any such unaffiliated benefit plans will have a separate trustee who is vested with investment discretion as to plan assets, will have limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and will not include self-directed plans; (b) tax-exempt retirement plans of the Manager or the Distributor and their affiliates; (c) banks and insurance companies that are not affiliated with the Manager purchasing for their own accounts; (d) investment companies not affiliated with the Manager or the Distributor; and (e) endowment funds or non-profit organizations that are not affiliated with the Manager.

increase the speculative character of the shares in a Fund, since all shares will participate *pro rata* in all of the Fund's income and all of the Fund's expenses (with the exception of the Class Expenses).

3. Under the Alternative Purchase Plan, mutuality of risk will be preserved with respect to all classes of shares in a Fund, as the classes will represent interests in a single pool of assets presenting the same investment risk to all shareholders of the Fund, regardless of class. Further, since all classes of shares will be redeemable at all times, no class of shares will have any preference or priority over the other class of shares of the particular Fund in the usual sense (that is, no class will have a distribution or liquidation preference with respect to particular assets of a Fund and no class will be protected by any reserve or other account).

Applicants' Conditions

Applicants agree that the order granting the requested exemptions will be subject to the following conditions:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

2. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the impact of any rule 12b–1 plan payments (which may include servicing fees or distribution fees, or both) or Shareholder Servicing Plan payments made by a class and any other expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of shares, (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) Trustees' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plans, except as provided in condition 16 below; (c) the different exchange privileges of the various classes of shares as may be described from time to time in any prospectus of the Trust; (d) the fact that only certain classes will have a conversion feature; and (e) the designation of each class of shares of a Fund.

3. The Trustees of the Trust, including a majority of the independent Trustees, shall have approved each Alternative Purchase Plan prior to its implementation by any Fund. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement each Alternative Purchase Plan will reflect in detail the reasons for determining that the Alternative Purchase Plan is in the best interests of the relevant Fund and its shareholders.

4. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Class Expenses shall provide to the Trustees of the Trust, and such Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustee, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Manager and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

6. The Trustees will receive quarterly and annual statements concerning distribution and servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a class of shares will be used to support any distribution or servicing fee charged to shareholders of such class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Trustees to support any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that payments made under the rule 12b–1 plan or Shareholder Servicing Plan relating to a particular class of shares will be borne exclusively by such class and except that any Class Expenses will be borne by the applicable class of shares.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among such classes has been reviewed by an expert (the "Independent Examiner") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Trust which the Trust agrees to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on the policies and procedures placed in operation" and the ongoing

reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the Statement on Auditing Standards No. 70 of the American Institute of Certified Public Accountants, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants agree to take immediate corrective action if the Independent Examiner does not so concur in the ongoing reports.

10. The prospectus of the Trust that implements each revised Alternative Purchase Plan will include a statement to the effect that any person entitled to receive compensation for selling shares of a Fund of the Trust may receive different levels of compensation for selling or servicing one particular class of shares over another of such Fund.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards. Such compliance standards will require that all investors eligible to purchase shares of any class of Institutional Shares be sold only shares of a class of Institutional Shares, rather than any other class of shares offered by a Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the Alternative Purchase Plan will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

13. The Funds will disclose their respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares, other than a class of Institutional Shares, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. If the Trust offers a class of Institutional Shares, it may offer such shares solely pursuant to a separate prospectus. Any prospectus for Institutional Shares will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of Institutional Shares, if any, and will identify the persons eligible to purchase Institutional Shares. The Funds will disclose their respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis, whereas each Fund's per share data will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Institutional Shares, if any. Advertising materials reflecting the expenses or performance data for Institutional Shares will be available only to those persons eligible to purchase Institutional Shares. Information provided by the Applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares, except Institutional Shares, separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans or Shareholder Servicing Plans in reliance on the exemptive order.

15. If any class of shares is created with a conversion feature, such class ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to maximum asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the maximum asset-based sales charge and service fee which they were subject prior to the conversion.

16. If a Fund implements any amendment to any of its 12b–1 Plans (or, if presented to shareholders, adopts or implements any amendment to a Shareholder Servicing Plan) that would increase materially the amount that may be borne by Target Class shares subject to the plan, existing Purchase Class shares will stop converting into Target Class shares unless the holders of the Purchase Class shares, voting separately as a class, approve the proposal. The Trustees of the Trust shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Trustees of the Trust to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class shares or New Purchase Class shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees of the Trust reasonably believe will not be subject to federal taxation. In accordance with condition 5 above, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Manager and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class shares plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. The Shareholder Servicing Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19968 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20452; No. 812–9146]

Transamerica Occidental Life Insurance Company, et al.

August 9, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Transamerica Occidental Life Insurance Company ("Transamerica"), First Transamerica Life Insurance Company ("First Transamerica"), Separate Account VA–2NL of Transamerica Occidental ("Separate Account VA–2NL"), Separate Account VA–2L of Transamerica Occidental ("Separate Account VA–2L"), Separate Account VA–2NLNY of First Transamerica ("Separate Account VA–2NLNY"), Separate Account VA–2LNY of First Transamerica ("Separate Account VA–2LNY") (collectively, "Separate Accounts"), and Transamerica Insurance Securities Sales Corporation ("TISSC"), (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: APPLICANTS SEEK TO AMEND AN ORDER UNDER SECTION 6(C) OF THE INVESTMENT COMPANY ACT OF 1940 ("ACT") EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTIONS 26(A)(2)(C) AND 27(C)(2) OF THE ACT TO THE EXTENT NECESSARY TO PERMIT THE DEDUCTION OF A MORTALITY AND EXPENSE RISK CHARGE FROM THE ASSETS OF THE SEPARATE ACCOUNTS IN CONNECTION WITH THE ISSUANCE AND SALE OF CERTAIN VARIABLE ANNUITY CONTRACTS ("CONTRACTS"). APPLICANTS PROPOSE THAT TISSC REPLACE DREYFUS SERVICE CORPORATION AS PRINCIPAL UNDERWRITER FOR THE CONTRACTS, AND THAT THE AMENDED ORDER EXTEND TO TISSC, AND TO ANY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. MEMBER BROKER-DEALER THAT MAY IN THE FUTURE SERVE AS PRINCIPAL UNDERWRITER FOR THE CONTRACTS, THE SAME EXEMPTIONS CURRENTLY GRANTED TO DREYFUS.

FILLING DATE: The application was filed on August 5, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o James W. Dederer, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive, Los Angeles, California 90015; Frederick R. Bellamy, Esq., Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2404.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Transamerica and First Transamerica are each a stock life insurance company. First Transamerica is a wholly-owned subsidiary of Transamerica, which is a wholly-owned subsidiary of Transamerica Insurance Corporation of California ("Transamerica-California"). Transamerica-California is, in turn, a wholly-owned subsidiary of Transamerica Corporation. Transamerica and First Transamerica are each principally engaged in offering life insurance and annuity contracts. Transamerica is licensed in Puerto Rico, Guam, the Virgin Islands, Hong Kong, certain provinces of Canada, the District of Columbia, and in all states except New York. First Transamerica is licensed to sell insurance and annuities in New York and New Mexico.

2. Separate Accounts VA–2L and VA–2NL are separate accounts established by Transamerica. Separate Accounts VA–2LNY and VA–2NLNY are separate accounts established by First Transamerica. The Separate Accounts have been registered with the Commission under the 1940 Act as unit investment trusts.

3. TISSC, a wholly-owned subsidiary of Transamerica-California, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

4. By orders of the Commission,[1] Applicants, other than TISSC, and Dreyfus Service Corporation ("Dreyfus"), the primary principal underwriter of the Contacts, were granted exemptive relief under Section (6)(c) of the 1940 Act from the provisions of Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Accounts in connection with the issuance of the Contracts. Dreyfus is a wholly-owned subsidiary of Dreyfus Corporation.

5. Applicants represent that Dreyfus Corporation will soon be acquired by Mellon Bank. As a result of the proposed acquisition, Dreyfus will become a bank affiliate and, consequently, cannot continue to serve in the capacity of principal underwriter of the Contracts issued through the Separate Accounts because bank affiliates may not act as principal underwriters of investment company securities. Accordingly, Applicants intend that TISSC replace Dreyfus as principal underwriter of the Contracts.

6. Applicants request that the Commission amend the Commission Orders to extend to TISSC, as well as to any NASD member broker-dealer that may in the future serve as principal underwriter for the Contracts ("Future Underwriters"), the same exemptions granted Dreyfus under the Commission Orders.

Applicants' Legal Analysis

1. Applicants represent that all of the facts asserted and representations made in the applications for the Commission Orders remain true and accurate. Applicants specifically incorporate such acts and representations by reference to such prior applications and, further, represent that they each will comply with the conditions set forth in such

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[1] *Transamerica VA–2L*, Inv. Co. Act Rel. Nos. 19195 (Dec. 30, 1992) (Order), and 19144 (Dec. 2, 1992) (Notice); * *Transamerica VA–2L*, Inv. Co. Act Rel. Nos. 19750 (Sep. 29, 1993) (Order), and 19675 (Sep. 1, 1993) (Notice); *Transamerica VA–1NL*, Inv. Co. Act Rel. Nos. 19180 (Dec. 23, 1992) (Order), and 19119 (Nov. 24, 1992) (Notice); *First Transamerica VA–2LNY*, Inv. Co. Act Rel. Nos. 19295 (Feb. 25, 1993) (Order), and 19246 (Jan. 29, 1993) (Notice); and *First Transamerica VA–2NLNY*, Inv. Co. Act Rel. Nos. 19294 (Feb. 25, 1993) (Order), and 19245 (Jan. 29, 1993) (collectively, "Commission Orders").

applications in connection with the exemptions requested.

2. Applicants request that the Commission issue an order under Section 6(c) of the Act amending the Commission Orders to exempt TISSC as well as any Future Underwriters from the provisions of Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Accounts as provided for in the Contracts.

Conclusion

For the reasons set forth above in the applications requesting the foregoing orders, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19967 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20465; 811–5918]

U.S. Government Income Portfolio B; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: U.S. Government Income Portfolio B.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York trust, is an open-end management investment company. On October 4, 1989, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities under the Securities Act of 1933.

2. Applicant was organized as a master fund in a master/feeder arrangement with Yankee Funds, another registered management investment company. Yankee U.S. Government Income Fund B, a portfolio of Yankee Funds, invested in applicant and owned substantially all of applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan or reorganization whereby all of applicant's assets would be transferred to Galaxy Intermediate Bond Fund, a portfolio of The Galaxy Fund. In accordance with rule 17a–8, the trustees of applicant and the Galaxy Fund determined that the reorganization was in the best interests of each trust, and the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee U.S. Government Income Fund B's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee U.S. Government Income Fund B approved the reorganization at a meeting held on May 6, 1993, and Yankee U.S. Government Income Fund B, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Intermediate Bond Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Intermediate Bond Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Intermediate Bond Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $48,843. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19957 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20454; 811–1917]

U.S. Government Income Portfolio A; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Reregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: U.S. Government Income Portfolio A.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officer.

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant, a New York Trust, is an open-end management investment company. On October 4, 1989, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b). Applicant never registered its securities under the Securities Act of 1993.

2. Applicant was organized as a master fund in a master/feeder arrangement with Yankee Funds, another registered management investment company. Yankee U.S. Government Income Fund A, a portfolio of Yankee Funds, invested in applicant and owned substantially all of applicant's units of beneficial interest.

3. On February 22, 1993, the boards of trustees of Yankee Funds and applicant approved a plan of reorganization whereby all of applicant's assets would be transferred to Galaxy Intermediate Bond Fund, a portfolio of The Galaxy Fund. In accordance with rule 17a–8, the trustees of applicant and The Galaxy Fund determined that the reorganization was in the best interest of each trust, and that the interests of the existing shareholders of each trust would not be diluted as a result.[1]

4. A combined proxy statement and prospectus was sent to Yankee U.S. Government Income Fund A's shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of the shareholders of Yankee U.S. Government Income Fund A approved the reorganization at a meeting held on May 6, 1993, and Yankee U.S. Government Income Fund A, as holder of a majority of the units of beneficial interest of applicant, approved the reorganization by written consent dated May 6, 1993.

5. On May 7, 1993, applicant transferred all of its assets and liabilities to Galaxy Intermediate Bond Fund in exchange for shares of that fund. Thereafter, applicant distributed the Galaxy Intermediate Bond Fund shares to its shareholders. Applicant's shareholders received shares of the Galaxy Intermediate Bond Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody, and administration fees and expenses totaling $21,654. The expenses were paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19966 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Galaxy Equity Growth Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a), rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[REL. No. IC–20464; 811–5916]

Yankee Funds; Notice of Application

August 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Yankee Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1994 and amended on August 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notifications by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts trust, is an open-end management investment company. On October 3, 1989, applicant filed a notification of registration under section 8(a) and a registration statement on Form N–1A under section 8(b). Applicant registered the following portfolios under the Securities Act of 1933: Yankee U.S. Government Income Fund A; Yankee U.S. Government Income Fund B; Yankee Tax-Exempt Income Fund A; Yankee Tax-Exempt

Income Fund B; Yankee Equity Fund; Yankee Equity Income Fund; and Yankee Funds (the "Yankee Money Market Fund").

2. Applicant's portfolios were organized as feeder funds in a master/feeder arrangement with seven registered management investment companies (the "Master Funds"). In early 1993, the investment adviser to the Master Funds recommended to the boards of trustees of applicant and the Master Funds that the non-money market portfolios of applicant and the corresponding Master Funds be reorganized into the Galaxy Fund and that the Yankee Money Market Fund be liquidated.

3. On February 22, 1993, the boards of trustees of applicant and the Master Funds approved the plan of reorganization. A combined proxy statement and prospectus was sent to applicant's non-money market fund shareholders on April 11, 1993. Definitive copies of such materials were filed with the SEC as part of The Galaxy Fund's registration on April 23, 1993. A majority of applicant's shareholders, excluding the shareholders of the Yankee Money Market Fund, approved the reorganization at a meeting held on May 6, 1993, and applicant, as holder of a majority of the units of beneficial interest of the Master Funds, approved the reorganization by written consent dated May 6, 1993.

4. On May 7, 1993, applicant transferred all of the assets and liabilities of: (a) Yankee U.S. Government Income Fund A and Yankee U.S. Government Income Fund B to Galaxy Intermediate Bond Fund; (b) Yankee Tax-Exempt Income Fund and Yankee Tax-Exempt Income Fund B to Galaxy Tax-Exempt Bond Fund; and (c) Yankee Equity Fund and Yankee Equity Income Fund to Galaxy Equity Growth Fund (Galaxy Intermediate Bond Fund, Galaxy Tax-Exempt Bond Fund, and Galaxy Equity Growth Fund together, the "Acquiring Funds") in exchange for shares of the respective Acquiring Funds. Thereafter, applicant distributed the appropriate Acquiring Fund shares to its shareholders. Applicant's shareholders received shares of the Acquiring Funds with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. On or before May 10, 1993, the three holders of beneficial interest in the Yankee Money Market Fund gave notice that they wanted to redeem their entire holdings. The corresponding Master Fund's investment portfolio consisted entirely of short-term investments all maturing on May 10, 1993. On May 10, 1993, a complete redemption totaling $65,585,130 was paid by applicant to its shareholders on a *pro rata* basis.

6. In connection with the reorganization, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $164,666. These expenses were allocated to applicant's non-money market portfolios based on the relative net assets of such portfolios and paid by applicant. In connection with the liquidation, applicant incurred expenses such as professional fees, custody and administration fees and expenses totaling $13,401. These expenses were allocated to the Yankee Money Market Fund and paid by applicant.

7. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19958 Filed 8–15–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 08/08–0149]

Hanifen Imhoff Mezzanine Fund, L.P.; Issuance of a Small Business Investment Company License

On April 4, 1994, a notice was published in the **Federal Register** (59 FR 15762) stating that an application had been filed by Hanifen Imhoff Mezzanine Fund, L.P., 1125 17th Street, suite 1600, Denver, Colorado 80202 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business May 4, 1993 to submit their comments to SBA. No comments were received. Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08–0149 on July 26, 1994, to Hanifen Imhoff Mezzanine Fund, L.P. to operate as a small business investment company.

The Licensee will be owned by Lincoln National Life Insurance Company, Northern Life Insurance Company, Hartford Life Insurance Company, Hanifen Imhoff Inc. (a brokerage firm), and 20 individuals. The licensee will have initial capital of $2,717,000 and has commitments for additional capital which are expected to reflect total capital of $14,710,000 when fully invested.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 3, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20060 Filed 8–15–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000134]

Needham Capital SBIC, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Needham Capital SBIC, L.P., 400 Park Avenue, New York, New York 10022, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Needham Capital Management Partners, L.P., 400 Park Avenue, New York, NY 10022	1.0%
Limited Partners:	
Needham Capital Management Partners, L.P., 400 Park Avenue, New York, NY 10022	99.0% (1)
	100.0%

(1) Needham & Company, Inc., 400 Park Avenue, New York, NY, 10022, through its limited partnership interest in Needham Capital Partners, L.P. owns an effective 26.4% interest in the Applicant.

Needham Capital SBIC, L.P. will be managed by Needham Capital Management Partners, L.P. The general

and limited partners of Needham Capital Management Partners, L.P. are:

Name	Relationship to manager	Percentage ownership of manager
George A. Needham, 79 East 79th Street, New York, NY 10021.	General Partner	0.5
John C. Michaelson, 1010 Fifth Avenue, New York, NY 10028.	General Partner	0.5
Needham Capital Partners, L.P., 400 Park Avenue, New York, NY 10022.	Limited Partner	99.0
	.....	100.0

The applicant will begin operations with capitalization of approximately $7.5 million and will be a source of equity financings for qualified small business concerns. The applicant will invest primarily in the technology and life sciences businesses located in the states of California, Massachusetts, Minnesota, and Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: August 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20062 Filed 8–15–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000082]

RFE Investment Partners V, L.P.; Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by RFE Investment Partners V, L.P., 36 Grove Street, New Canaan, Connecticut 06840 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder. RFE Investment Partners V, L.P. is a limited partnership formed under Delaware Law. Its principal area of operation is the eastern half of the United States and, on a selected basis, throughout the United States.

RFE Investment Partners V, L.P. will be managed by RFE Management Corporation, located at 36 Grove Street, New Canaan, Connecticut 06840. The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
State Treasurer of the State of Michigan, Custodian of the Michigan Public School Employees' Retirement System, State Employees' Retirement System, Michigan State Police Retirement System, and Michigan Judges' Retirement System	30.0
The Northern Trust Company as Trustee for the Allied Corporation Master Pension Trust	22.4
The Retirement and Security Program for Employees of the National Rural Electric Cooperative Association and its Member Systems	14.0
Fleet Growth Resources, Inc	11.9

The Applicant will begin operations with an initial capitalization of approximately $35.71 million and will be a source of later stage investments, mezzanine financings, and re-capitalizations for qualified small business concerns. The applicant will invest primarily in the eastern half of the United States, and may participate as an investor in deals that originate in other parts of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new SBIC under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New Canaan, Connecticut.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: August 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20061 Filed 8–15–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–058]

Differential Global Positioning System, St. Marys River/Lake Huron Corridor Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the St. Marys River/Lake Huron Corridor Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before September 15, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George

Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES**. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the Federal Register.

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the St. Marys River/Lake Huron Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected five sties along the St. Marys River/Lake Huron Corridor for the DGPS equipment. The sites are in the vicinity of Detroit, MI: Saginaw Bay, MI; Cheboygan, MI; Neebish Island, MI; and Whitefish Point, MI. The sites are used already for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to install a 90 foot guyed antenna with an accompanying ground plane except at Whitefish Point where the existing whip antenna will be used. A ground plane for these antenna's consists of approximately 120 copper radials (6 guage copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is between 200–300 feet, but this length may be shortened to fit within property boundaries.

Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures.

(c) Equipment shelter—A 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment at each site except at Whitefish Point, where the existing equipment building will be used.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. However, an existing diesel generator is available at the Whitefish Point site and may be utilized if backup power is needed. A telephone line will be required at each site for remote monitoring and operation.

Description of Each Site

The Detroit, MI site is located on U.S. Army Corps of Engineers boat yard property, which is located adjacent to Fort Wayne. The site will require installation of a 90 foot guyed transmit antenna. In addition, a 10 foot by 16 foot equipment hut will be installed to house the DGPS electronic equipment.

The Saginaw Bay, MI site is located on U.S. Army Corps of Engineers field office property, which is located near Essexville, MI. The site will require installation of a 90 foot guyed transmit antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Cheboygan, MI site is located on U.S. Coast Guard property in the city of Cheboygan, MI near the intersection of Western Avenue and Lincoln Avenue. The site will require installation of a 90 foot guyed transmit antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Neebish Island, MI site is located on the north end of the island, at the Neebish Cell Dock, and within U.S. Army Corps of Engineers property. The site will require installation of a 60 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Whitefish Point Light Station, MI site is located on the upper peninsula approximately 35 miles northeast of Sault Ste Marie. The existing radiobeacon has already been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes. The existing radiobeacon transmit antenna will be used and the DGPS equipment will be housed in the existing equipment hut. The light is listed on the National Register of Historic Places. The Coast Guard and MI State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the historic property.

Implementation of a DGPS service in the St. Marys River/Lake Huron Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: August 8, 1994.

R.C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–20026 Filed 8–15–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Draft Environmental Impact Statement (DEIS); Newark International Airport Monorail—Northeast Corridor Connection Project; Public Hearing

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of public hearing.

SUMMARY: The Eastern Region of the FAA announces:

The FAA, acting as "Lead Agency," has prepared a Draft Environmental Impact Statement (DEIS)—for a proposal by the Port Authority of New York and

New Jersey, acting as "Sponsor," to develop the Newark International Airport (EWR) Monrail—Northeast Corridor Connection Project (Newark Airport Monorail-NEC Connection Project).

The DEIS has been prepared to evaluate environmental impacts associated with the project. Three alternatives are analyzed in the DEIS: a "No Build" alternative; a Transportation Systems Management option; and a Build alternative, which is the extension of the monorail system (currently under construction at the airport) to the northeast rail corridor, along with construction of a new rail station. Three monorail alignments are under consideration for the extension; their associated environmental impacts are analyzed in the DEIS.

A Public Hearing has been scheduled to discuss the project alternatives, present the three alignments under consideration, and receive comments on the DEIS:

Date: Wednesday, August 17, 1994.

Time: 4:00 pm–6:00 pm Presentation/Comment Period; 7:00 pm–9:00 pm Repeat Presentation/Comment Period.

Place: Holiday Inn North, 169 Holiday Plaza, Newark, NJ 07114.

In the advance of the Hearing, you are invited to review copies of the complete DEIS at the following locations (call to confirm hours):

Newark Public Library, 5 Washington Street, Newark, NJ 07101, (201) 733–7800

Elizabeth Public Library, 11 South Broad Street, Elizabeth, NJ 07202, (908) 354–6060

Federal Aviation Administration, US Department of Transportation, Fitzgerald Federal Building—Room 347, JFK International Airport, Jamaica, NY 11430, (718) 553–1250.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony P. Spera, Federal Aviation Administration, Eastern Region Office, AEA–620, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone (718) 553–1250.

Issued in Jamaica, New York on August 9, 1994.

Anthony P. Spera,

Manager, Planning and Programming Branch, Airports Division, Federal Aviation Administration, Eastern Regional Office, Jamaica, New York.

[FR Doc. 94–20002 Filed 8–15–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenues from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan Elliot, Director of Aviation, Charlottesville-Albermarle Airport Authority, at the following address: Charlottesville-Albermarle Airport Authority, 201 Bowen Loop, Charlottesville, VA 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 15, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 12, 1994.

The following is a brief overview of the application.

Level of proposed PFC: $2.00

Proposed charge effective date: September 1, 1992

Proposed charge expiration date: September 30, 1993

Total estimated PFC revenue: $307,896

Brief description of proposed project(s):

PFC will be used to fund the sponsor share of the following projects:

—Purchase Disabled Passenger Lift Device

—Construct General Aviation Taxiway and Ramp

—Modify Air Carrier Terminal Security Screening Point

—Construct GA Terminal Access Road

—Acquire Land Runway 21 Protection Zone

—Acquire Runway Friction Measuring Device

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/commercial operators filing FAA Form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York on August 8, 1994.

A.H. DeGraw,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–20001 Filed 8–15–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubois-Jefferson County Airport, Dubois, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of

the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager Harrisburg Airports District Office, 311 Harzdale Drive, Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert W. Shaffer, Airport Manager of the Dubois—Jefferson County Airport at the following address: Clearfield-Jefferson Counties Regional Airport Authority, Box 299, Falls Creek, PA 15840.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Clearfield-Jefferson Counties Regional Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Harztdale Drive, Suite 1, Camp Hill, PA 17011 (Tel (717)–975–3423). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (124 CFR Part 158).

On June 15, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Clearfield—Jefferson Counties Regional Airport Authority was substantially complete within the requirement of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 1994

Proposed charge expiration date: February 28, 1999

Total estimate PFC revenue: $336,322

Brief description of proposed projects:

—Obstruction Removal

—Parking Lot Expansion

—Parallel Taxiway to Runway 7

—Deicing Pad

—Snow Removal Equipment

—Expand Sand Storage Building

—Land Acquisition

—Powered Lift Device

—Route 830 Terminal Relocation (impose only)

—Sewage/Water System (impose only)

—Non-Directional Beacon (impose only)

—Emergency Generator (impose only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Tax/ Commerical Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Clearfield-Jefferson Counties Regional Airport Authority.

Issued in Jamaica, New York on July 8, 1994.

A.H. DeGraw,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 94–20003 Filed 8–15–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 9, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0940

Regulation ID Number: LR–185–84 Final Regulations

Type of Review: Extension

Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements

Description: The regulations liberalize the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and delete the requirement to file certain supplemental capital expenditure statements.

Respondents: State or local governments, Small businesses or organizations

Estimated Number of Recordkeepers: 10,000

Estimated Burden Hours Per Recordkeeper: 6 minutes

Frequency of Response: Annually

Estimated Total Recordkeeping Burden: 1,000 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 94–19975 Filed 8–15–94; 8:45 am]

BILLING CODE 4830–01–P

[General Counsel Designation No. 205]

Appointment of members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 01–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Dennis I. Foreman, Deputy General Counsel, who shall serve as Chairperson;

Russell L. Munk, Assistant General Counsel (International Affairs);

John E. Bowman, Assistant General Counsel (Banking and Finance);

Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);

Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms; and

Micheal T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;

Deputy General Counsel;

Two Associate Chief Counsel, IRS; and

Two Regional Counsel, IRS

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: August 10, 1994.

Jean E. Hanson,

General Counsel.

[FR Doc. 94–20015 Filed 8–15–94; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 157
Tuesday, August 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9 a.m., September 12, 1994.

PLACE: On board *Mississippi V* at Foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

TIME AND DATE: 9 a.m., September 13, 1994.

PLACE: On board *Mississippi V* at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

TIME AND DATE: 9 a.m., September 14, 1994.

PLACE: On board *Mississippi V* at Corps of Engineers Bank Grading and Mat Loading Facility, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

TIME AND DATE: 9 a.m., September 16, 1994.

PLACE: On board *Mississippi V* at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601–634–5766.

Noel D. Caldwell,

Executive Assistant, Mississippi River Commission.

[FR Doc. 94–20211 Filed 8–12–94; 3:17 pm]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 15, 22, 29, and September 5, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 15

There are no meetings scheduled for the Week of August 15.

Week of August 22—Tentative

Monday, August 22

2:00 p.m.
Briefing on Additional Changes to Part 100 Rulemaking and Proposed Update on Source Term (Public Meeting)
(Contact: Leonard Soffer, 301–415–6574)

Tuesday, August 23

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Gulf States Utilities Company—Appeal of LBP–94–3 (River Bend Station, Unit 1) (Tentative)
(Contact: Cecilia Carson, 301–504–1625)
b. Sequoyah Fuels Corporation's and General Atomics' Appeal of the Atomic Safety and Licensing Board's Orders, LBP–94–5 and LBP–94–8 (Docket No. 40–8027–EA) (Tentative)
(Contact: Cecilia Carson, 301–504–1625)
c. Sequoyah Fuels Corporation's Appeal of the Atomic Safety and Licensing Board's Order LBP–94–19 (Docket No. 40–8027–EA) (Tentative)
(Contact: Cecilia Carson, 301–504–1625)

Week of August 29—Tentative

Tuesday, August 30

2:30 p.m.
Briefing on PRA Policy Statement and Action Plan (Public Meeting)
(Contact: Thomas Hiltz, 301–504–1105)

Wednesday, August 31

10:00 a.m.
Briefing by U.S. Enrichment Corporation (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 5—Tentative

Wednesday, September 7

2:00 p.m.
Briefing on Information Technology Strategic Plan (Public Meeting)
(Contact: Richard Hartfield, 301–415–5818)

Thursday, September 8

1:30 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)
3:00 p.m.
Briefing on NRC High Level Radioactive Waste Performance Assessment Program (Public Meeting)
4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 9

9:30 a.m.
Briefing on HLW Issues by NWTRB, State of Nevada, Local Governments and Native Americans (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Protocol for Study of Thyroid Disease in Belarus as a Result of the Chernobyl Accident (Public Meeting)
(Contact: Shlomo Yaniv, 301–415–6239)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: August 12, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–20219 Filed 8–12–94; 3:18 pm]

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federal register

Tuesday
August 16, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species: Gray Wolf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC86

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Gray Wolf in Yellowstone National Park in Wyoming, Idaho, and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reintroduce the gray wolf (*Canis lupus*), an endangered species, into Yellowstone National Park, which is located in Wyoming, Idaho, and Montana. This population would be classified as a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). Gray wolf populations have been extirpated from most of the western United States. They presently occur in a small population in extreme northwestern Montana, and as incidental occurrences of a few wolves in Idaho, Wyoming, and Washington that result from the dispersal of wolves from Montana and Canada. This reintroduction is being proposed to reestablish a viable wolf population in the Yellowstone area, one of three wolf recovery areas that have been identified in the Northern Rocky Mountain Wolf Recovery Plan. Potential effects of this proposed rule were evaluated in an environmental impact statement completed in May 1994. This gray wolf reintroduction would not conflict with existing or anticipated Federal agency actions or traditional public uses of park lands, wilderness areas, or surrounding lands.

DATES: Comments from all interested parties must be received by October 17, 1994.

ADDRESSES: Comments or other information may be sent to: Gray Wolf Reintroduction, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601. The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at 100 N. Park, Suite 320, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Bangs, at the above address, or telephone (406) 449–5202.

SUPPLEMENTARY INFORMATION:

Background

1. Legal

The Endangered Species Act Amendments of 1982, P.L. 97–304, made significant changes to the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*), including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental populations". Under previous authorities in the Act, the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroductions as a management tool.

Under section 10(j), a reintroduced population of a listed species established outside of its current range, but within its historic range may be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." The Act requires that an experimental population be separated geographically from nonexperimental populations of the same species. Furthermore, an experimental population is treated as a threatened species, except that, solely for section 7 purposes (except for subsection (a)(1)), an experimental population determined not to be essential to the continued existence of a species is treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4 of the Act. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized or carried out by a Federal agency.

Experimental and non-essential designations increase the flexibility for management of a reintroduced population of a listed species. Treatment of such a population as threatened provides the Service with greater latitude in devising management programs than would be possible for an endangered species. While Section 9 of the Act spells out directly the prohibitions that apply for endangered species, Section 4(d) of the Act permits adoption by regulation of prohibitions only to the extent that they are necessary and advisable to promote the conservation of a species listed as threatened.

In addition, a nonessential experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act unless the experimental population occurs on a National Wildlife Refuge or National Park, where the full provisions of section 7 apply. Section 7(a)(1) of the Act applies to nonessential experimental populations, and requires that all Federal agencies use their authorities to conserve listed species. Individual organisms used in establishing an experimental population can be removed from a source or donor population only after it has been determined that their removal itself is not likely to jeopardize the continued existence of the species, and a permit has been issued in accordance with the requirements of 50 CFR 17.22.

In 1967, the timber wolf was listed as a subspecies (*Canis lupus lycaon*) as endangered (32 FR 4001), and in 1973 the northern Rocky Mountain subspecies, as then understood, (*C. l. irremotus*) was also listed as endangered, as was the Texas subspecies (*C. l. monstrabilis*) (38 FR 14678). In 1978, the legal status of the gray wolf in North America was clarified by listing wolves in Minnesota as threatened and other members of the species south of Canada as endangered, without referring to subspecies (43 FR 9607).

2. Biological

This proposal deals with the gray wolf (*Canis lupus*), an endangered species of carnivore that was extirpated from the western portion of the conterminous United States by about 1930. The gray wolf is native to most of North America north of Mexico City, except for the southeastern United States, which was occupied by a similar species, the red wolf (*Canis rufus*). The gray wolf occupied nearly every area in North America that supported populations of hooved mammals (ungulates), its major food source.

Twenty-four distinct subspecies of gray wolf have been recognized in North America. Recently, however, taxonomists have suggested that there are five or fewer subspecies of gray wolf in North America and that the wolves that once occupied the northern Rocky Mountains of the United States belonged to a more widely distributed subspecies than was previously believed.

The gray wolf historically occurred in the northern Rocky Mountains, including mountainous portions of Wyoming, Montana, and Idaho. The

great reduction in the distribution and abundance of this species in North America was directly related to human activities, especially elimination of native ungulates, conversion of wildland into agricultural lands, and extensive predator control efforts by private, State, and Federal agencies. When most wolves in the conterminous United States were eradicated, the natural history of wolves was poorly understood. As were other large predators, it was considered a nuisance and a threat to humans. Today, the gray wolf's role as an important and necessary part of natural ecosystems is better appreciated.

Wolf reproduction was not detected in the Rocky Mountain portion of the United States for a period of about 50 years prior to 1986. At that time, a wolf den was discovered near the Canadian border in Glacier National Park. This event was presumably due to the southern expansion of Canadian wolf populations, and the wolf population in Glacier National Park has steadily expanded to an estimated size of about 65 wolves that now occupy northwestern Montana.

Reproducing wolf populations are not known to occur in Idaho or Wyoming. Wolves occasionally have been sighted in these states, but populations as defined by wolf experts (Service 1994) have not been established. Historical reports suggest that wolves may have produced young there several times in the past. However, based on extensive surveys and interagency monitoring efforts (Service 1994), no wolf population has persisted in these States.

3. Wolf Recovery Efforts

In the 1970s, the state of Montana led an interagency recovery team, established by the Service, that developed a recovery plan for the Northern Rocky Mountain Wolf. That 1980 plan recommended a combination of natural recovery and reintroduction be used to recover wolf populations in the area around Yellowstone National Park (Park) north to the Canadian border, including central Idaho.

A revised recovery plan was approved by the Service in 1987 (Service 1987). It identified a recovered wolf population as being at least 10 breeding pairs of wolves, for 3 consecutive years, in each of 3 recovery areas (northwestern Montana, central Idaho and the Yellowstone area). A population of this size would comprise approximately 300 wolves. The plan recommended natural recovery in Montana and Idaho, and using the experimental-population authority of section 10(j) of the Act to quickly reintroduce wolves to Yellowstone National Park and to conduct liberal management to address local concerns about their potential negative impacts. If 2 wolf packs did not become established in central Idaho within 5 years, the plan recommended that conservation measures other than natural recovery be considered.

In 1990 (Pub. L. 101–512), Congress directed appointment of a Wolf Management Committee, composed of 3 Federal, 3 State and 4 interest group representatives, to develop a plan for wolf restoration to Yellowstone and central Idaho. That Committee provided a majority, but not unanimous, recommendation to Congress in May 1991. Among the measures recommended was a declaration by Congress directing reintroduction of wolves to Yellowstone National Park, and possibly central Idaho, as a special nonessential experimental population with particularly flexible management by agencies and the public to resolve potential conflicts. Wolves and ungulates under that plan would be intensively managed by the States with Federal funding and thus implementation costs were estimated to be high. Congress took no action on the Committee's recommendation.

In November 1991 (Pub. L. 102–154), Congress directed the Service, in consultation with the National Park Service and Forest Service, to prepare an environmental impact statement (EIS), that considered a broad range of alternatives on wolf reintroduction to Yellowstone National Park and central Idaho. In 1992 (Pub. L. 102–381), Congress directed the Service to complete the EIS by January 1994 and indicated that the preferred alternative should be consistent with existing law.

The Service formed and funded an interagency team to prepare the EIS. In addition to the National Park Service and Forest Service, the States of Wyoming, Idaho, and Montana, USDA Animal Damage Control, and the Wind River and Nez Perce Tribes participated. The Gray Wolf EIS program emphasized public participation. In the spring of 1992, nearly 2,500 groups or individuals that had previously expressed an interest in wolves were directly contacted and the EIS program was widely publicized by the news media.

In April 1992, a series of 27 "issue scoping" open houses were held in Montana, Wyoming, and Idaho and 7 more in other locations throughout the U.S. The meetings were attended by nearly 1,800 people and thousands of brochures were distributed. Nearly 4,000 people provided their thoughts on issues they felt should be addressed in the EIS. A report describing the public's comments was mailed to 16,000 people in July 1992.

In August 1992, another series of 27 "alternative scoping" open houses and 3 hearings were held in Wyoming, Montana, and Idaho. Three other hearings were held in Seattle, WA, Salt Lake City, UT, and Washington D.C. In addition, a copy of the alternative scoping brochure was inserted into a Sunday edition of the two major newspapers in Montana, Wyoming, and Idaho (total circulation about 250,000). Nearly 2,000 people attended the meetings and nearly 5,000 comments were received about different ways that wolf recovery might be managed. Public comments reflected the strong polarization that has typified management of wolves. A report on the public's ideas and suggestions was mailed to about 30,000 people in November 1992. In April 1993, a Gray Wolf EIS planning update report was published. It discussed the status of the EIS, provided factual information about wolves, and requested the public to report observations of wolves in the northern Rocky Mountains. It was mailed to nearly 40,000 people that had requested information, residing in all 50 states and over 40 foreign countries.

The public comment period on the draft EIS (DEIS) began on July 1, 1993, and the notice of availability was published July 16. Full DEIS documents were mailed to potentially affected agencies, public libraries, many interest groups and to all who requested the complete DEIS. In addition, the DEIS summary, a schedule of the 16 hearings, and a request to report wolf sightings were printed in a flyer that was inserted into the Sunday edition of 6 newspapers in Wyoming, Montana and Idaho with a combined circulation of about 280,000. In mid-June 1993, the Service sent out a letter to over 300 groups, primarily in Wyoming, Montana, and Idaho, offering a presentation on the DEIS. As a result, 31 presentations were given to about 1,000 people during the comment period on the DEIS.

During the public review period from July 1 to November 26, 1993, on the DEIS, comments were received from over 160,200 individuals, organizations, and government agencies. This degree of public response indicated the strong interest people have in the management of wolves. A summary of the public comments was mailed to about 42,000 people on the EIS mailing list in early March 1994.

The final EIS was filed with the Environmental Protection Agency on May 4, 1994, and a notice of availability was published on May 9, 1994. The reintroduction of nonessential

experimental populations of gray wolves to Yellowstone National Park and central Idaho was the Service's proposed action. The four alternatives considered in detail in the EIS were (1) Natural Recovery (No action), (2) No wolf, (3) Wolf Management Committee, and (4) Reintroduction of Nonexperimental Wolves.

The Record of Decision on the EIS was signed by the Secretary of the Interior on June 15, 1994. The Secretary of Agriculture signed a letter concurring with that decision on July 13, 1994. The decision directed the implementation of the Service's proposed action as soon as practical.

The Service already has an active wolf management program in Montana because of the presence of breeding pairs of wolves. About 65 wolves now occupy northwestern Montana, and most of these occur near the Canadian border. The Montana program monitors wolves to determine their status, encourages research on wolves and their prey, provides accurate information to the public, and controls wolves that attack domestic livestock. Wolf control consists of translocating wolves that depredate on livestock to reduce livestock losses, and to foster local tolerance of nondepredating wolves to promote and enhance the conservation of the species. The control program does not relocate wolves to accelerate the natural expansion of wolves into unoccupied historic habitat. Wolf control includes removal of wolves that attack livestock and, although 19 wolves have been removed in that program, the wolf population in Montana has continued to expand at about 22 percent per year for the past 9 years.

4. Reintroduction Site

The Service proposes to reintroduce wolves into Yellowstone National Park. The Park was proposed as a site for the experimental population area after much deliberation by the Service and others. The Park was selected due to several factors. The vast remote habitats of the Park are under tight Federal controls, and it has high-quality wolf habitat and good potential wolf release sites. It is also distant from the current southern expansion of naturally formed wolf packs in Montana. Thus, any wolf pack documented inside the experimental area would likely result from reintroduction into the Park rather than from natural dispersal from extant wolf populations in Canada or northwestern Montana. The Service is also proposing establishment of a nonessential experimental population of wolves in central Idaho in a separate proposal in today's **Federal Register**.

The Service has determined that the proposed reintroduction effort in the Park has the greatest potential for successful recovery of the gray wolf in the conterminous United States, due to ecological and political considerations (Service 1994). Reintroduction of wolves into the Park will enhance wolf population viability by increasing the genetic diversity of wolves in the Rocky Mountain population, increase genetic interchange between segments of the population, and is projected to accelerate reaching wolf population recovery goals 20 years sooner than under the current natural recovery policy. No critical habitat would need to be designated; millions of acres of public land containing hundreds of thousands of wild ungulates currently provide more than enough habitat to support a recovered population of wolves in the Park and surrounding area.

Gray wolves that are reintroduced into the Park would be placed on Federal lands and classified as a nonessential experimental population. In so doing, the Service would accelerate the recovery of gray wolves in the northwestern United States while reducing local concerns about excessive government regulation of private lands, uncontrolled livestock depredations, big game predation, and the lack of State government involvement in the program.

Establishment of an experimental population of gray wolves in the Park would initiate wolf recovery in one of the three recovery areas described as necessary for recovery of gray wolves in the northern Rocky Mountains. The only alternative site identified at this time, central Idaho, is planned for future reintroduction efforts. There are no existing or anticipated Federal and/or State actions identified for this release site that are expected to have major effects on this experimental population. For all these reasons, and based on the best scientific and commercial data available, the Service finds not only that the release of wolves will further the conservation of this endangered species, but also that the Park constitutes the highest priority reintroduction site that will best serve to further the conservation of this species.

Gray wolves used for the reintroduction effort would be obtained from healthy wolf populations in Canada by permission of the Canadian and Provincial governments. Gray wolves are common in western Canada (tens of thousands) and Alaska (about 7,000) and they are increasing in the Great Lakes area. Thus, the removal of wolves from locations in Canada would not significantly impact the wolf populations there.

5. Reintroduction Protocol

This wolf reintroduction project is undertaken by the Service in cooperation with the National Park Service; Forest Service; other Federal agencies; potentially affected Tribes; States of Wyoming, Montana, and Idaho; and entities of the Canadian government. The Service would enter into agreements with the Canadian and provincial governments and/or Canadian resource management agencies to obtain wild wolves.

The wolf reintroduction project in Yellowstone National Park would require the transfer of about 45 to 75 wolves from southwestern Canada with assistance by Canadian and Provincial governments. About 15 wild wolves would be captured annually from several different packs over the course of 3–5 years by trapping, darting from helicopters, or net gunning in the autumn and winter. They would be transported to the Park by truck or plane. In the Park, groups of wolves, each consisting of pups and possibly adults from the same packs, would be placed in individual holding pens of about 0.4 hectare (1 acre) size for a period of up to two months to allow for acclimation to the new environment. Acclimation pens would be isolated and provided maximum protection from humans and other animals, and efforts would be made to prevent habituation to people. During acclimation, each animal would be monitored with radiotelemetry to ensure quick retrieval of an animal if necessary. The wolves would be provided carcasses of natural prey taken from the area where they will be released. In addition, the wolves would receive regular veterinary care, including examinations and vaccinations.

In autumn and early winter, about 3 groups of acclimated gray wolf pups, and possibly adult pack members, would be placed in the individual holding pens at about 3 release sites in the Park. The wolves would be kept and fed in these pens until about January 1. At that time, the wolves would be radio collared and released. Food (ungulate carrion) would be provided in the area until the wolves no longer required supplemental feeding. All wolves would be closely monitored each day or two for the first few weeks, and then the frequency of monitoring would gradually be reduced to about weekly. If wolves cause conflicts with humans, they will be recaptured and controlled according to the procedures that have been used with other problem wolves.

Based upon previous experience with movements of wild, relocated wolves, it is questionable whether adults will remain with each other or the pups. The pups would remain in the wild as long as they appeared to be sustaining themselves on carrion or wild prey. Wolf pups should be capable of killing wild prey by January.

The progress of the reintroduction effort would be reviewed periodically, and the success or failure of the release would be determined at least on an annual basis. In addition, the release of wild wolves into the Park would be reviewed and evaluated relative to the effects on the conservation and recovery of the gray wolf in the conterminous United States. If this reintroduction technique appeared successful, it would be repeated for at least three years or until two wild breeding pairs produced at least two young for two consecutive years in the Park. At that time, wolves would be monitored and no further reintroductions would take place unless fewer than 2 litters were produced in a single year.

Subsequent releases would be modified depending upon information obtained during the previous experiments. Utilizing information gained from the initial phase of the project, an overall assessment of the success of the reintroduction would be made after the first year, and for every year thereafter. It is thought that the physical reintroduction phase would be completed within 3–5 years. After the reintroduction of wolves has resulted in two packs raising 2 pups each for 2 consecutive years, the wolf population would be managed to grow naturally toward recovery levels. This reintroduction attempt is consistent with the recovery goals identified for this species by the 1987 recovery plan for the northern Rocky Mountain Wolf.

It is estimated that this program, in conjunction with natural recovery in northwestern Montana and a similar reintroduction into central Idaho, would result in a viable recovered wolf population (ten breeding pairs in each of three recovery areas for three consecutive years) by about the year 2002.

A small portion of Idaho (east of Interstate 15) and Montana (east of Interstate 15 and south of the Missouri River from Great Falls, Montana to eastern Montana border) and all of Wyoming is proposed as an experimental population area for wolf reintroduction into the Park. Private landowners and agency personnel adjacent to the Park will continue to be requested to immediately report any observation of a gray wolf to the Service or to a Service designated agency. Take of gray wolves by the public would be discouraged by an extensive information and education program and by the assurance that, at least initially, all animals will be monitored with radio telemetry and therefore easy to locate when they leave public lands. The public would be encouraged to cooperate with the Service in the attempt to closely monitor the wolves and quickly resolve any conflicts.

More specific information on conduct of the wolf reintroduction program can be obtained from Appendix 4 "Scientific techniques for the reintroduction of wild wolves" in the environmental impact statement: "The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho" (Service 1994).

Status of Reintroduced Populations

This reintroduced population of gray wolves is proposed to be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. As previously stated, the experimental population of wolves would be treated as a threatened species or species proposed for listing for the purposes of sections 4(d), 7, and 9 of the Act. This enables the Service to propose a special rule that can be less restrictive than the mandatory prohibitions covering endangered species. In the case of the Yellowstone reintroduction, the biological status of the species, and the need for management flexibility in reintroducing the gray wolf has resulted in the Service proposing to designate the reintroduced wolves as "nonessential". The Service has found that the nonessential designation, in concert with protective measures, is necessary to conserve and recover the gray wolf in the Yellowstone ecosystem.

It is anticipated that wolves will come in contact with the human population and domestic animals inside and outside of the Park. Public opinion surveys, public comments on wolf management planning, and the positions taken by elected local, State, and Federal government officials have indicated that wolves can not be reintroduced without assurances that current uses of public and private lands would not be disrupted by wolf recovery activities. The following provisions respond to these concerns. There would be no violation of the Act for unintentional, nonnegligent, and accidental taking of wolves by the public if incidental to otherwise lawful activities, and taking in defense of human life would not be prohibited—provided such takings are reported to the Service or to an authorized agency within 24 hours. Certain Federal, State, and/or Tribal employees would be authorized by the Service to take wolves needing special care or posing a threat to livestock or property. Livestock owners with grazing allotments on public land and private land owners or their immediate designates would be permitted to harass adult wolves in an opportunistic non-injurious manner on their allotments or private property at any time, provided that such harassment would have to be reported within 7 days to a Service-designated authority.

Under the proposed status, livestock owners or their designates could receive a permit from a Service-designated agency to take (injure or kill) gray wolves that are attacking livestock on permitted public livestock grazing allotments, but only after 6 or more breeding pairs were established in the Park or experimental area. Such take, moreover, would only be permitted after due notification to Service designated agencies, unsuccessful efforts to capture the offending wolf by such agencies, and documentation of additional livestock losses. Private landowners or their designates would be permitted to take (injure or kill) a wolf in the act of wounding or killing livestock on private land. However, physical evidence (wounded or dead livestock) that such an attack occurred at the time of the taking would have to be clearly evident in such instances. Such take would be immediately (within 24 hours) reported to the Service or agencies authorized by the Service for investigation.

Wolves that repeatedly (2 times in a calendar year) attack domestic animals other than livestock (fowl, swine, goats, etc.) or pets (dogs or cats) on private property would be designated as problem wolves and would be moved from the area by the Service or a designated agency. Wolves that depredate on domestic animals after being relocated once after such previous conflicts would be designated chronic problem wolves and be removed from the wild.

It is unlikely that wolf predation on big game populations will be the primary cause for failure of States or Tribes to meet their specific big game management objectives outside National Parks and National Wildlife Refuges. Nor is such predation likely to inhibit wolf population increases. However, if the Service deemed it necessary, wolves from the responsible packs could be translocated to other sites in the experimental area to resolve such predation problems. Wolves could not be deliberately killed to resolve wolf predation conflicts with big game while

the experimental population of wolves were listed. However, such take is expected to be rare and is unlikely to significantly affect the overall rate of wolf recovery. The States and Tribes would define such situations in their Service-approved wolf management plans before such actions could be taken.

Wolves would be moved on a case-by-case basis to enhance wolf recovery in the experimental population area. Generally there would not be attempts to locate and/or move lone wolves dispersing in this area, although this may occur.

Hunting, trapping, and animal damage control activities are regulated inside and outside National Parks and National Wildlife Refuges. Most of the area within the wolf reintroduction area is remote and sparsely inhabited wild lands. There are some risks to wolf recovery that would be associated with take of wolves, other land uses, and various recreational activities. However, these risks are low because take of wolves should occur so infrequently that wolf recovery would not be significantly affected.

The Service finds that the stated protective measures and management practices are necessary and advisable for the conservation and recovery of the gray wolf in the Park. No additional Federal regulations appear to be needed. The Service also finds that the proposed nonessential experimental status is appropriate for gray wolves released in Yellowstone National Park that are taken from wild populations. As discussed above, although once extirpated from its historic range in most of the conterminous United States, the gray wolf is common in western Canada (tens of thousands) and Alaska (about 7,000), and wolves are increasing in the Great Lakes area. The gray wolf has also recently been recovering in a small portion of its range in the western United States. Therefore, taking fewer than 100 wolves from these areas will pose no threat to the survival of the species in the wild.

An additional management flexibility would result from using the nonessential status for wolves introduced into the Park, due to less stringent requirements of section 7 of the Act (interagency consultation) for wolves that may occur outside National Parks and National Wildlife Refuges. Wolves that are part of the nonessential experimental population would be treated as animals proposed for listing, rather than listed, when occurring outside of a National Park or Refuge, and only two provisions of section 7 apply to Federal actions outside National Parks and Wildlife Refuges: section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. The results of a conference are advisory in nature; agencies are not required to refrain from commitment of resources to projects as a result of a conference. There are, in reality, no conflicts envisioned with any current or anticipated management actions of the Forest Service or other Federal agencies in the areas. National Forests are a benefit to the project because they form a buffer to private properties in many areas, and National Forests are typically managed to produce wild animals that would be prey to wolves. The Service finds that there are no threats to the success of the reintroduction project or the overall continued existence of the gray wolf from the less restrictive section 7 requirements associated with the nonessential designation.

The full provisions of section 7 apply to nonessential experimental populations in a National Park or National Wildlife Refuge. The Service, National Park Service, Forest Service or any other Federal agency is prohibited from authorizing, funding, or carrying out an action within a National Park or National Wildlife Refuge that is likely to jeopardize the continued existence of the gray wolf. Pursuant to 50 CFR 17.83(b), section 7 determinations must consider all experimental and nonexperimental wolves as a single listed species for analysis purposes. The Service has reviewed all ongoing and proposed uses of the Parks and Refuges and found none that are likely to jeopardize the continued existence of the gray wolf, nor will they adversely affect the success of the reintroduction program. Potential uses that could adversely affect success are hunting, trapping, animal damage control activities and high speed vehicular traffic. Hunting and trapping and USDA Animal Damage Control programs are prohibited or tightly regulated in National Parks and are closely regulated by State and Federal law and policy in other areas. There are very few paved roads in the proposed reintroduction area and wolf encounters with vehicles are likely to be infrequent. Even most of the unpaved roads are used seasonally, and are on the outside fringes of the reintroduction area. In addition, these unpaved roads typically have low vehicle traffic and are constructed for low speed use.

Location of Experimental Population

The release site for reintroducing wolves will be in Yellowstone National Park. The experimental population area will include all of the State of Wyoming, that portion of Idaho east of Interstate Highway 15, and all the State of Montana east of Interstate Highway 15 and south of the Missouri River east of Great Falls, Montana, to the Montana/North Dakota border. Comments obtained by the Service during review of the DEIS resulted in changing the boundary of the experimental population area to the Missouri River in central Montana (Service 1994). The Missouri River was chosen as the northern boundary because the record of wolf sightings and wolf mortalities indicated that, during the last several decades, wolves have occurred north, but not south of the river. The river may not act as a complete barrier to wolf movements, but current information indicates that, if wolves are found south of the river, they would likely be experimental wolves from the Yellowstone area. Wolves north of the river would likely be naturally dispersing wolves from northwestern Montana or Canada.

The proposed experimental area does not currently support reproducing pairs of wolves nor is it likely to support 2 pairs of naturally dispersing wolves from northwestern Montana within the next 3 years, at which time the reintroduced population should be growing and potentially dispersing into Montana and central Idaho. Except for an established and growing population of gray wolves in northwestern Montana, only gray wolf individuals have been documented in the remainder or the northern Rocky Mountains in the United States. Thus, the Yellowstone National Park reintroduction is consistent with provisions of section 10(j) of the Act that requires that an experimental population be wholly separate geographically from nonexperimental populations of the same species. An occasional, solitary wolf has been reported, killed, or otherwise documented in Idaho, Wyoming, Montana, and other western States, and single packs occasionally have been reported throughout the northern Rocky Mountains. However, these reported wolves and groups of wolves, if all reports are factual, apparently disappeared for unknown reasons and did not establish recoverable "populations" as defined by wolf experts (Service 1994). However, it is possible that prior to 2002, other wolves may appear in the wild, and be attracted to the experimental area by the

presence of the reintroduced wolves, or by other factors. These "new" wolves that appear in the experimental population area might contribute to recovery of the experimental population, and they also would be classified as part of the experimental, nonessential population.

It is anticipated that some wolves may disperse from the experimental area and contribute to wolf recovery in northwestern Montana. If so, these wolves would be classified as endangered, as in the case of wolves that recolonized an area near Glacier National Park in 1982. It is also possible, but not probable, that during the next 3 years, movements between recovery areas would result in some genetic exchange between wolves resulting from natural recovery and those resulting from the reintroduction. It is not anticipated that such exchange will significantly affect the rate of recovery in the Yellowstone National Park experimental population area.

For the purposes of establishment of this experimental population, the Service has determined that there is no existing wolf population in the recovery area that would preclude reintroduction and establishment of an experimental population in Yellowstone National Park. A wolf population is defined as at least two breeding pairs of naturally occurring gray wolves that successfully raise at least two young to December 31 of their birth year for two consecutive years (Service 1994). If a wolf population were discovered in the proposed recovery area, no reintroduction would occur. Instead, the success of the naturally occurring wolf population would be monitored to determine if population recovery was continuing. If this event occurs before the effective date of the experimental population rule, those wolves would be determined to be, and managed as, endangered wolves under the full authority of the Act. In this case, the experimental rule would not be implemented, and no wolves would be reintroduced in that experimental area. If wolf population growth does not continue, and within 5 years the wolf population has not doubled from the original founding pairs and pups, reintroduction would proceed. Wolves will not be introduced as an experimental population if, prior to introduction of wolves, breeding groups of wolves are discovered. However, once the experimental population rule is established and the reintroduction begun by the actual release of wolves into a recovery area, the experimental population rule would remain in effect until wolf recovery occurs or after a scientific review indicates that modifications in the experimental rule are necessary to achieve wolf recovery.

If a wolf population (2 breeding pairs successfully raising two young each for two consecutive years) were discovered in the proposed Yellowstone experimental population area, reintroduction under an experimental population rule would not occur into that area and any such wolf population would be managed as a natural recovering population in that area. The boundaries of the proposed experimental population area would be changed, as needed, to encourage recovery of any naturally occurring, breeding wolf population if such natural population is discovered prior to the establishment of the experimental population, and before wolf reintroduction occurs. No experimental population area will contain a portion of the home range of any active breeding pairs of wolves that have successfully raised young. Any changes in the boundaries of the nonessential experimental population area, required because of the above conditions, would be reflected in a final rule.

Utilization of Federal public lands including National Parks and Forests is consistent with the legal responsibility of the National Park Service to sustain the native wildlife resources of the United States, and of the Forest Service and all other Federal agencies under section 7(a)(1) to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species.

Management

As previously stated, the nonessential experimental population of gray wolves would be established in the Yellowstone area by introducing gray wolves into Yellowstone National Park under authority of section 10(j) of the Act, as amended. The Yellowstone area includes all of Wyoming and parts of Montana and Idaho that surround the Park. Ongoing wolf monitoring efforts (Service 1994) would continue to document the presence of any wild wolves, and, prior to any reintroduction, the Service would make a determination of the status of any naturally occurring wolf population in this area. Wolves would not be reintroduced into the Park if a wolf population is documented in the recovery area. After introduction has been completed according to the Reintroduction Protocol (section 5 above), management of the experimental population will begin.

The National Park Service will be the primary agency implementing the experimental population rule inside the boundaries of National Parks. The States of Wyoming, Montana, and Idaho, and potentially affected Tribes will be encouraged to enter into cooperative agreements for management of the gray wolf in the Park. These cooperative agreements would be reviewed annually by the Service to ensure that the States and Tribes have adequate regulatory authority to conserve listed species, including the gray wolf. It is anticipated that the States and Tribes will be the primary agencies implementing this experimental population rule outside National Parks and National Wildlife Refuges. The Service will provide oversight, coordinate wolf recovery activities, and provide technical assistance. If the States and Tribes do not assume wolf management responsibilities, the Service would do so, as needed.

Management of the reintroduced wolves would allow wolves to be killed or moved under some conditions by Service authorized Federal, State, and Tribal agencies for domestic animal depredations and excessive predation on big game populations. Under some conditions, the public could harass or kill wolves attacking livestock (cattle, sheep, horses, and mules). There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. There would be no land-use restrictions applied when 6 or more wolf packs were documented in the experimental population area because sufficient wolf numbers would be available and no restrictions around den sites or other critical areas would be necessary to promote wolf recovery. Enhancement of prey populations would be encouraged. Use of toxicants lethal to wolves in areas occupied by wolves would still be prohibited by existing labeling restrictions.

Wolves have a relatively high reproductive rate and, with 6 packs of wolves present in a population, about 20–25 pups could be born each year to greatly compensate for mortality which would result from management actions. The Service believes that a possible 10 per cent loss of wolves could occur due to control actions and an additional 10 per cent loss could occur from other mortality sources. However, once the number of introduced wolves has reached the goal of 6 wolf packs, the reproductive output of 6 packs of wolves would provide for a wolf population increasing at or near 22 per cent per year. This increase in numbers should easily accommodate more flexible wolf management to further address local concerns and resistance to

wolf recovery efforts, and reduce the need and costs of agency actions to resolve wolf/human conflicts. Closely regulated public control also can more effectively focus on individual problem wolves as conflicts occur rather than hours or days after a problem is documented. Agency control actions would more likely target groups of wolves that contain problem individuals, whereas public control could be focused on individual problem wolves.

The Service, or States and Tribes if authorized, may move wolves that are having unacceptable impacts on ungulate populations in the unlikely event that those impacts would inhibit wolf recovery. Wolves could be moved to other places within the experimental population area. Two examples are where wolf predation is dramatically affecting prey availability because of unusual habitat or weather conditions (e.g., bighorn sheep in areas with marginal escape habitat) or where wolves cause prey to move onto private property and mix with livestock, increasing potential conflicts. The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal management plans. These plans would be approved by the Service through cooperative agreement before such control could be conducted. Wolves would not be deliberately killed to address ungulate-wolf conflicts. These unacceptable impacts would be identified in State and Tribal wolf management plans and developed in consultation with the Service. If such control by the States or Tribes were likely to be significant or beyond the provisions of the experimental rule as determined by the Service, then they would be specifically incorporated as part of an amendment to this experimental rule, which would be adopted following national public comment and review.

Management of wolves in the experimental population would not result in any major change in existing private or public land-use restrictions (except at containment facilities during reintroduction) after 6 breeding pairs of wolves are established in this experimental area. When 5 or fewer breeding pairs are in this experimental area, land-use restrictions could be employed on an as needed basis, at the discretion of land management and natural resources agencies to control intrusive human disturbance. Temporary restrictions on human access, when 5 or fewer breeding pairs are established, may be required near active wolf den sites between April 1 and June 30.

The Service, or Federal, State or Tribal agencies authorized by the Service would be allowed to promptly remove any wolf of the experimental population that the Service, or agency authorized by the Service, determined was presenting a threat to human life or safety. Although not a management option *per se*, it is noted that a person could legally kill or injure wolves in response to an immediate threat to human life. The incidental and accidental nonnegligent take in the course of otherwise lawful recreational activity, or take in defense of human life, would be permitted by the Service and Service-authorized agencies, provided that such taking is immediately (within 24 hours) reported to the authorized State or Federal authority.

The Service or State, Federal, or Tribal agencies designated by the Service will control wolves that attack livestock (cattle, sheep, horses, and mules) by management measures that may include aversive conditioning, nonlethal control, and/or moving wolves when 5 or fewer breeding pairs are established, and by previously described measures. However, killing wolves or placing them in captivity may be considered and used as management options after 6 or more breeding pairs are established in the experimental population area. For depredation occurring on public land and prior to 6 breeding pairs becoming established, depredating females and their pups would be released on site prior to October 1. Wolves on private land under these circumstances would be moved. Wolves that attack other domestic animals and pets on private land 2 times in a calendar year would be moved. Chronic problem wolves (wolves that depredate on domestic animals after being moved for previous domestic animal depredations) would be removed from the wild.

The Service, other Federal agencies, and Tribal and State Wildlife Agency personnel would be additionally authorized and should be prepared to take wolves under special circumstances where there was an immediate threat to livestock or property, or a need to move individuals for genetic purposes. Wolves could be captured alive and translocated to resolve demonstrated conflicts with State big-game management objectives or when they were outside designated wolf pack recovery areas. Take procedures in such instances would involve live capture and removal to a remote area, or if the animal is clearly unfit to remain in the wild, return to a captive facility. Killing of animals would be a last resort and would be authorized only if live capture attempts fail or there is some clear danger to human life.

The Service and other authorized management agencies would use the following conditions and criteria in determining the problem status of wolves within the nonessential experimental population area:

(1) Wounded livestock or some remains of a livestock carcass must be present with clear evidence (Roy and Dorrance 1976; Fritts 1982) that wolves were responsible for the damage and there must be reason to believe that additional losses would occur if the problem wolf or wolves were not controlled. Such evidence is essential since wolves may feed on carrion they have found while not being responsible for the kill.

(2) Artificial or intentional feeding of wolves must not have occurred. Livestock carcasses not properly disposed of in an area where depredations have occurred will be considered attractants. On Federal lands, removal or resolution of such attractants must accompany any control action. Livestock carrion or carcasses on Federal land, not being used as bait in an authorized control action (by agencies authorized by the Service), must be removed, buried, burned, or otherwise disposed of so that the carcass(es) will not attract wolves.

(3) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

Final Federal responsibility for protection of gray wolves in the experimental population under provisions of the Act would cease after: (1) A minimum of 10 breeding pairs are documented for three consecutive years in each of the three recovery areas presented by the revised wolf recovery plan (Service 1987), and evaluated by the environmental impact statement (Service 1994), providing that legal mechanisms are in place to conserve this population, and (2) gray wolves in Montana, Idaho, and Wyoming are delisted according to provisions of the Act. The Act specifies that the status of a species must be monitored for a 5-period after delisting. If, after delisting, the wolf population fell below the minimum criteria of 10 breeding pairs in any recovery area for two of three consecutive years, wolves in that area would be considered for relisting under the Act.

Public Comments Solicited

The Service intends that any final rule resulting from this proposal be as accurate and effective as possible. Therefore, comments or suggestions from the public, States, Tribes, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments must be received within 60 days of publication of the proposed rule in the **Federal Register**.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

The Service will also hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Cheyenne, Wyoming; Boise, Idaho; Helena, Montana; Salt Lake City, Utah; Seattle, Washington; and Washington, D.C. The location, dates, and times of these six hearings will be announced in a forthcoming issue of the **Federal Register** and in newspapers.

National Environmental Policy Act

An Environmental Impact Statement under the National Environmental Policy Act has been prepared and is available to the public (see **ADDRESSES**). This proposed rule is an implementation of the proposed action and does not require revision of the environmental impact statement on the reintroduction of gray wolves to Yellowstone National Park and central Idaho.

Required Determinations

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

Fritts, S.H. 1982. Wolf depredation on livestock in Minnesota. U.S. Fish and Wildlife Service Resource Publication 145. 11 pp.

Roy, L.D., and M.J. Dorrance. 1976. Methods of investigating predation of domestic livestock. Alberta Agriculture, Edmonton, Alberta. 53 pp.

U.S. Fish and Wildlife Service. 1987. Northern Rocky Mountain wolf recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 119 pp.

U.S. Fish and Wildlife Service. 1994. Reintroduction of gray wolves to Yellowstone National Park and central Idaho. Final Environmental Impact Statement, Helena, Montana. 608 pp.

Author

The principal author of this proposal is Edward E. Bangs (see **ADDRESSES** section). Harold M. Tyus, Denver Regional Office, served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), the table entry for "Wolf, gray" under "MAMMALS" is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A. (48 conterminous States, except MN and where listed as an experimental population below).	E	1, 6, 13, 15, 35, _____	17.95(a)	NA
Do	....do	....do	U.S.A. (MN)	T	35 _____	17.95(a)	17.40(d)
Do	....do	....do	U.S.A. (WY and portions of ID and MT—see. § 17.84( )	XN	.....	NA	17.84( )
*	*	*	*	*	*	*	*

3. § 17.84 be amended by adding paragraph ( ) following the last paragraph to read as follows:

§ 17.84 Special Rules—Vertebrates.

* * * * *

( ) Gray wolf (*Canis lupus*).

(1) The gray wolf (wolf) population identified in paragraph ( )(6) of this section is a nonessential experimental population. This population will be managed in accordance with the respective provisions of this section.

(2) No person may take this species in the wild in an experimental population area except as provided in paragraphs ( )(2), (4), and (7) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service) that are legally using public land (Federal land and any other public lands designated in State and Tribal wolf management plans as approved by the Service) may harass any adult wolf (a wolf that does not exceed 50 lbs in weight is not considered an adult for these purposes) in an opportunistic noninjurious manner at any time, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) adult wolves in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service), *Provided* that such incidents must be reported immediately but no later than within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution. A gray wolf that does not exceed 50 lbs in weight is not considered an adult and can not be taken.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit from the Service or other agencies designated by the Service, to take (including to kill or injure) adult wolves that are in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service), *Provided* that 6 or more breeding pairs of wolves have been documented in that experimental population area and that the Service or other agencies authorized by the Service has confirmed that the livestock losses have been caused by wolves and has unsuccessfully attempted to resolve the problem and subsequent livestock losses are documented. Such take must be reported immediately but no later than within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service and livestock freshly wounded or killed by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) The potentially affected States and Tribes may move wolves to other areas within an experimental population area as described in paragraph ( )(6), *Provided* that the level of wolf predation is having unacceptable impacts on localized ungulate populations and to the extent that those impacts could inhibit wolf recovery. The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal wolf management plans. These plans must be approved by the Service through cooperative agreement before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service may promptly remove (place in captivity or kill) any wolf the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, *Provided* that all such take is reported immediately (within 24 hours) to the Service reintroduction project leader or Service designated agent. The taking of any wolf without such evidence of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are designated as "problem wolves" (as defined below) that attack livestock (cattle, sheep, horses, and mules or domestic animals or as defined by State and Tribal wolf management plans approved by the Service) by nonlethal measures, including but not limited to: aversive conditioning, nonlethal control, and/or moving wolves when 5 or fewer breeding pairs are established, and by previously described measures. If such measures result in a wolf mortality, it must be demonstrated that such mortality was nondeliberate. Lethal control of wolves or placing them in permanent captivity will be allowed only after 6 or more breeding pairs are established in the experimental population area. For depredations occurring on federally managed lands and any additional public lands identified in State or Tribal wolf management plans and prior to 6 breeding pairs becoming established, depredating female wolves with pups and their pups will be released at or near the site of capture prior to October 1. Wolves on private land under these circumstances will be moved to other areas within the experimental population area. Wolves that attack domestic animals other than livestock, including pets on private land, a total of 2 times in a calendar year will be moved. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three conditions and criteria will apply in determining the problem status of wolves within the nonessential experimental population area:

(A) Wounded livestock or some remains of a livestock carcass must be present with clear evidence that wolves were responsible for the damage and there must be reason to believe that additional losses would occur if the problem wolf or wolves were not controlled. Such evidence is essential because wolves may feed on carrion they have found and may not be responsible for the death of livestock.

(B) Artificial or intentional feeding of wolves must not have occurred. Livestock carcasses not properly disposed of in an area where depredations have occurred will be considered attractants. On Federal lands, removal or resolution of such attractants must accompany any control action. Livestock carrion or carcasses on Federal land, not being used as bait in an authorized control action (by agencies authorized by the Service), must be removed, buried, burned, or otherwise disposed of such that the carcass(es) will not attract wolves.

(C) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take gray wolves found in an area defined in paragraph ( )(6), *Provided* that, the take is incidental, accidental, unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care in the course of otherwise lawful recreational activity, and that such taking is immediately (within 24 hours) reported to the authorized Service or Service-designated authority.

Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or Tribal personnel may be additionally authorized in writing by the Service to take animals under special circumstances that pose an immediate threat to livestock or property, or when animals need to be moved for genetic purposes. Wolves may be live captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Endangered Species Act, or when they are outside the designated experimental population area. Take procedures in such instances would involve live capture and release to a remote area, or if the animal is clearly unfit to remain in the wild, return to a captive facility. Killing of animals will be a last resort and will be authorized only if live capture attempts fail or there is some clear danger to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf in the wild in the experimental population area if such action is necessary:

(A) For scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen which may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported immediately (within 24 hours) to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(3) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and Tribal land management agencies. When 5 or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when 5 or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites. When 6 or more breeding pairs are established in an experimental population area, no land use restrictions may be employed outside of National Parks or National Wildlife Refuges.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Endangered Species Act.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs ( )(2) through (4) of this section.

(6) The site for reintroduction is within the historic range of the species:

(i) The Yellowstone Management area is shown on the following map. The boundaries of the nonessential experimental population area will be that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.

(ii) [Reserved]

(iii) All wolves found in the wild within the boundaries of this paragraph ( )(6) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph ( )(6) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area it may relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild grey wolf or if the Service or agencies designated by the Service determine the animal shows substantial evidence of recent hybridization with other canids such as domestic dogs or coyotes or of being an animal raised in captivity, it will be returned to captivity or killed.

(7) The reintroduced wolves will be continually monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(8) The status of the experimental population will be reevaluated within the first 5 years after the first year of releases of wolves to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released in the area, as well as the overall health of the experimental wolves. Once recovery goals are met for downlisting or delisting the species, a rule will be proposed to address downlisting or delisting.

(9) The Service does not intend to reevaluate the "nonessential experimental" designation. The Service does not foresee any likely situation which would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the Northern Rocky Mountains according to provisions outlined in the Act.

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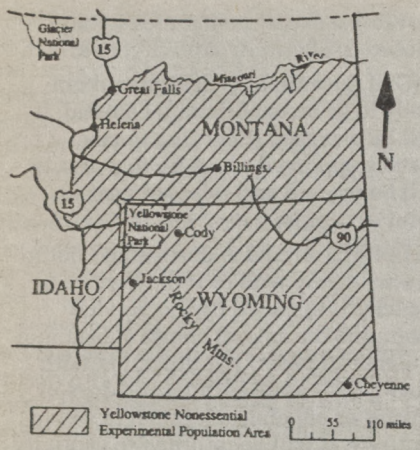

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Dated: August 8, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–19998 Filed 8–15–94; 8:45 am]

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50 CFR Part 17

RIN 1018–AC87

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of the Gray Wolf in Central Idaho Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reintroduce the gray wolf (*Canis lupus*), an endangered species, into central Idaho in order to establish a population of wolves. This population would be classified as a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). Gray wolves have been extirpated from most of the western United States. They presently occur in a small population in extreme northwestern Montana, and as incidental occurrences of a few wolves in Idaho, Wyoming, and Washington that result from the dispersal of wolves from Montana and Canada. This reintroduction is being proposed to reestablish a viable wolf population in the central Idaho area (including a portion of southwestern Montana), one of three wolf recovery areas that have been identified in the Northern Rocky Mountain Wolf Recovery Plan. Potential effects of this proposed rule were evaluated in an environmental impact statement completed in May 1994. This gray wolf reintroduction would not conflict with existing or anticipated Federal agency actions or traditional public uses of park lands, wilderness areas, or surrounding lands.

DATES: Comments from all interested parties must be received by October 17, 1994.

ADDRESSES: Comments or other information may be sent to: Gray Wolf Reintroduction, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601. The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at 100 N. Park, Suite 320, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Bangs, at the above address, or telephone (406)449–5202.

SUPPLEMENTARY INFORMATION:

Background

1. Legal

Amendments of 1982, P.L. 97–304, made significant changes to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental populations". Under previous authorities in the Act, the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroductions as a management tool.

Under section 10(j), a reintroduced population of a listed species established outside its current range, but within its historic range may now be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." The Act requires that an experimental population be separated geographically from nonexperimental populations of the same species. Furthermore, an experimental population is treated as a threatened species, except that, solely for section 7 purposes (except for subsection (a)(1)), an experimental population determined not to be essential to the continued existence of a species is treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4 of the Act. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized or carried out by a Federal agency.

2. Biological

This proposal deals with the gray wolf (*Canis lupus*), an endangered species of carnivore that was extirpated from the western portion of the conterminous United States by about 1930. The gray wolf is native to most of North America north of Mexico City, except for the southeastern United States, which was occupied by a similar species, the red wolf (*Canis rufus*). The gray wolf occupied nearly every area in North America that supported populations of hooved mammals (ungulates), its major food source.

Twenty-four distinct subspecies of gray wolf have been recognized in North America. Recently, however, taxonomists have suggested that there are five or fewer subspecies of gray wolf in North America and that the wolves that once occupied the northern Rocky Mountains of the United States belonged to a more widely distributed subspecies than was previously believed.

The gray wolf historically occurred in the northern Rocky Mountains, including mountainous portions of Wyoming, Montana, and Idaho. The great reduction in the distribution and abundance of this species in North America was directly related to human activities, especially elimination of native ungulates, conversion of wildland into agricultural lands, and extensive predator control efforts by private, State, and Federal agencies. When most wolves in the conterminous United States were eradicated, the natural history of wolves was poorly understood. As were other large predators, it was considered a nuisance and a threat to humans. Today, the gray wolf's role as an important and necessary part of natural ecosystems is better appreciated.

Wolf reproduction was not detected in the Rocky Mountain portion of the United States for a period of about 50 years prior to 1986. At that time, a wolf den was discovered near the Canadian border in Glacier National Park. This event was presumably due to the southern expansion of Canadian wolf populations, and the wolf population in Glacier National Park has steadily expanded to an estimated size of about 65 wolves that now occupy northwestern Montana.

Reproducing wolf populations are not known to occur in Idaho or southwestern Montana. Wolves occasionally have been sighted in these

States, but they have not established populations as defined by wolf experts (Service 1994). Historical reports suggest wolves may have produced young there several times in the recent past. However, based on extensive surveys and interagency monitoring efforts (Service 1994), no wolf population has persisted in these States.

3. Wolf Recovery Efforts

In the 1970s, the state of Montana led an interagency recovery team, established by the Service, that developed a recovery plan for the Northern Rocky Mountain Wolf. That 1980 plan recommended a combination of natural recovery and reintroduction be used to recover wolf populations in the area around Yellowstone National Park (Park) north to the Canadian border, including central Idaho.

A revised recovery plan was approved by the Service in 1987 (Service 1987). It identified a recovered wolf population as being at least 10 breeding pairs of wolves, for 3 consecutive years, in each of 3 recovery areas (northwestern Montana, central Idaho and the Yellowstone area). A population of this size would comprise approximately 300 wolves. The plan recommended natural recovery in Montana and Idaho, and using the experimental-population authority of section 10(j) of the Act to quickly reintroduce wolves to Yellowstone National Park and to conduct flexible management to address local concerns about their potential negative impacts. If 2 wolf packs did not become established in central Idaho within 5 years, the plan recommended that conservation measures other than natural recovery be considered.

In 1990 (Pub. L. 101–512), Congress directed appointment of a Wolf Management Committee, composed of 3 Federal, 3 State and 4 interest group representatives, to develop a plan for wolf restoration to Yellowstone and central Idaho. That Committee provided a majority, but not unanimous, recommendation to Congress in May 1991. Among the measures recommended was a declaration by Congress directing reintroduction of wolves to Yellowstone National Park, and possibly central Idaho, as a special nonessential experimental population with particularly liberal management by agencies and the public to resolve potential conflicts. Wolves and ungulates under that plan would be intensively managed by the States with Federal funding and thus implementation costs were estimated to be high. Congress took no action on the Committee's recommendation.

In November 1991 (Pub. L. 102–154), Congress directed the Service, in consultation with the National Park Service and Forest Service, to prepare an environmental impact statement (EIS), that considered a broad range of alternatives on wolf reintroduction to Yellowstone National Park and central Idaho. In 1992 (Pub. L. 102–381), Congress directed the Service to complete the EIS by January 1994 and indicated that the preferred alternative should be consistent with existing law.

The Service formed and funded an interagency team to prepare the EIS. In addition to the National Park Service and Forest Service, the States of Wyoming, Idaho, and Montana, USDA Animal Damage Control, and the Wind River and Nez Perce Tribes participated. The Gray Wolf EIS program emphasized public participation. In the spring of 1992, nearly 2,500 groups or individuals that had previously expressed an interest in wolves were directly contacted and the EIS program was widely publicized by the news media.

In April 1992, a series of 27 "issue scoping" open houses were held in Montana, Wyoming, and Idaho and 7 more in other locations throughout the U.S. The meetings were attended by nearly 1,800 people and thousands of brochures were distributed. Nearly 4,000 people provided their thoughts on issues they felt should be addressed in the EIS. A report describing the public's comments was mailed to 16,000 people in July 1992.

In August 1992, another series of 27 "alternative scoping" open houses and 3 hearings were held in Wyoming, Montana, and Idaho. Three other hearings were held in Seattle, WA, Salt Lake City, UT, and Washington DC. In addition, a copy of the alternative scoping brochure was inserted into a Sunday edition of the two major newspapers in Montana, Wyoming, and Idaho (total circulation about 250,000). Nearly 2,000 people attended the meetings and nearly 5,000 comments were received about different ways that wolf recovery might be managed. Public comments reflected the strong polarization that has typified management of wolves. A report on the public's ideas and suggestions was mailed to about 30,000 people in November 1992. In April 1993, a Gray Wolf EIS planning update report was published. It discussed the status of the EIS, provided factual information about wolves, and requested the public to report observations of wolves in the northern Rocky Mountains. It was mailed to nearly 40,000 people that had requested information, residing in all 50 states and over 40 foreign countries.

The public comment period on the draft EIS (DEIS) began on July 1, 1993, and the notice of availability was published July 16. Full DEIS documents were mailed to potentially affected agencies, public libraries, many interest groups and to all who requested the complete DEIS. In addition, the DEIS summary, a schedule of the 16 hearings, and a request to report wolf sightings were printed in a flyer that was inserted into the Sunday edition of 6 newspapers in Wyoming, Montana and Idaho with a combined circulation of about 280,000. In mid-June 1993, the Service sent out a letter to over 300 groups, primarily in Wyoming, Montana, and Idaho offering a presentation on the DEIS. As a result, 31 presentations were given to about 1,000 people during the comment period on the DEIS.

During the public review period from July 1 to November 26, 1993, on the DEIS, comments were received from over 160,200 individuals, organizations, and government agencies. This degree of public response indicated the strong interest people have in the management of wolves. A summary of the public comments was mailed to about 42,000 people on the EIS mailing list in early March 1994.

The final EIS was filed with the Environmental Protection Agency on May 4, 1994, and a notice of availability was published on May 9, 1994. The reintroduction of nonessential experimental populations of gray wolves to Yellowstone National Park and central Idaho was the Service's proposed action. The four alternatives considered in detail in the EIS were (1) Natural Recovery (No action), (2) No wolf, (3) Wolf Management Committee, and (4) Reintroduction of Nonexperimental Wolves.

The Record of Decision on the EIS was signed by the Secretary of the Interior on June 15, 1994. The Secretary of Agriculture signed a letter concurring with that decision on July 13, 1994. The decision directed the implementation of the Service's proposed action as soon as practical.

The Service already has an active wolf management program in Montana because of the presence of breeding pairs of wolves. About 65 wolves now occupy northwestern Montana, and most of these occur near the Canadian border. The Montana program monitors wolves to determine their status, encourages research on wolves and their prey, provides accurate information to the public, and controls wolves that attack domestic livestock. Wolf control consists of translocating wolves that depredate on livestock to reduce livestock losses, and to foster local

tolerance of non-depredating wolves to promote and enhance the conservation of the species. The control program does not relocate wolves to accelerate the natural expansion of wolves into unoccupied historic habitat. Wolf control includes removal of wolves that attack livestock and, although 19 wolves have been removed from 1986 to present in northwestern Montana, the wolf population in Montana has continued to expand at about 22 per cent per year for the past 9 years.

4. Reintroduction Site

The Service proposes to reintroduce wolves into Federal lands managed by the USDA Forest Service. The Idaho location was proposed as a site for this experimental population area after much deliberation by the Service and others. The central Idaho reintroduction site is a vast area of about 53,000 km^2 (20,000 mi^2) of contiguous National forests, including the Bitterroot, Boise, Challis, Clearwater, Nez Perce, Payette, Sawtooth, Salmon, and Panhandle National Forests. In the center of this area are three wilderness areas, the Frank Church River-of-no-Return, Selway-Bitterroot, and the Gospel-Hump Wilderness Areas that collectively comprise about 16,000 km^2 (6,000 mi^2) of wilderness habitat.

This vast area of Federal lands has high quality wolf habitat and good potential wolf release sites. Also, the central Idaho area is sufficiently distant from the current southern expansion of naturally formed wolf packs in Montana that any wolf pack documented inside the experimental area would likely result from reintroduction rather than from natural dispersal from extant wild wolf populations in Canada or northwestern Montana.

The Service has determined that the proposed reintroduction effort in central Idaho is necessary for the successful recovery of the gray wolf in the conterminous United States, due to ecological and landownership considerations (Service 1994). Reintroduction of wolves into central Idaho will enhance wolf population viability by increasing the genetic diversity of wolves in the Rocky Mountain population, increase genetic interchange between segments of the population, and is projected to accelerate reaching wolf population recovery goals 20 years sooner than under the current natural recovery policy. No critical habitat would be designated; millions of acres of public lands contain hundreds of thousands of wild ungulates (Service 1994) and currently provide more than enough habitat to support a recovered population of wolves in central Idaho.

Gray wolves that are reintroduced into central Idaho would be placed on Federal lands. By doing so, the Service would accelerate the recovery of the gray wolf in the northwestern United States while reducing local concerns about excessive government regulation of private lands, uncontrolled livestock depredations, big game predation, and the lack of State government involvement in the program. There are only a few scattered parcels of private and State of Idaho lands in the area in which wolves would be reintroduced (Service 1994), and no conflicts with private or State land use is anticipated.

Establishment of an experimental population of gray wolves in central Idaho would initiate wolf recovery in one of the three recovery areas described as necessary for recovery of gray wolves in the northern Rocky Mountains. The only other reintroduction site identified at this time, Yellowstone National Park, is also the subject of a proposal to establish a nonessential experimental population published elsewhere in today's **Federal Register**. There are no existing or anticipated Federal or State actions identified for this release site that are expected to have major effects on this experimental population. For all these reasons, and based on the best scientific and commercial data available, the Service finds that the release of wolves and the establishment of an experimental population in central Idaho and southwestern Montana will further the conservation of this endangered species.

Gray wolves used for the reintroduction effort would be obtained from healthy wolf populations in Canada by permission of the Canadian and Provincial governments. Gray wolves are common in western Canada (tens of thousands) and Alaska (about 7,000) and they are increasing in the Great Lakes area. Thus, the removal of wolves from locations in Canada would not significantly impact the wolf populations there.

5. Reintroduction Protocol

This wolf reintroduction project is undertaken by the Service in cooperation with the USDA Forest Service, other Federal agencies, potentially affected Tribes, States of Idaho and Montana, and entities of the Canadian government. The Service would enter into agreements with the Canadian and provincial governments and/or Canadian resource management agencies to obtain wild wolves.

The wolf reintroduction project in the central Idaho area would require the transfer of about 45 to 75 wolves from southwestern Canada with assistance by Canadian and Provincial governments. About 15 wild wolves would be captured annually from several different packs over the course of 3–5 years by trapping, darting from helicopters, or net gunning in the autumn and winter. Upon capture, the wolves would receive veterinary care, including examinations and vaccinations as necessary, and they would be transported to central Idaho by truck or plane. In central Idaho, groups of wolves, each consisting of young adults from various packs, would be fitted with radio collars, released in several areas, and monitored by radiotelemetry. This method is referred to as a "hard release", i.e., the wolves would be released upon or shortly after transport to each release site. Wolves to be released would not be held on site for acclimation, nor would any food or care be provided after they were released. It is anticipated that the wolves will move widely, but eventually find mates and form packs.

All wolves would be monitored by radiotelemetry, and if wolves cause conflicts with humans, they will be recaptured and controlled according to the procedures that have been used with other problem wolves.

Subsequent releases would be modified depending upon information obtained during the reintroduction effort. Utilizing information gained from the initial phase of the project, an overall assessment of the success of the reintroduction would be made after the first year, and for every year thereafter. It is thought that the physical reintroduction phase will be completed within 3–5 years. After the reintroduction of wolves has resulted in two packs raising 2 pups each for 2 consecutive years, the wolf population will be managed to grow naturally toward recovery levels. This reintroduction attempt is consistent with the recovery goals identified for this species by the 1987 recovery plan for the northern Rocky Mountain Wolf.

It is estimated that this program, in conjunction with natural recovery in northwestern Montana and a similar reintroduction into Yellowstone National Park, would result in a viable recovered wolf population (ten breeding pairs in each of three recovery areas for three consecutive years) by about the year 2002.

Private landowners and agency personnel that manage properties adjacent to Federal lands used as release areas will be requested to immediately report any observation of a gray wolf to

the Service or to a Service-designated agency. Take of gray wolves by the public will be discouraged by an extensive information and education program and by the assurance that, at least initially, all animals will be monitored with radio telemetry and therefore easy to locate when they leave public lands. The public would be encouraged to cooperate with the Service in the attempt to closely monitor the wolves and quickly resolve any conflicts.

More specific information on conduct of the wolf reintroduction program can be obtained from Appendix 4 "Scientific techniques for the reintroduction of wild wolves" in the environmental impact statement: "The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho" (Service 1994).

Status of Reintroduced Population

Gray wolves would be reintroduced into central Idaho in order to establish a nonessential experimental population according to the provisions of section 10(j) of the Act. As previously stated, the experimental population of wolves would be treated as a threatened species or species proposed for listing for the purposes of sections 4(d), 7, and 9 of the Act. This enables the Service to propose a special rule that can be less restrictive than the mandatory prohibitions covering endangered species. In the case of the central Idaho reintroduction, the biological status of the species, and the need for management flexibility in reintroducing the gray wolf, has resulted in the Service proposing to designate the reintroduced wolves as "nonessential". The Service has found that the nonessential designation, in concert with protective measures, is necessary to conserve and recover the gray wolf in central Idaho and southwestern Montana.

It is anticipated that wolves will occasionally come in contact with the human population and domestic animals. Public opinion surveys, public comments on wolf management planning, and the positions taken by elected local, State, and Federal government officials have indicated that wolves cannot be reintroduced without assurances that current uses of public and private lands would not be disrupted by wolf recovery activities. The following provisions respond to these concerns. There would be no violation of the Act for unintentional, nonnegligent, and accidental taking of wolves by the public if incidental to otherwise lawful activities, and taking in defense of human life would not be prohibited—provided such takings are reported to the Service or to an authorized agency within 24 hours. Certain Federal, State, and/or Tribal employees would be authorized by the Service to take wolves needing special care or posing a threat to livestock or property. Livestock owners with grazing allotments on public land and private land owners or their immediate designates would be permitted to harass adult wolves, i.e., wolves larger than about 23 Kg (50 lbs), in an opportunistic non-injurious manner on their allotments or private property at any time, provided that such harassment would have to be reported within 7 days to a Service-designated authority.

Under the proposed status, livestock owners or their designates could receive a permit from a Service-designated agency to take (injure or kill) gray wolves that are attacking livestock on permitted public livestock grazing allotments, but only after 6 or more breeding pairs were established in the experimental area. Such take, however, would only be permitted after due notification to Service-designated agencies, unsuccessful efforts to capture the offending wolf by such agencies, and documentation of additional livestock losses. Private landowners or their designates would be permitted to take (injure or kill) a wolf in the act of wounding or killing livestock on private land. However, physical evidence (wounded or dead livestock) that such an attack occurred at the time of the taking would have to be clearly evident in such instances. Such take would be immediately (within 24 hours) reported to the Service or agencies authorized by the Service for investigation.

Wolves that repeatedly (2 times in a calendar year) attack domestic animals other than livestock (fowl, swine, goats, etc.) or pets (dogs or cats) on private property would be designated as problem wolves and would be moved from the area by the Service or a designated agency. Wolves that depredate on domestic animals after being relocated once after such previous conflicts would be designated chronic problem wolves and be removed from the wild.

It is unlikely that wolf predation on big game populations will be the primary cause for failure of States or Tribes to meet their specific big game management objectives outside National Parks and National Wildlife Refuges. Nor is such predation likely to inhibit wolf population increases. However, if the Service deemed it necessary, wolves from the responsible packs could be translocated to other sites in the experimental area to resolve such predation problems. Wolves could not be deliberately killed to resolve wolf predation conflicts with big game while the experimental population of wolves were listed. However, such take is expected to be rare and is unlikely to significantly affect the overall rate of wolf recovery. The States and Tribes would define such situations in their Service-approved wolf management plans before such actions could be taken.

Wolves would be moved on a case-by-case basis to enhance wolf recovery in the experimental population area. Generally there would not be attempts to locate and/or move lone wolves dispersing in this area, although this may occur.

Hunting, trapping, and animal damage control activities are regulated inside and outside National Parks and National Wildlife Refuges. Most of the area within the wolf reintroduction area is remote and sparsely inhabited wild lands. There are some risks to wolf recovery that would be associated with take of wolves, other land uses, and various recreational activities. However, these risks are low because take of wolves should occur so infrequently that wolf recovery would not be significantly affected.

The Service finds that the stated protective measures and management practices are necessary and advisable for the conservation and recovery of the gray wolf in central Idaho and southwestern Montana. No additional Federal regulations appear to be needed. The Service also finds that the proposed nonessential experimental status is appropriate for gray wolves released in central Idaho that are taken from unendangered wild populations. As discussed above, although once extirpated from its historic range in most of the conterminous United States, the gray wolf is common in western Canada (tens of thousands) and Alaska (about 7,000) and they are increasing in the Great Lakes area. The gray wolf has also recently been recovering in a small portion of its range in the western United States. Therefore, taking fewer than 100 wolves from Canada will pose no threat to the survival of the species in the wild.

An additional management flexibility would result from using the nonessential status for wolves introduced into the central Idaho, due to less stringent requirements of section 7 of the Act (interagency consultation) for wolves that may occur outside National Parks and National Wildlife Refuges. Wolves that are part of the nonessential experimental population would be treated as animals proposed for listing, rather than listed, when occurring

outside of a National Park or National Wildlife Refuge, and only two provisions of section 7 apply to Federal actions outside National parks and refuges: section 7 (a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. The results of a conference are advisory in nature; agencies are not required to refrain from commitment of resources to projects as a result of a conference. There are no conflicts envisioned with any current or anticipated management actions of the Forest Service or other Federal agencies in the reintroduction area. National Forests are typically managed in such a fashion as to produce wild animals that would be natural prey to wolves. The Service finds that there are no threats to the success of the reintroduction project or the overall continued existence of the gray wolf from the less restrictive section 7 requirements associated with the nonessential designation.

The full provisions of section 7 apply to nonessential experimental populations in a National Park or National Wildlife Refuge. The Service, Forest Service, or any other Federal agency is prohibited from authorizing, funding, or carrying out an action within a National Park or National Wildlife Refuge that is likely to jeopardize the continued existence of the gray wolf. Pursuant to 50 CFR 17.83(b), section 7 determinations consider all experimental and nonexperimental wolves as a single listed species for analysis purposes. The Service has reviewed all ongoing and proposed uses of the affected National Forests and found none that are likely to jeopardize the continued existence of the gray wolf, nor will such uses adversely affect the success of the reintroduction program. Potential uses that could adversely affect success are hunting, trapping, animal damage control activities and high speed vehicular traffic. Hunting and trapping, and USDA Animal Damage Control programs are prohibited or tightly regulated in National Forests and are closely regulated by State and Federal law and policy in other areas. There are very few paved roads in the proposed reintroduction area, and wolf encounters with vehicles are likely to be infrequent. Even most of the unpaved roads are used seasonally. In addition, these unpaved roads typically have low vehicle traffic and are constructed for low-speed use.

Location of Experimental Population

The release site for reintroducing wolves will be on National Forest lands in central Idaho. The experimental population area will include that portion of Idaho and Montana that is west of Interstate 15 and south of Interstate 90. Current information indicates that, if wolves are found south of Interstate 90, they would likely be experimental wolves from the central Idaho area. Wolves north of the Interstate 90 would likely be naturally dispersing wolves from northwestern Montana or Canada.

The proposed experimental area does not currently support reproducing pairs of wolves, nor is it likely that 2 pairs of naturally dispersing wolves from northwestern Montana would, within the next 3 years, move into the area and establish a breeding population of wolves. In 3 years, the number of reintroduced wolves should be growing and potentially dispersing into other areas, including Montana and the proposed Yellowstone reintroduction area. Except for an established and growing population of gray wolves in northwestern Montana, only gray wolf individuals have been documented in the remainder of the northern Rocky Mountains in the United States. Thus, the central Idaho reintroduction site is consistent with provisions of section 10(j) of the Act that requires that an experimental population be wholly separate geographically from nonexperimental populations of the same species. An occasional, solitary wolf has been reported, killed, or otherwise documented in Idaho, Wyoming, Montana, and other western States, and single packs occasionally have been reported throughout the northern Rocky Mountains. However, these reported wolves and groups of wolves, if all reports are factual, apparently disappeared for unknown reasons and did not establish recoverable "populations" as defined by wolf experts (Service 1994). However, it is possible that prior to 2002, other wolves may appear in the wild, and be attracted to the experimental area by the presence of the reintroduced wolves, or by other factors. These "new" wolves that appear in the experimental population area might contribute to recovery of the experimental population, and they also would be classified as part of the nonessential experimental population.

It is anticipated that some wolves may disperse from the experimental area and contribute to wolf recovery in northwestern Montana. If so, these wolves would be classified as endangered, as in the case of wolves that recolonized an area near Glacier National Park in 1982. It is also possible, but not probable, that during the next 3 years, movements between recovery areas may result in some genetic exchange between wolves resulting from natural recovery and those resulting from the reintroduction. It is not anticipated that such exchange will significantly affect the rate of recovery in the central Idaho experimental population area.

For the purposes of establishment of this experimental population, the Service has determined that there is no existing wolf population in the recovery area that would preclude reintroduction and establishment of an experimental population in the central Idaho area. A wolf population is defined as at least two breeding pairs of naturally occurring gray wolves that successfully raise at least two young to December 31 of their birth year for two consecutive years (Service 1994). If a wolf population were discovered in the proposed recovery area, no reintroduction would occur. Instead, the success of the naturally occurring wolf population would be monitored to determine if population recovery was continuing. If this event occurs before the effective date of the experimental population rule, those wolves would be determined to be, and managed as, endangered wolves under the full authority of the Act. In this case, the experimental rule would not be implemented, and no wolves would be reintroduced in that experimental area. If wolf population growth does not continue, and within 5 years the wolf population has not doubled from the original founding animals, reintroduction would proceed. Wolves will not be reintroduced if, prior to introduction of wolves, breeding groups of wolves are discovered. However, once the experimental population rule is established and the reintroduction begun by the actual release of wolves into a recovery area, the experimental population rule would remain in effect until wolf recovery occurs or after a scientific review indicates that modifications in the experimental rule are necessary to achieve wolf recovery.

If a wolf population (2 breeding pairs successfully raising two young each for two consecutive years) were discovered in the proposed central Idaho experimental population area, reintroduction under an experimental population rule would not occur in that area and any such wolf population would be managed as a natural recovering population in that area. The boundaries of the proposed

experimental population area would be changed, as needed, to encourage recovery of any naturally occurring, breeding wolf population if such natural population is discovered prior to the establishment of the experimental population, and before wolf reintroduction occurs. No experimental population area will contain a portion of the home range of any active breeding pairs of wolves that have successfully raised young. Any changes in the boundaries of the nonessential experimental population area, required because of the above conditions, would be reflected in a final rule.

It is possible that an exchange of reintroduced wolves may occur between the central Idaho area and an experimental area established by reintroducing wolves into Yellowstone National Park. Such interchange, if it occurs, would pose no problem in determining their status because wolves from both areas would already be classified as part of nonessential experimental population.

Utilization of Federal public lands including National Forests is consistent with the legal responsibility of the Forest Service and all other Federal agencies under section 7(a)(1) of the Act to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species.

Management

As previously stated, the nonessential experimental population of gray wolves would be established in central Idaho by introducing gray wolves into Federal lands under authority of section 10(j) of the Act, as amended. Ongoing wolf monitoring efforts (Service 1994) would continue to document the presence of any wild wolves, and, prior to any reintroduction, the Service would make a determination of the status of any naturally occurring wolf population in this area. Wolves would not be reintroduced into central Idaho if a naturally occurring wolf population is documented in the recovery area. After introduction has been completed according to the Reintroduction Protocol (section 5 above), management of the experimental population will begin.

The Forest Service and the Service will be the primary Federal agencies implementing the experimental population rule inside the boundaries of a National Forest. The States of Idaho and Montana and potentially affected Tribes will be encouraged to enter into cooperative agreements for management of the gray wolf in central Idaho and southwestern Montana. These cooperative agreements would be reviewed annually by the Service to ensure that the States and Tribes have adequate regulatory authority to conserve listed species, including the gray wolf. It is anticipated that the States and Tribes will be the primary agencies implementing this experimental population rule outside National Parks and National Wildlife Refuges. The Service will provide oversight, coordinate wolf recovery activities, and provide technical assistance. If the States and Tribes do not assume wolf management responsibilities, the Service would do so, as needed.

Management of the reintroduced wolves would allow wolves to be killed or moved under some conditions by Service-authorized Federal, State, and Tribal agencies for domestic animal depredations and excessive predation on big game populations. Under some conditions, the public could harass or kill wolves attacking livestock (cattle, sheep, horses, and mules). There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. There would be no land-use restrictions applied when 6 or more wolf packs were documented in the experimental population area because sufficient wolf numbers would be available and no restrictions around den sites or other critical areas would be necessary to promote wolf recovery. Enhancement of prey populations would be encouraged. Use of toxicants lethal to wolves in areas occupied by wolves would still be prohibited by existing labeling restrictions.

Wolves have a relatively high reproductive rate and, with 6 packs of wolves present in a population, about 20–25 pups could be born each year to greatly compensate for mortality that would result from management actions. The Service believes that a possible 10 per cent loss of wolves could occur due to control actions and an additional 10 per cent loss could occur from other mortality sources. However, once the number of introduced wolves has reached the goal of 6 wolf packs, the reproductive output of 6 packs of wolves would provide for a wolf population increasing at or near 22 per cent per year. This increase in numbers should easily accommodate more flexible wolf management to further address local concerns and resistance to wolf recovery efforts, and reduce the need and costs of agency actions to resolve wolf/human conflicts. Closely regulated public control also can more effectively focus on individual problem wolves as conflicts occur rather than hours or days after a problem is documented. Agency control actions would more likely target groups of wolves that contain problem individuals, whereas public control could be focused on individual problem wolves.

The Service, or States and Tribes if authorized, may move wolves that are having unacceptable impacts on ungulate populations in the unlikely event that those impacts would inhibit wolf recovery. Wolves could be moved to other places within the experimental population area. Two examples are where wolf predation is dramatically affecting prey availability because of unusual habitat or weather conditions (e.g., bighorn sheep in areas with marginal escape habitat) or where wolves cause prey to move onto private property and mix with livestock, increasing potential conflicts. The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal management plans. These plans would be approved by the Service through cooperative agreement before such control could be conducted. Wolves would not be deliberately killed to resolve ungulate-wolf conflicts. These unacceptable impacts would be identified in State and Tribal wolf management plans and developed in consultation with the Service. If such control by the States or Tribes were likely to be significant or beyond the provisions of the experimental rule as determined by the Service, then they would be specifically incorporated as part of an amendment to this experimental rule, which would include national public comment and review.

Management of wolves in the experimental population would not result in any major change in existing private or public land-use restrictions after 6 breeding pairs of wolves are established in this experimental area. When 5 or fewer breeding pairs are in this experimental area, land-use restrictions could be employed on an as needed basis, at the discretion of land management and natural resources agencies to control intrusive human disturbance. Temporary restrictions on human access, when 5 or fewer breeding pairs are established, may be required near active wolf den sites between April 1 and June 30.

The Service, or Federal, State or Tribal agencies authorized by the Service would be allowed to promptly remove any wolf of the experimental population that the Service, or agency authorized by the Service, determined

was presenting a threat to human life or safety. Although not a management option *per se*, it is noted that a person could legally kill or injure wolves in response to an immediate threat to human life. The incidental and accidental nonnegligent take in the course of otherwise lawful recreational activity or take in defense of human life, would be permitted by the Service and Service-authorized agencies, provided that such taking is immediately (within 24 hours) reported to the authorized State or Federal authority.

The Service or State, Federal, or Tribal agencies designated by the Service will control wolves that attack livestock (cattle, sheep, horses, and mules) by management measures that may include aversive conditioning, nonlethal control, and/or moving wolves when 5 or fewer breeding pairs are established, and by previously described measures. However, killing wolves or placing them in captivity may be considered and used as management options after 6 or more breeding pairs are established in the experimental population area. For depredation occurring on public land and prior to 6 breeding pairs becoming established, depredating females and their pups would be released on site prior to October 1. Wolves on private land under these circumstances would be moved. Wolves that attack other domestic animals and pets on private land 2 times in a calendar year would be moved. Chronic problem wolves (wolves that depredate on domestic animals after being moved for previous domestic animal depredations) would be removed from the wild.

The Service, other Federal agencies, and Tribal and State wildlife agency personnel would be additionally authorized and should be prepared to take wolves under special circumstances where there was an immediate threat to livestock or property, or need to move individuals for genetic purposes. Wolves could be captured alive and translocated to resolve demonstrated conflicts with State big-game management objectives or when they were outside designated wolf pack recovery areas. Take procedures in such instances would involve live capture and removal to a remote area, or if the animal is clearly unfit to remain in the wild, return to a captive facility. Killing of animals would be a last resort and would be authorized only if live capture attempts fail or there is some clear danger to human life.

The Service and other authorized management agencies would use the following conditions and criteria in determining the problem status of wolves within the nonessential experimental population area:

(1) Wounded livestock or some remains of a livestock carcass must be present with clear evidence (Roy and Dorrance 1976, Fritts 1982) that wolves were responsible for the damage, and there must be reason to believe that additional losses would occur if the problem wolf or wolves were not controlled. Such evidence is essential since wolves may feed on carrion they have found while not being responsible for the kill.

(2) Artificial or intentional feeding of wolves must not have occurred. Livestock carcasses not properly disposed of in an area where depredations have occurred will be considered attractants. On Federal lands, removal or resolution of such attractants must accompany any control action. Livestock carrion or carcasses on Federal land, not being used as bait in an authorized control action (by agencies authorized by the Service), must be removed, buried, burned, or otherwise disposed of so that the carcass(es) will not attract wolves.

(3) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

Final Federal responsibility for protection of gray wolves in the experimental population under provisions of the Act would cease after: (1) a minimum of 10 breeding pairs are documented for three consecutive years in each of the three recovery areas presented by the revised wolf recovery plan (Service 1987), and evaluated by the environmental impact statement (Service 1994), providing that legal mechanisms are in place to conserve this population, and (2) gray wolves in Montana, Idaho, and Wyoming are delisted according to provisions of the Act. The Act specifies that the status of a species must be monitored for a 5-period after delisting. If, after delisting, the wolf population fell below the minimum criteria of 10 breeding pairs in any recovery area for two of three consecutive years, wolves in that area would be considered for relisting under the Act.

Public Comments Solicited

The Service intends that any final rule resulting from this proposal be as accurate and effective as possible. Therefore, comments or suggestions from the public, States, Tribes, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments must be received within 60 days of publication of the proposed rule in the **Federal Register.**

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

The Service will also hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Cheyenne, Wyoming; Boise, Idaho; Helena, Montana; Salt Lake City, Utah; Seattle, Washington; and Washington, D.C. The location, dates, and times of these six hearings will be announced in a forthcoming issue of the **Federal Register** and in newspapers.

National Environmental Policy Act

An Environmental Impact Statement under the National Environmental Policy Act has been prepared and is available to the public (see **ADDRESSES**). This proposed rule is an implementation of the proposed action and does not require revision of the environmental impact statement on the reintroduction of gray wolves to Yellowstone National Park and central Idaho.

Required Determinations

This proposed rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

Fritts, S.H. 1982. Wolf depredation on livestock in Minnesota. U.S. Fish and Wildlife Service Resource Publication 145. 11 pp.

Roy, L.D., and M.J. Dorrance. 1976. Methods of investigating predation of domestic livestock. Alberta Agriculture, Edmonton, Alberta. 53 pp.

U.S. Fish and Wildlife Service. 1987. Northern Rocky Mountain wolf recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 119 pp.

U.S. Fish and Wildlife Service. 1994. Reintroduction of gray wolves to Yellowstone National Park and central Idaho. Final Environmental Impact Statement, Helena, Montana. 608 pp.

Author

The principal author of this proposal is Edward E. Bangs (see **ADDRESSES** section). Harold M. Tyus, Denver Regional Office, served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), the table entry for "Wolf, gray" under "MAMMALS" is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
*	*	*	*	*	*	*	*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A. (48 conterminous States, except MN and where listed as an experimental population below).	E	1, 6, 13, 15, 35, ____	17.95(a)	NA
Do	do	do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	do	do	U.S.A. (specific portions of ID and MT—see § 17.84( ).	XN		NA	17.84( )
*	*	*	*	*	*	*	*

3. § 17.84 be amended by adding paragraph ( ) following the last paragraph to read as follows:

§ 17.84 Special Rules—Vertebrates.

* * * * *

( ) Gray wolf (*Canis lupus*)

(1) The gray wolf (wolf) population identified in paragraph ( )(6) of this section is a nonessential experimental population. This population will be managed in accordance with the respective provisions of this section.

(2) No person may take this species in the wild in an experimental population area except as provided in paragraphs ( )(2), (4), and (7) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service) that are legally using public land (Federal land and any other public lands designated in State and Tribal wolf management plans as approved by the Service) may harass any adult wolf (a wolf that does not exceed 50 lbs in weight is not considered an adult for these purposes) in an opportunistic noninjurious manner at any time, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) adult wolves in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service), *Provided* that such incidents must be reported immediately but no later than within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution. A gray wolf that does not exceed 50 lbs in weight is not considered an adult and can not be taken.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit from the Service or other agencies designated by the Service, to take (including to kill or injure) adult wolves that are in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and Tribal wolf management plans as approved by the Service), *Provided* that 6 or more breeding pairs of wolves have been documented in that experimental population area and that the Service or other agencies authorized by the Service has confirmed that the livestock losses have been caused by wolves and has unsuccessfully attempted to resolve the problem and subsequent livestock losses are documented. Such take must be reported immediately but no later than within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service and livestock freshly wounded or killed

by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) The potentially affected States and Tribes may move wolves to other areas within an experimental population area as described in paragraph ( )(6), *Provided* that the level of wolf predation is having unacceptable impacts on localized ungulate populations and to the extent that those impacts could inhibit wolf recovery. The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal wolf management plans. These plans must be approved by the Service through cooperative agreement before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service may promptly remove (place in captivity or kill) any wolf the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, *Provided* that all such take is reported immediately (within 24 hours) to the Service reintroduction project leader or Service designated agent. The taking of any wolf without such evidence of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are designated as "problem wolves" (as defined below) that attack livestock (cattle, sheep, horses, and mules or domestic animals or as defined by State and Tribal wolf management plans approved by the Service) by nonlethal measures, including but not limited to: aversive conditioning, nonlethal control, and/or moving wolves when 5 or fewer breeding pairs are established, and by previously described measures. If such measures result in a wolf mortality, it must be demonstrated that such mortality was nondeliberate. Lethal control of wolves or placing them in permanent captivity will be allowed only after 6 or more breeding pairs are established in the experimental population area. For depredations occurring on federally managed lands and any additional public lands identified in State or Tribal wolf management plans and prior to 6 breeding pairs becoming established, depredating female wolves with pups and their pups will be released at or near the site of capture prior to October 1. Wolves on private land under these circumstances will be moved to other areas within the experimental population area. Wolves that attack domestic animals other than livestock, including pets on private land, a total of 2 times in a calendar year will be moved. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three conditions and criteria will apply in determining the problem status of wolves within the nonessential experimental population area:

(A) Wounded livestock or some remains of a livestock carcass must be present with clear evidence that wolves were responsible for the damage and there must be reason to believe that additional losses would occur if the problem wolf or wolves were not controlled. Such evidence is essential because wolves may feed on carrion they have found and may not be responsible for the death of livestock.

(B) Artificial or intentional feeding of wolves must not have occurred. Livestock carcasses not properly disposed of in an area where depredations have occurred will be considered attractants. On Federal lands, removal or resolution of such attractants must accompany any control action. Livestock carrion or carcasses on Federal land, not being used as bait in an authorized control action (by agencies authorized by the Service), must be removed, buried, burned, or otherwise disposed of such that the carcass(es) will not attract wolves.

(C) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take gray wolves found in an area defined in paragraph ( )(6), *Provided* that, the take is incidental, accidental, unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care in the course of otherwise lawful recreational activity, and that such taking is immediately (within 24 hours) reported to the authorized Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or Tribal personnel may be additionally authorized in writing by the Service to take animals under special circumstances that pose an immediate threat to livestock or property, or when animals need to be moved for genetic purposes. Wolves may be live captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Endangered Species Act, or when they are outside the designated experimental population area. Take procedures in such instances would involve live capture and release to a remote area, or if the animal is clearly unfit to remain in the wild, return to a captive facility. Killing of animals will be a last resort and will be authorized only if live capture attempts fail or there is some clear danger to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf in the wild in the experimental population area if such action is necessary:

(A) For scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen which may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported immediately (within 24 hours) to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(3) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and Tribal land management agencies. When 5 or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when 5 or fewer breeding pairs are established in an experimental

population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites. When 6 or more breeding pairs are established in an experimental population area, no land use restrictions may be employed outside of National Parks or National Wildlife Refuges.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Endangered Species Act.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs ( )(2) through (4) of this section.

(6) The site for reintroduction is within the historic range of the species:

(i) [Reserved]

(ii) The central Idaho Management area is shown on the attached map. The boundaries of the nonessential experimental population area will be those portions of Idaho and Montana that are south of Interstate Highway 90 and West of Interstate Highway 15.

(iii) All wolves found in the wild within the boundaries of this paragraph ( )(6) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph ( )(6) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area it may relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service approved plans for that area or will be marked and released near its point of capture.

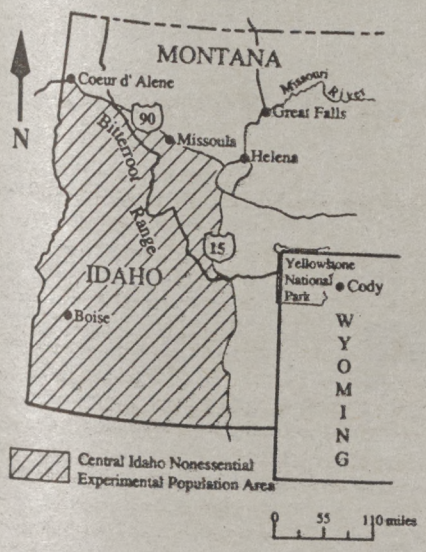
(D) If the animal is determined not to be a wild grey wolf or if the Service or agencies designated by the Service determine the animal shows substantial evidence of recent hybridization with other canids such as domestic dogs or coyotes or of being an animal raised in captivity, it will be returned to captivity or killed.

(7) The reintroduced wolves will be continually monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(8) The status of the experimental population will be reevaluated within the first 5 years after the first year of releases of wolves to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released in the area, as well as the overall health of the experimental wolves. Once recovery goals are met for downlisting or delisting the species, a rule will be proposed to address downlisting or delisting.

(9) The Service does not intend to reevaluate the "nonessential experimental" designation. The Service does not foresee any likely situation which would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the Northern Rocky Mountains according to provisions outlined in the Act.

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Dated: August 8, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–19997 Filed 8–15–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Tuesday
August 16, 1994

Part III

Department of Education

Patricia Roberts Harris Fellowship Program; Notices

DEPARTMENT OF EDUCATION

[CFDA NO: 84.094B]

Patricia Roberts Harris Fellowship Program—Master's Level and Professional Study Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995.

Purpose of Program: To provide, through institutions of higher education, grants to assist in making available the benefits of master's level and professional study education programs to women and individuals from minority groups who are underrepresented in these programs. This program supports the National Education Goal that calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education that offer a program of postbaccalaureate study leading to a master's level or professional degree other than schools or departments of divinity, are eligible to receive grants under this program.

Deadline for Transmittal of Applications: October 14, 1994.

Note: The notice inviting applications for new grants under the FY 1995 Patricia Roberts Harris Fellowship Program—Doctoral Study competitions is published elsewhere in this issue of the **Federal Register.**

Deadline for Intergovernmental Review: December 13, 1994.

Applications Available: September 1, 1994.

Available Funds: The funding level is expected to be $6,333,101. Of the expected funds for this competition, not less than 75 percent is expected to be available for applications for master's level and professional study fellowships in academic areas of high national priority, and up to 25 percent is expected to be available for applications for master's level and professional study fellowships in other areas.

Estimated Range of Awards: $19,167 to $460,000.

Estimated Average Size of Awards: $140,735.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 649.

Supplementary Information: The Secretary will hold two separate competitions. One competition will be for master's level and professional study fellowships in academic areas of high national priority only. The second competition will be for master's level and professional study fellowships in other areas. This second competition will give a competitive preference to master's level fellowships in academic fields that will lead to careers that serve the public interest only. The Secretary has established absolute priorities for each competition. Only those applications that meet the priorities will be considered for funding. An applicant may submit no more than one application under the master's level and professional study program. An applicant who wishes to apply for funding under both competitions must indicate its intention to compete under both competitions within its single application.

Priorities

Master's Level and Professional Study in Academic Areas of High National Priority Fellowships Competition

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 649.22 (a) and (c) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications for master's level and professional study fellowships that meet both of these absolute priorities:

Absolute Priority 1—

Fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level or professional study and are underrepresented in the academic field for which a grant award is sought.

Absolute Priority 2—

Fellowships in the following academic career fields that the Secretary has identified, from among the academic areas listed in the appendix of the regulations for this program, as high national priority for the purpose of the master's level and professional study competition in FY 1995:

Business Administration & Management/Accounting

Biological & Life Sciences

Computer Science

Engineering

Health Sciences

Visual & Performing Arts

Master's Level and Professional Study in Other Areas Fellowships Competition

Absolute Priority

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 649.22(a) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications for master's level and professional study fellowships that meet the following absolute priority:

Fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level or professional study and are underrepresented in the academic field for which a grant award is sought.

Competitive Priority

Within the absolute priority specified above, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 649.22(b) gives preference to applications that meet the following competitive priority. The Secretary awards one point to each applicant that meets this competitive priority. This point is in addition to any points the applicant earns under the institutional and academic field selection criteria for this program.

Fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level study leading to careers that serve the public interest.

Stipend level: The Secretary has determined that the maximum fellowship stipend for academic year 1995–1996 is $14,400, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

Institutional payment: The institutional payment for academic year 1994–1995 was $9,243. The Secretary will adjust the institutional payment for academic year 1995–1996 prior to the issuance of grant awards based on the Department of Labor's determination of the Consumer Price Index for 1994.

For Applications or Information Contact: Ms. Cosette Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Bldg, Suite C80, Washington, DC 20202–5329. Telephone: (202) 260–3608. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on

the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134, 1134d–1134g.

Dated: August 11, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–20017 Filed 8–15–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.094B]

Patricia Roberts Harris Fellowship Program—Doctoral Study Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To provide, through institutions of higher education, grants to assist in making available the benefits of doctoral study education programs to women and individuals from groups traditionally underrepresented in these programs. This program supports the National Education Goal that calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education that offer a program of postbaccalaureate study leading to a doctoral degree, other than schools or departments of divinity, are eligible to receive grants under this program.

Deadline for Transmittal of Applications: October 14, 1994.

Note: The notice inviting applications for new grants under the FY 1995 Patricia Roberts Harris Fellowship Program—Master's Level and Professional Study competitions is published elsewhere in this issue of the **Federal Register**.

Deadline for Intergovernmental Review: December 13, 1994.

Applications Available: September 1, 1994.

Available Funds: The funding level is expected to be $10,213,500. Of the expected funds for this competition, not less than 75 percent is expected to be available for applications for doctoral study fellowships in academic areas of high national priority, and up to 25 percent is expected to be available for applications for doctoral study fellowships in other areas.

Estimated Range of Awards: $23,243 to $575,000.

Estimated Average Size of Awards: $130,942.

Estimated Number of Awards: 78.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 649.

Supplementary Information: The Secretary will hold two separate competitions for doctoral study fellowships. One competition will be for fellowships in areas of high national priority only. The second competition will be for fellowships in academic areas other than those designated as areas of high national priority only. The Secretary has established absolute priorities for each competition. Only those applications that meet the priorities will be considered for funding. An applicant may submit no more than one application under the doctoral study fellowships program. An applicant who wishes to apply for funding under both competitions must indicate its intention to compete under both competitions within its single application.

Priorities

Doctoral Study in Academic Areas of High National Priority Fellowships Competition

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 649.32 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications for doctoral fellowships that meet both of these absolute priorities:

Absolute Priority 1—

Fellowships in the award of which priority is given to women undertaking doctoral study, or individuals from traditionally underrepresented groups undertaking doctoral study, or both.

Absolute Priority 2—

Fellowships in the following academic career fields that the Secretary has identified, from among the academic areas listed in the appendix of the regulations for this program, as high national priority for the purpose of the doctoral study competition in FY 1995:

Biological & Life Sciences
Business Administration & Management
Clinical Psychology
Computer Science
English/American Literature & Language
Engineering
Mathematics
Physical Sciences
Visual & Performing Arts

Doctoral Study Fellowships in Other Fields Competition

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 649.32 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Fellowships in the award of which priority is given to women undertaking doctoral study, or individuals from traditionally underrepresented groups undertaking doctoral study, or both.

Stipend level: The Secretary has determined that the maximum fellowship stipend for academic year 1995–1996 is $14,400, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

Institutional payment: The institutional payment for academic year 1994–1995 was $9,243. The Secretary will adjust the institutional payment for academic year 1995–1996 prior to the issuance of grant awards based on the Department of Labor's determination of the Consumer Price Index for 1994.

For Applications or Information Contact: Ms. Cosette Ryan, U.S. Department of Education, 400 Maryland Avenue SW., Portals Bldg., Suite C80, Washington, DC 20202–5329. Telephone: (202) 260–3608. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134, 1134d–1134g.

Dated: August 11, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–20016 Filed 8–15–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
August 16, 1994

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB84

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations by revising Subpart A and adding a new Subpart J. The proposed regulations govern the approval and administration of tests that may be used to determine a student's eligibility for assistance under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs), if that student does not have a high school diploma or its recognized equivalent. The regulations also propose a passing score for each approved test. The proposed regulations implement changes made to section 484(d) of the Higher Education Act of 1965, as amended (HEA) by the Higher Education Amendments of 1992.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lorraine Kennedy or Adara Walton, 400 Maryland Avenue SW. (Regional Office Building 3, Room 4318), Washington, DC 20202–5343.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy or Adara Walton, Telephone: (202) 708–7888. Individuals that 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: These proposed regulations implement amended section 484(d) of the HEA, Public Law 102–325. As amended, section 484(d) provides that a student who does not have a high school diploma or its recognized equivalent is eligible for Title IV, HEA program funds only if—

- The student takes an independently administered examination and achieves a score specified by the Secretary, demonstrating that the student has the ability to benefit from the education or training being offered; or
- The student is determined to have the ability to benefit from the education or training being offered in accordance with a "process" prescribed by the State in which the institution the student is attending is located and that has been approved by the Secretary.

These proposed regulations were subject to a regulatory negotiation process set forth in section 492 of the HEA. Under that process, the Secretary convened four regional meetings to obtain public involvement in the development of these proposed regulations. These meetings were held in San Francisco, Atlanta, New York, and Kansas City. At these meetings, the Secretary provided attendees with a list of issues that needed to be addressed in these proposed regulations. A summary of the responses of the attendees is contained in Appendix A to these proposed regulations.

Groups that attended the regional meetings nominated individuals to participate in regulatory negotiations. The Secretary selected regulation negotiators from the names nominated and chose negotiators to reflect all the groups that participate in the Title IV, HEA programs, such as students, student financial aid administrators, and various types of eligible institutions.

In accordance with section 492(b) of the HEA, the Secretary prepared draft proposed regulations and negotiated provisions of the draft with the negotiators. Two negotiating sessions were held: one in April 1993 and one in June 1993. Generally, consensus was not reached on any issues in these regulations, consensus being defined as unanimity among all negotiators.

The provision of postsecondary education and training programs to students who have neither a high school diploma nor its recognized equivalent has broader dimensions than those covered under section 484(d) of the HEA and this proposed regulation. Within the systemic education reforms of the Goals 2000 initiative and current efforts to build an effective school-to-work transition system, the Secretary is investigating long-term strategies to address problems of opportunity and quality education for this population, and invites public comment and suggestions concerning those strategies.

The Secretary also invites comment on an alternative approach to implementing the changes in section 484(d) of the HEA under the 1992 Amendments (PL 102–325) that would link the ability-to-benefit (ATB) testing system to State education practice and policy under the "Goals 2000: Educate America Act" (PL 103–227). If adopted by the Secretary, under this alternative, the Secretary would publish in the final rule a procedure with the following components:

—By a date to be specified, each State would be asked to inform the Secretary of the test (or tests) which the State has determined best reflect the education goals and standards for high school graduates in its public education system. By the same specified date, each State would also set the passing score or scores on those tests, and provide the Secretary with a justification for the passing score in light of the goals and standards for its public high school graduates. These tests and passing scores would then become the only allowable ATB tests and passing scores for all postsecondary institutions located and licensed in the State.

—The Secretary could not disapprove the State's determination except in circumstances in which the selection of tests and determination of passing scores was documented as inappropriate. The State could replace a disapproved test or reset a passing score under the same terms as above.

—By the same specified date, each State would also submit to the Secretary a plan to ensure independent, fair and secure administration of the selected tests within its borders, including any provisions the State may deem appropriate for testing students with disabilities and students of limited English proficiency.

—The State would inform all institutions licensed by the State and certified and made eligible for Title IV funds by the Secretary of the approved tests, passing scores, administrative procedures, and special provisions, and indicate how it intends to enforce its decisions.

—Any State that, by the date specified, chooses not to select tests, determine passing scores, and submit plans for the other aspects of ensuring independent, fair and secure administration of its ability to benefit testing program, must notify the Secretary of that choice. By not participating, the State would thereby be determining that students applying for Title IV (HEA) financial aid to attend a school within the State (1) would have to pass a test determined by the Secretary, according to the procedures specified in this NPRM, or (2) participate in an approved "State process" as specified in PL 102–325 and as described in this NPRM.

The Secretary recognizes that students from many States may apply to attend

a single school within one State, and that standards (hence, selection of tests and determination of passing scores) in the States in which the students live may be different from standards in the State in which the school is located. However, the State in which the school is located is responsible for licensing that school, and thus should be able to determine under what educational standards an individual without a high school diploma or GED should be permitted to use Federal funds at that school.

The following discussion reflects proposed significant changes to the Student Assistance General Provisions regulations. Proposed changes are discussed in the order in which they appear in the proposed regulations text. If a provision applies to more than one section or is included in more than one section, it is discussed the first time it appears with an appropriate reference to its other appearances.

This NPRM proposes to make changes in the following areas:

Student Assistance General Provisions

Subpart A—General

Section 668.7 *Eligible student.* The Secretary has revised § 668.7(a)(3) to implement amended section 484(d) of the HEA. Under current regulations, a student does not have to document that he or she has a high school diploma or its recognized equivalent. It is currently sufficient for a student to certify that he or she has such a credential. The Secretary proposes in § 668.7(a)(3)(i) to require a student to document that he or she has such a credential.

The Secretary has proposed special provisions for a student who—

(1) Attended high school in the United States and is unable to obtain a copy of his or her high school diploma or transcript because the high school from which the student graduated closed and the records are not available through any state or local education agency; or

(2) Attended high school or its equivalent in a foreign country and is unable to obtain a copy of his or her high school diploma or transcript.

The special procedures for students in the latter category were suggested by one of the negotiators and are an adaptation of procedures that are currently being used in New York State. The Secretary is requesting public comment on the procedures for students in the latter category.

The Secretary has also proposed that, if a student transfers from one institution to another, a statement from the first institution on an academic or financial aid transcript that it has a copy of the transfer student's diploma or equivalent certificate would satisfy the documentation requirement for the second institution.

It is the Secretary's view that the thrust of the amended section 484(d) of the HEA would be thwarted by continuing the current practice of allowing institutions to accept a student's word that he or she has a high school diploma. Moreover, the Secretary believes that this basic element of student eligibility should be documented.

During the regulation negotiation sessions, the majority of the negotiators agreed to this proposed requirement. The Secretary is requesting public comment on the burden associated with obtaining a copy of a student's high school diploma for all students receiving Title IV aid. The Secretary also requests comment on the burden of the proposed requirement that foreign students who cannot obtain a copy of their diploma submit a written statement, indicating why their diploma cannot be provided, in both English and their native language.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

In this subpart, the Secretary is proposing procedures and standards that govern the Secretary's approval of tests, the passing score of each test, the independent administration of those tests, and the approval of State "processes." These proposed procedures differ significantly from current procedures governing test approval, passing scores, and test administration because the Secretary believes that the current procedures do not adequately evaluate whether students without a high school diploma or its equivalent should be eligible to receive Title IV, HEA program funds. The Secretary intends that these new procedures will significantly strengthen that evaluation.

Procedures and Standards That Govern the Approval of Tests

Section 668.142 *Special definitions.* The Secretary has proposed to define special terms that are used throughout Subpart J. The proposed definitions are based on definitions commonly used in other Federal regulations or that are commonly used in the psychometric field.

Section 668.143 *Application for test approval.* A test publisher that wishes the Secretary to approve its test for use under section 484(d) of the HEA must provide sufficient information to enable the Secretary to determine that the test instrument satisfies standards used by the education testing industry, and that the test results are scientifically valid. In this section, the Secretary proposes requirements to meet those twin goals. Standards used by the testing industry include but are not limited to documentation of test development, evidence of reliability, unambiguous scales, and provisions for test security.

Section 668.144 *Test approval procedures.* The Secretary has proposed procedures for approving tests. Under these procedures, the Secretary will use experts in the field of educational testing and assessment to initially evaluate tests and advise the Secretary as to whether the test meets all the requirements for test approval set forth in Subpart J. If the test submitted for approval is in a foreign language, to the extent possible, the Secretary will select at least one expert who is also fluent in the language in which the test is written.

If the test does not meet the requirements for test approval, the Secretary will notify the test publisher and provide to that test publisher the reasons why the test was not approved. The test publisher may request the Secretary to re-evaluate that test. The test publisher may accompany that re-evaluation request with documents that address the reasons for the non-approval of the test, or an analysis of why the test met test approval requirements, notwithstanding the Secretary's decision. The Secretary is requesting public comment on the resubmission process used to evaluate test for approval, and on what information could be updated to reflect changes rather than resubmitted in full.

If the Secretary approves a test, the Secretary proposes that the approval period generally would be five years. If the test publisher wishes to have that test re-approved after five years without interruption, the Secretary proposes that the test publisher submit the test for re-approval at least six months before its initial approval is scheduled to lapse.

These procedures are designed to ensure that the tests are reviewed objectively and that the test publishers would have a fair opportunity to appeal the Secretary's decision if necessary.

Section 668.145 *Criteria for approving tests.* To be approved, the Secretary proposes that a test must meet all the conditions for test construction provided in the 1985 edition of the *Standards for Educational and Psychological Testing* prepared by the joint committee of the American Educational Research Association, the American Psychological Association,

and the National Council on Measurement in Education. With the exception of tests designed for students in English as a Second Language (ESL) programs, the Secretary proposes that an approved test assess secondary school level basic verbal and quantitative skills, knowledge, and/or general learned verbal and quantitative abilities. Therefore, the content of a test must be able to assess those skills, knowledge, and abilities. The test must sample the major content "domains" of secondary school level verbal and quantitative skills with a sufficient number of questions to fully represent each domain. The test questions must also permit meaningful analysis of the performance of students who are representative of the contemporary population who are beyond the age of compulsory school attendance and either have or do not have a high school diploma or its equivalent. The proposed standards are generally accepted in the psychometric community.

In establishing the level of education to be assessed, the Secretary considered whether to establish that level at a particular grade of secondary schools, such as a tenth grade, eleventh grade, or twelfth grade level. However, because of the tremendous differences in the United States in the grade level at which subjects are taught in secondary schools, the Secretary determined that it would not be possible to establish such a grade level. Thus, as a general guideline, test questions have to be understood and should be answerable by students in the ninth grade through twelfth grade. An approved test would use test items (questions) that are drawn from the general content of secondary school level basic verbal and quantitative skills, and would adequately sample that content.

The Secretary does not consider a test to be adequate if it assesses only an individual's personality, general level of intelligence, interest related to vocational preferences, or a single special-aptitude, such as manual dexterity. The Secretary believes that there is a significant difference between ability to benefit from instruction in an education or training program and the demonstrable skills necessary to enter an occupation. The Secretary believes that the ability to process verbal, symbolic, and numerical information is necessary to benefit from instruction from any education or training program.

Section 668.146 *Passing score.* The Secretary proposes to require test publishers to determine a passing score for each test submitted for approval. The Secretary proposes that the passing score for each test will be one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval.

The Secretary has proposed this passing score to establish a sense of comparability among the three categories of students who are eligible to receive Title IV, HEA program funds. These categories include students who have a high school diploma, students who have the equivalent of that diploma, in most cases a GED, and students who have neither but can pass a test approved by the Secretary.

The Secretary believes that earning a high school diploma or GED certificate should be the primary basis for qualifying to receive Title IV, HEA program assistance. The Secretary further believes that students who do not have those credentials and qualify to receive such assistance by taking a test should demonstrate through that test a level of verbal and quantitative skills at least comparable to the typical range of performance of students in those other two categories.

To demonstrate this comparability, the Secretary proposes to establish as the passing score for each approved test one standard deviation below the mean (average) score achieved by students with high school diplomas who have taken the test within three years before the date on which the test was submitted to the Secretary for approval. (In very broad terms, the standard deviation describes the typical range of performance around the mean scores on a test.)

The Secretary acknowledges that during negotiated rulemaking, the Secretary had proposed that the passing score would be the mean score of high school graduates who have taken the test within three years of the test being submitted for approval. Many of the regulatory negotiators had indicated that this passing score was too high for comparability purposes. Accordingly, in view of these comments, for the purpose of this proposed rule, the Secretary has proposed a lower passing score. The Secretary welcomes specific comments on the appropriate passing score that should be included in this regulation.

Section 668.147 *Additional criteria for the approval of performance based tests, tests for non-native speakers of English, modified tests for persons with disabilities, and computer-based tests;* Section 668.148 *Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available;* and Section 668.153 *Administration of tests for students whose native language is not English or for persons with disabilities.* The Secretary believes that special provisions should be made for both persons with documented disabilities and students whose native languages are not English. Therefore, the Secretary is proposing that, under certain circumstances, special testing procedures or instruments can be used for testing persons with disabilities and for testing students whose native languages are not English. These tests, of course, would have to be independently administered.

Independent Administration of Tests

In general, the Secretary has proposed a scheme under which approved tests are administered independent of the institutions that use the tests and test results to establish the eligibility of their students for Title IV, HEA program assistance. The Secretary has proposed an interlocking network of agreements between test publishers, test administrators, and institutions to achieve this result. The Secretary proposes that the test publishers will have primary responsibility for ensuring that their tests are independently administered.

Under the proposed scheme, a test publisher will give its test directly or offer it through test administrators that it certifies. The test publisher will certify a test administrator when it determines the test administrator has the necessary training, knowledge, and skills to give its test and the ability and capacity to keep the test secure from release or disclosure. The test publisher will not provide its test to institutions or allow test administrators to provide its test to institutions. The test administrator may give a test only to a student who is attending, or is scheduled to attend, an institution that is independent of the test administrator.

The test publisher will score the test and provide the student and the student's institution with a notice indicating whether the student has passed the test and the student's test score. The institution will be able to use the notice from the test publisher to determine whether the student qualifies as an eligible student for Title IV, HEA program assistance.

Section 668.149 *Agreement between the Secretary and a test publisher.* The Secretary is proposing that if a publisher's test is approved, the test publisher would be required to enter into an agreement with the Secretary before an institution would be able to use the test to determine the eligibility of a student for Title IV, HEA program funds. The agreement between the Secretary and the test publisher would

articulate the responsibilities of the test publisher with respect to ensuring the integrity and proper administration of the test.

The agreement would provide that the test approved by the Secretary could be given to students only by those test administrators who are certified by the test publisher. Under the agreement, the test publisher would directly administer its test or would enter into agreements for test administration with test administrators who it determines are properly trained and possess the knowledge and skills necessary to test students in accordance with the test publisher's procedures and instructions. The test publisher would agree to score the test and maintain and make available for the Secretary's review the records of tests given by the test administrators it certifies. In addition, the test publisher would agree to provide the Secretary with an analysis of the test scores of tests given by test administrators for the purpose of determining whether the test scores produced any irregular pattern indicating that the test may not have been properly administered.

If the test publisher finds, through an analysis of the test scores or by other means, that a test administrator did not properly give the test to students or failed to secure the test, the test publisher would be required to decertify the test administrator. Similarly, the Secretary would terminate the agreement with the test publisher if the test publisher failed to carry out the terms of the agreement.

Section 668.150 *Agreement between a test publisher and a test administrator.* Except in the case of test administrators at a testing assessment center, the Secretary is proposing that a test publisher must enter into an agreement with each test administrator it certifies to give its test. Initial and continuing approval by the Secretary of a publisher's test is subject to this requirement. The agreement would require the test administrator to be independent from the institution that a student taking the test is attending or is planning to attend. In addition, the agreement would require the test administrator to give the test in accordance with the test publisher's instructions, to secure the test properly against disclosure or release, and to submit the original test answer sheet promptly to the test publisher for grading. The test publisher would have to terminate the agreement with a test administrator if the test publisher finds that the test administrator violated the provisions of the agreement.

Section 668.151 *Agreement between the institution and a certified test administrator.* The Secretary proposes that if an institution wishes to award Title IV, HEA program funds to a student without a high school diploma or its recognized equivalent, the institution must enter into a written agreement with a test administrator who has been certified by a test publisher. The Secretary does not consider that a test administrator has an ownership interest in an institution if that ownership interest is derived from ownership of a mutual fund whose portfolio included the stock of the institution or the corporation that owns the institution. In the agreement, the institution would agree not to interfere with or compromise the independence of the test administrator.

The Secretary is requesting public comment on the use of the three separate agreements described in §§ 668.149, 668.150 and 668.151. In commenting on this matter, the Secretary is interested in alternative procedures that would accomplish the same purpose, independence of test administration, but would require only one or two agreements.

Section 668.152 *Administration of tests.* This section summarizes the rules regarding the administration of tests under this subpart. In addition, the Secretary proposes that if a student fails a test, the student may not retake the same form of that test for the period specified by the test publisher in the publisher's application that was approved by the Secretary.

Section 668.154 *Institutional accountability.* Under the Secretary's proposed scheme, institutions will not be part of the process of determining whether students pass approved tests. Therefore, if an institution receives a notice from an approved test publisher that one of its students received a passing score on an approved test, the institution will not be liable to repay any student financial assistance funds the student receives if the student, in actuality, did not pass that test. An institution will be liable only if it used a test administrator that was not independent of the institution, it violated its agreement with a test administrator, it compromised in any way the testing process, or it was unable to document that the student received a passing score on an approved test. These rules are intended to ensure that an institution will not compromise the administration of a test.

Approval of State "processes."

Section 668.155 *Approved State process.* Under section 484(d) of the HEA, a student without a high school diploma or its recognized equivalent may be eligible to receive Title IV, HEA program funds without passing an independent examination approved by the Secretary if the student is determined to have the ability to benefit from education or training under a State "process" approved by the Secretary for that purpose. The State process provision was included in the Higher Education Amendments of 1992 as a result of the action taken by the House of Representatives. The activities the Secretary has proposed for the State process were based upon the description of the State process that was contained in the House Committee Report of the Committee on Education and Labor which accompanied the House version of what was to become the Higher Education Amendments of 1992. The Secretary proposes to approve a State process based upon (1) activities that are included in the process and (2) student outcomes. The proposed rules are designed to ensure that a State process is approved only if the process is effective in enabling students to benefit from the instruction offered by institutions using the process.

In calculating the passing score on approved tests, the Secretary has proposed to base that passing score on one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval. In this way, the Secretary has proposed that recipients of Title IV, HEA program funds without high school diplomas have a rough comparability with recipients with high school diplomas. To maintain that comparability under the State process method, the Secretary proposes to approve state processes if the success rates of students it admits under the State process are within 95 percent of the success rates of high school graduates who are enrolled in the same educational programs at the institutions that participate in the State process. A "success rate" is a simple measure of the rate at which students complete their programs or are making progress toward that completion. For this purpose, the Secretary considers that students are making progress toward the completion of their programs if they are still enrolled in an institution at the end of an award year.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the

potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small institutions of postsecondary education and test publishers. These regulations would safeguard Federal funds and reduce potential abuse in the Title IV, HEA programs. These changes will not significantly increase institutions' workloads or costs associated with administering the Title IV, HEA programs. In the case of test publishers, these businesses are compensated for any services they provide. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 668.143, 668.144, 668.145, 668.147, 668.148, 668.149, 668.151, 668.152, 668.153, and 668.155 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

This NPRM contains records that would affect test publishers, postsecondary institutions, and students that do not have high school diplomas or recognized equivalents and that wish to apply for Title IV, HEA programs. The information used by test publishers for annual reporting and recordkeeping is readily available in publishers records. An estimate of the total annual reporting and recordkeeping burden that will result from the collection of the information is 98,375 hours for 196,750 responses.

The collection activity associated with the State process is incorporated in various sections through the regulations. All other burden associated with the maintenance of records of the student's ability-to-benefit is already cleared under the individual programs of Federal financial assistance for which these students may be applying under regulations governing institutions administering these programs.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: August 9, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Educational Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program.)

The Secretary proposes to amend Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.7 is amended by removing paragraph (b); redesignating paragraphs (c) through (k) as paragraphs (b) through (j); and revising paragraph (a)(3) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(3)(i) Has a high school diploma or its recognized equivalent, as demonstrated by the institution's receipt of—

(A) A copy of the student's high school diploma;

(B) A copy of the student's high school transcript that indicates that the student completed a high school program;

(C) A copy of the student's GED;

(D) A copy of the student's State certificate that the State recognizes as the equivalent of a high school diploma;

(E) For a student who attended high school in the United States and who is unable to obtain a copy of his or her high school diploma or transcript because the high school from which the student graduated closed and the records are not available through any state or local education agency, a written statement from the student indicating that the student graduated from high school, was unable to secure a copy of his or her high school diploma or transcript, and the reason for that inability;

(F) For a student who attended high school or its equivalent in a foreign country and who is unable to obtain a copy of his or her high school diploma

or transcript, a written statement by the student in English and in the student's native language that indicates that the student was unable to obtain his or her diploma or transcript, and the reasons for that inability; or

(G) In the case of a student who transferred from one eligible institution to another, a statement on the academic or financial aid transcript the institution from which the student transferred from that indicates that it has documentation for the student described in paragraphs (a)(3)(i)(A)-(a)(3)(i)(F) of this section; or

(ii) (A) Has obtained within 12 months before the date the student initially receives Title IV HEA program funds, a passing score specified by the Secretary on an approved, independently administered test, in accordance with the provisions contained in Subpart J of this part; or

(B) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under Subpart J of this part.

* * * * *

3. Subpart J is added to Part 668 to read as follows:

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Sec.

668.141 Scope.
668.142 Special definitions.
668.143 Application for test approval.
668.144 Test approval procedures.
668.145 Criteria for approving tests.
668.146 Passing score.
668.147 Additional criteria for the approval of performance—based tests, tests for non-native speakers of English, modified tests for persons with disabilities, and computer-based tests and test for ESL programs.
668.148 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.
668.149 Agreement between the Secretary and a test publisher.
668.150 Agreement between a test publisher and a test administrator.
668.151 Agreement between the institution and a certified test administrator.
668.152 Administration of tests.
668.153 Administration of tests for students whose native language is not English or for persons with disabilities.
668.154 Institutional accountability.
668.155 Approved State process.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

§ 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive Title IV, HEA program funds, except for FSLS Program funds, by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth—

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered; and

(4) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A center—

(1) Is located at an eligible institution that—

(i) Offers two-year or four-year degrees; or

(ii) Qualifies as an eligible public vocational institution;

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Does not have as its primary purpose the administration of ability-to-benefit tests;

(4) Is independent of the admissions process at the institution at which it is located; and

(5) Is staffed by professionally trained personnel.

Computer-based test: A test administered and scored by a computer.

Disabled student: A student who—

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to "content," "curricula," or "basic verbal and quantitative skills," refers to basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test administrator: An individual who may give tests under this subpart.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 1091(d))

§ 668.143 Application for test approval.

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test.

(b) A test publisher that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary, at such time and in such manner, as the Secretary may prescribe. The application shall contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in this section.

(c) A test publisher shall include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) subtests and abbreviated tests for which approval is being sought;

(2) The name, address, and telephone number of a contact person to whom the Secretary may address inquiries;

(3) Each edition and form of the test for which the publisher requests approval;

(4) The proposed passing score for each test;

(5) Documentation of the development of the test, including a history of the test's use;

(6) Norming data and other evidence used in determining the passing score;

(7) Material that defines the content domains addressed by the test;

(8) For tests first published five years or more before the date submitted to the Secretary for review and approval, documentation of periodic reviews of the content and specifications of the test to ensure that the test continues to reflect secondary school level curricula;

(9) If a test has been revised from its most recent edition, an analysis of the revisions, including the reasons for the revisions, the implications of the

revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.145(b)(2), and an analysis of the effects of time on performance;

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill, ability, or knowledge;

(iv) Evidence that the test was validated using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and that were not disproportionately composed of any race or gender; and

(B) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the tests for persons with documented disabilities;

(12) The manual provided to test administrators containing procedures and instructions for the security and administration of the test and the forwarding of the test scoring data;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.145(b);

(14) Recommended passing scores for each edition, form, level, and (if applicable) sub-test or partial battery for which approval is being sought, in accordance with § 668.146;

(15) For performance-based tests or tests containing performance-based sections, a description of the training or certification required of test administrators and scorers by the test publisher;

(16) A description of retesting procedures; and

(17) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.145.

(Authority: 20 U.S.C. 1091(d))

§ 668.144 Test approval procedures.

(a)(1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment to determine whether the test meets the requirements for test approval contained in §§ 668.145, 668.146, 668.147, or 668.148, as appropriate, and to advise the Secretary of their determinations.

(2) If the test involves a language other than English, the Secretary selects at least one individual described in paragraph (a)(1) of this section who is fluent in the language in which the test is written to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.147 and 668.148.

(b) The Secretary determines whether the test publisher's test meets the criteria and requirements for approval after taking the advice of the experts into account.

(c)(1) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(2) The test publisher may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that addresses the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meets the criteria and requirements for test approval notwithstanding the Secretary's decision to the contrary.

(d) The Secretary approves a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher. At least six months before the date on which the test approval is scheduled to lapse, the test publisher may re-submit the test for review and approval according to the procedures set forth in § 668.143.

(e) The approval of a test may be withdrawn if the Secretary determines that the publisher violated any terms of the agreement described in § 668.149, or that the information the publisher submitted as a basis for approval of the test was inaccurate.

(f) If the Secretary revokes approval of a previously approved test, the revocation is effective 120 days from the date the notice of revocation is published in the **Federal Register**.

(g) For test batteries that contain multiple subtests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those subtests covering verbal and quantitative domains.

(Authority: 20 U.S.C. 1091(d))

§ 668.145 Criteria for approving tests.

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if the test meets the criteria set forth in paragraph (b) of this section and the test publisher satisfies the requirements set forth in paragraph (c) of this section.

(b) To be approved under this subpart, a test shall—

(1) Assess secondary school level basic verbal and quantitative skills and knowledge, and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (a)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) If the test is revised, have new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values and scores; and

(6) Meet all primary, secondary, and applicable conditional standards for test construction provided in the 1985 edition of the *Standards for Educational and Psychological Testing* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. (A copy of these standards may be obtained from the American Psychological Association, Inc., 1200 17th Street, N.W., Washington, D.C. 20036.)

(c) In order for a test to be approved under this subpart, a test publisher shall—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in § 668.146, establish a passing score that is the mean score for high school graduates who have taken the test within three years before the date on which the test is submitted to the Secretary for approval;

(4) Validate the test with—

(i) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(ii) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, have only one composite passing score for verbal skills, and only one composite passing score for quantitative skills.

(Authority: 20 U.S.C. 1091(d))

§ 668.146 Passing score.

Except as provided in §§ 668.147 and 668.148, to demonstrate that a test taker has the ability to benefit from the training offered, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1091(d))

§ 668.147 Additional criteria for the approval of performance-based tests, tests for non-native speakers of English, modified tests for persons with disabilities, and computer-based tests and tests for ESL programs.

(a) In addition to satisfying the criteria in § 668.145, to be approved by the Secretary, a test or a test publisher must meet the following criteria, if applicable:

(1) In the case of a test that is performance-based, or includes performance-based sections, for measuring writing, speaking, listening, or quantitative problem-solving skills, the test publisher must provide—

(i) A minimum of four parallel forms of the test; and

(ii) A description of the training provided to test administrators, and the criteria under which trained individuals are certified to administer and score the test.

(2) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the "Testing Linguistic Minorities" section of the *Standards for Educational and Psychological Testing;* and

(v)(A) If the test is in Spanish, accompanied by a recommendation for a passing score based on one standard deviation below the mean for Spanish-speaking students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval; and

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of the intended population and large enough to produce stable norms.

(3) In the case of a test that is modified for use for persons with disabilities, the test publisher must—

(i) Follow guidelines provided in the "Testing People Who Have Handicapping Conditions" section of the *Standards for Educational and Psychological Testing;*

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(iii) Recommend passing score(s) based on the performance of test-takers.

(4) In the case of a computer-based test, the test publisher must—

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing,* as well as specific guidelines set forth in the American Psychological Association's *Guidelines for Computer-based Tests and Interpretations* (1986) (Copies of these standards and guidelines may be obtained from the American Psychological Association, Inc., 1200 17th Street, N.W., Washington, D.C. 20036);

(ii) Provide test administrators with instructions for familiarizing test-takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms.

(b) If a test is designed solely to measure the English language competence of non-native speakers of English—

(1) The test must meet the criteria set forth in § 668.145(b)(6), and § 668.145(c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of those test takers beyond the age of compulsory school attendance who entered U.S. high school equivalency programs over the previous five years.

(Authority: 20 U.S.C. 1091(d))

§ 668.148 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.

If no test is reasonably available for persons with disabilities or students whose native language is not English and who are not fluent in English, so that no test can be approved under §§ 668.145, 668.146, and 668.147 for these students, the following procedures apply:

(a) *Persons with disabilities.* (1) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of disabled student to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(2) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test developer provided that the test administrator, using such procedures or instruments, maintains appropriate documentation, including a description of the procedures or instruments, their content domains and technical properties, scoring procedures, and recommended passing scores.

(b) *Students whose native language is not English.* The Secretary considers a test in a student's native language for a student whose native language is not English to be an approved test under this subpart if—

(1) The Secretary has not approved any test in that native language;

(2) The test was not previously rejected for approval by the Secretary;

(3) The test measures both basic verbal and quantitative skills at the secondary school level; and

(4) The passing scores and the methods for determining the passing scores are fully documented.

(Authority: 20 U.S.C. 1091(d))

§ 668.149 Agreement between the Secretary and a test publisher.

(a) If the Secretary approves a test under this subpart, the test publisher must enter into an agreement with the Secretary containing the provisions in paragraph (b) of this section before an institution may use the test to determine the eligibility of a student for Title IV, HEA program funds.

(b) The agreement between a test publisher and the Secretary shall provide that the test publisher shall—

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have—

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Enter into an agreement with each test administrator that it certifies;

(4) Decertify a test administrator if it finds that the test administrator—

(i) Has repeatedly failed to give its test in accordance with the publisher's instructions;

(ii) Has not kept the test secure; or

(iii) Has otherwise violated the provisions of the agreement entered into under § 668.150;

(5) Score the test answer sheet that it receives from a test administrator;

(6) If a computer-based test, provide the test administrator with software that will:

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher a secure write-protected diskette copy of the test taker's performance on each test item and the test taker's test scores; and

(iii) Prohibit any changes in test taker responses or test scores;

(7) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(8) Keep, for a period of at least five years, each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test;

(9) Every two years after the date the Secretary approves the test, analyze the test scores of students to determine whether the test scores produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis; and

(10) Upon request, give the Secretary, guaranty agency, accrediting agency, and State Postsecondary Review Entity (SPRE) access to test records or other documents related to an audit, investigation, or program review of the institution, test publisher, or test administrator.

(c)(1) The Secretary may terminate an agreement with a test publisher if the test publisher fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary will give the test publisher the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher under this section, the Secretary notifies institutions through publication in the **Federal Register** when they may no longer use the publisher's test for purposes of determining a student's eligibility for Title IV, HEA program funds.

(Authority: 20 U.S.C. 1091(d))

§ 668.150 Agreement between a test publisher and a test administrator.

(a) Except in the case of a test administrator at a testing assessment center, a test publisher whose test was approved by the Secretary under this subpart must enter into an agreement with each test administrator that it certifies to give its test to determine a student's eligibility for Title IV, HEA program assistance.

(b) The agreement between a test publisher and a test administrator shall provide that the test administrator will—

(1) Give a test to a student only if the test administrator is independent of the institution the student is attending or scheduled to attend;

(2) Give the test in accordance with the test publisher's instructions;

(3) Make the test available only to a test taker, and then only during a regularly scheduled test, and will collect the test from the test taker after the test is given;

(4) Secure the test against disclosure or release; and

(5) Submit to the test publisher within two business days after test administration, a copy of the test takers' performance and test scores by either mailing a write-protected diskette copy of the scores or electronically transmitting the scores through a memo.

(c) The test publisher shall terminate its agreement with a test administrator immediately if the test publisher finds that the test administrator—

(1) Has violated any of the provisions in paragraphs (b)(1) through (b)(4) of this section; or

(2) Has consistently violated the provisions of paragraphs (b)(5) of this section.

(Authority: U.S.C. 1091(d))

§ 668.151 Agreement between the institution and a certified test administrator.

(a) To establish a student's eligibility for Title IV, HEA program assistance under this subpart, an institution must use an approved test and must enter into a written agreement with a test administrator who has been certified by the test publisher of that test to give that test and is independent of the institution.

(b) Under the agreement—

(1) The institution shall agree not to—

(i) Compromise test security or testing procedures;

(ii) Pay test administrators bonuses or commissions or any other incentives based upon test scores or pass rates; and

(iii) Interfere with the test administrator's independence or test administration; and

(2) The test administrator shall agree to—

(i) Administer the test in accordance with instructions provided by the test publisher;

(ii) Administer the tests in a manner that ensures his or her independence and the integrity and security of the test; and

(iii) Upon request, give the Secretary, guaranty agency, licensing agency, SPRE, accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of the institution, or test publisher.

(c) Except as provided in paragraph (d) of this section, the Secretary considers a test administrator to be independent of an institution if the test administrator—

(1) Has no current or prior financial interest in the institution, its affiliates,

or its parent corporation, other than the interest obtained through its agreement to administer the test and has no controlling interest in any other educational institution;

(2) Has no current or prior ownership interest in the institution, its affiliates, or its parent corporation;

(3) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation or is not a person in control of another institution, or a member of the family of any of these individuals;

(4) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and

(5) Is not a current or former student of the institution.

(d)(1) The Secretary considers that a test administrator at an assessment center is independent of an institution.

(2) For purposes of this section, an approved test administered at a testing or assessment center at a degree-granting public institution or a public vocational institution is considered to be independently administered.

(e) The institution shall terminate its relationship with a test administrator immediately if the institution learns that the test administrator violated any provisions of this subpart.

(Authority: U.S.C. 1091(d))

§ 668.152 Administration of tests.

(a) In order for test results of an approved test to be considered in determining a student's eligibility under the Title IV, HEA programs, the test must have been properly administered.

(b) The Secretary considers an approved test to be properly administered with regard to a student if it is

—(1) Given by a certified test administrator who—

(i) Has an agreement with the test publisher and the institution the student is attending or planning to attend who satisfies the requirements of this subpart; and

(ii) Is independent of the institution that student is attending or planning to attend;

(2) Administered in accordance with the test publisher's requirements and the requirements of this subpart; and

(3) Scored by the test publisher except that a test administrator at an assessment center may score a test.

(c) Students must receive passing scores on both verbal and quantitative tests or sub-tests as approved by the Secretary.

(d) A student who fails to pass an independently administered test approved by the Secretary may not retake that same form of the test for the period prescribed by the test publisher of that test.

(e) The institution will maintain a record for each affected student, indicating the test taken by the student, the date of the test, and the student's scores as reported by the test publisher.

(Authority: U.S.C. 1091(d))

§ 668.153 Administration of tests for students whose native language is not English or for persons with disabilities.

(a) *Students whose native language is not English.* For a student whose native language is not English and who is not fluent in English, the institution shall use the following tests, as applicable:

(1) If the student is enrolled program conducted entirely in his or her native language, the student must take a test approved under §§ 668.145 and 668.147(a)(2), or 668.148(b).

(2) If the student is enrolled in a program that is taught in English with an ESL component, and the student is enrolled in that program and the ESL component, the student must take either an ESL test approved under § 668.147(b), or a test in the student's native language approved under § 668.145, 668.147 or 668.148.

(3) If the student is enrolled in a program that is taught in English without an ESL component, or the student does not enroll in the ESL component if the institution offers such a component, the student must take a test in English approved under § 668.145.

(4) If the student enrolls in an ESL program, the student must take an ESL test approved under § 668.147(b).

(b) *Persons with disabilities.* (1) An institution shall use a test described in §§ 668.147(a)(3) or 668.148(a) for a student with a documented impairment who has neither a high school diploma nor its equivalent and who is applying for Title IV, HEA program funds.

(2) The test must reflect the student's skills, knowledge, and general learned abilities rather than reflect the student's impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary.

(4) Documentation of a student's impairment may be satisfied by—

(i) A written determination including a diagnosis and recommended testing accommodations by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school or a vocational rehabilitation agency including a diagnosis and recommended testing accommodations.

(Authority: U.S.C. 1091(d))

§ 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart if the institution—

(a) Used a test administrator who is not independent of the institution;

(b) Violates its agreement with a test administrator;

(c) In any way compromises the testing process; or

(d) Is unable to document that the student received a passing score on an approved test as specified under § 668.149(b)(7).

(Authority: U.S.C. 1091(d))

§ 668.155 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for Title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section, that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services—

(1) Orientation regarding the institution's academic standards and requirements, and student rights;

(2) Assessment of each student's existing capabilities through means other than a single standardized test;

(3) Tutoring in basic verbal and quantitative skills, if appropriate;

(4) Assistance in developing educational goals;

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities; and

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process becomes effective.

(2) An approved State process shall become an effective alternative to determine a student's eligibility for Title IV, HEA program funds under this subpart six months after the date on which the State submits the process to the Secretary for approval, if the Secretary approves the process.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State shall calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs; or

(ii) Remained enrolled in education or training programs at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Authority: 20 U.S.C. 1091(d))

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to Preamble

Ability-to-Benefit (ATB)—Summary of Discussions at Regional Meetings

1. (a) How should the Secretary specify a passing score?

At three of the regional meetings, it was recommended that tests be normed by different populations for students in different educational programs. At two of the regional meetings, it was recommended that test scores be those recommended by test publishers. At one of the regional meetings, it was recommended that test scores should be based on persistence data.

(b) How should ATB test validity for schools with testing centers located on campus be addressed?

This issue was not addressed at any of the regional meetings.

(c) What criteria should be adopted to determine whether an ATB test is independently administered?

This provision was only addressed at one of the regional meetings where the consensus was that the current provisions as outlined in the December 12, 1989 **Federal Register** notice are sufficient.

2. (a) How should the Secretary determine whether a test is independently administered?

The consensus at all four of the regional meetings was that the Secretary should (1) continue to require the test examiner to certify that the test was independently administered, and (2) continue to permit testing centers at a school to administer tests provided that the testing center is separate from the admissions and financial aid process.

(b) What standards should be established for the development, administration, and scoring of examinations?

This issue was only addressed at two of the regional meetings. The consensus at one of the regional meetings was that a test should determine both a student's quantitative and verbal skill levels. The consensus at the other regional meeting was that tests should be reviewed for test biases, such as ethnicity, native language, and disability.

3. How often must a state submit ATB plans?

At three of the regional meetings, the consensus was that a state should only have to submit a plan once and then be required to resubmit it if the process changed. The consensus at the other regional meeting was that a state should have to submit its plan every 5 years at a minimum.

4. What factors should the Secretary use to evaluate the effectiveness of a state plan?

The consensus in all of the regional meetings was that the Secretary should consider such factors as retention, graduation and placement rates, and other relevant measures in evaluating the effectiveness of a state plan.

[FR Doc. 94–20138 Filed 8–15–94; 8:45 am]

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federal register

Tuesday
August 16, 1994

Part V

Department of Energy

Federal Energy Regulatory Commission

Western Gas Interstate Company; Notice

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP94–352–000]

Submittal of Account No. 191 Report; Western Gas Interstate Company

August 10, 1994.

Take notice that on August 4, 1994, Western Gas Interstate Company (Western) in compliance with the Commission's order of June 18, 1993, Western is filing a report showing the final balances in Account No. 191 and detailing any amounts collected or disbursed to date of the report.

Western states that it terminated its PGA on August 1, 1993, with a balance in Account No. 191 of $467,685.38. Western states that the balance has been billed through Western's transportation service with Southern Union Gas Company.

Western states that the worksheet attached to the filing depicts the Account No. 191 balance as of August 1, 1993, and all amounts collected from that time to the date of this report. Western also states that also shown on the worksheet are the carrying charges incurred by the balance in this account and any prior month adjustments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20077 Filed 8–15–94; 8:45 am]

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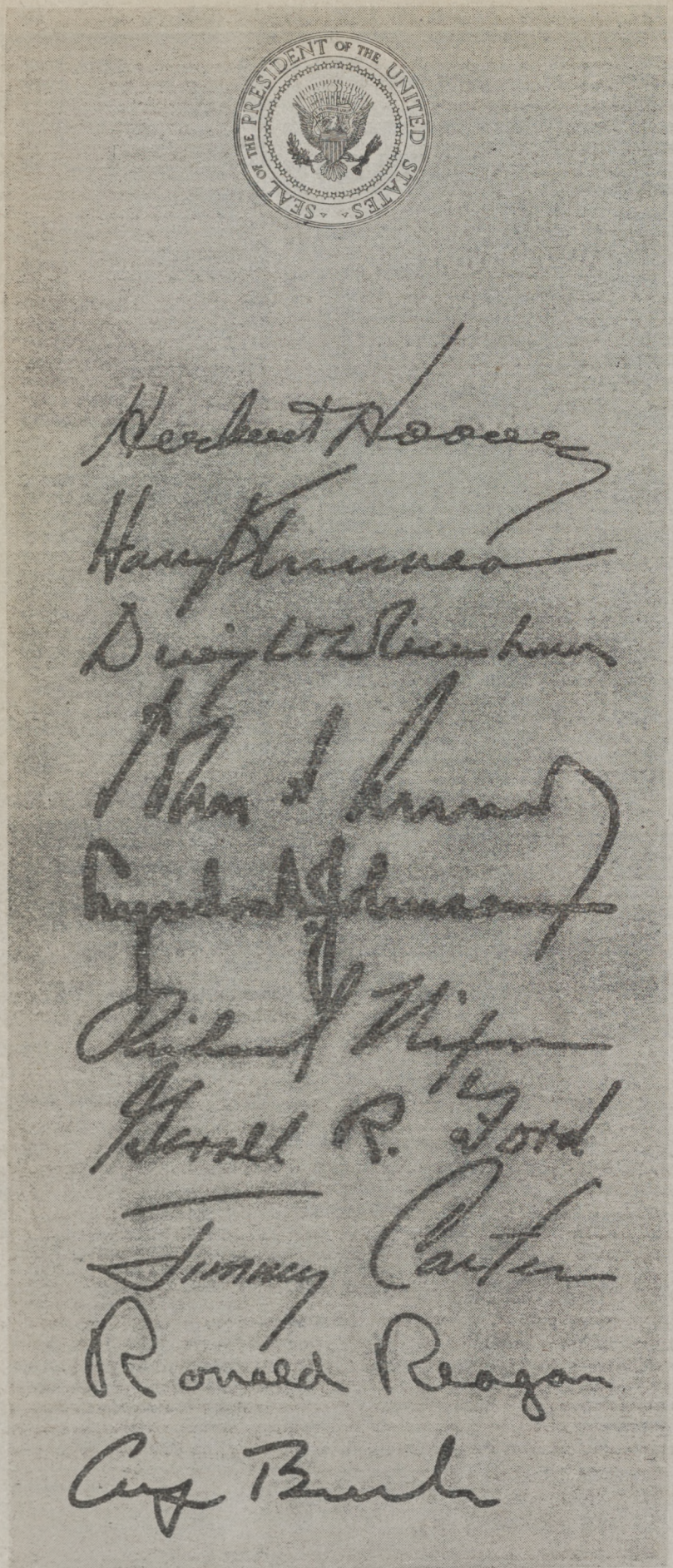

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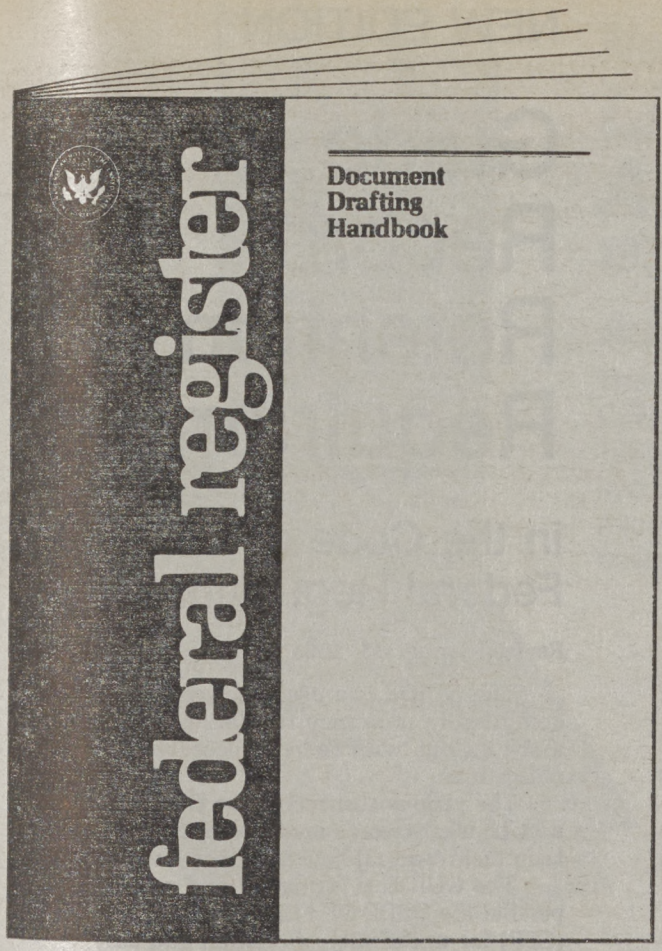

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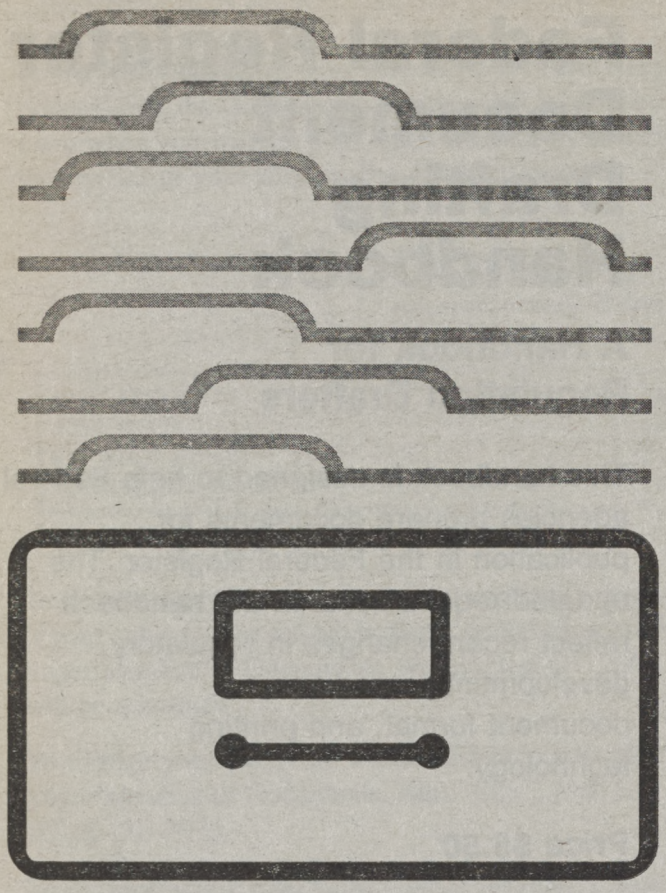

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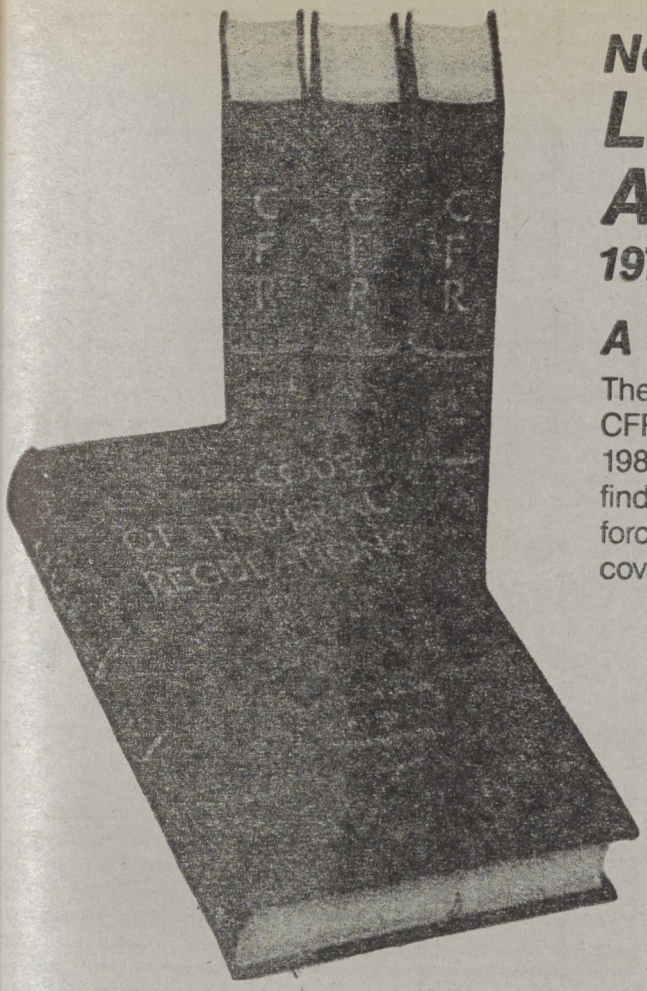

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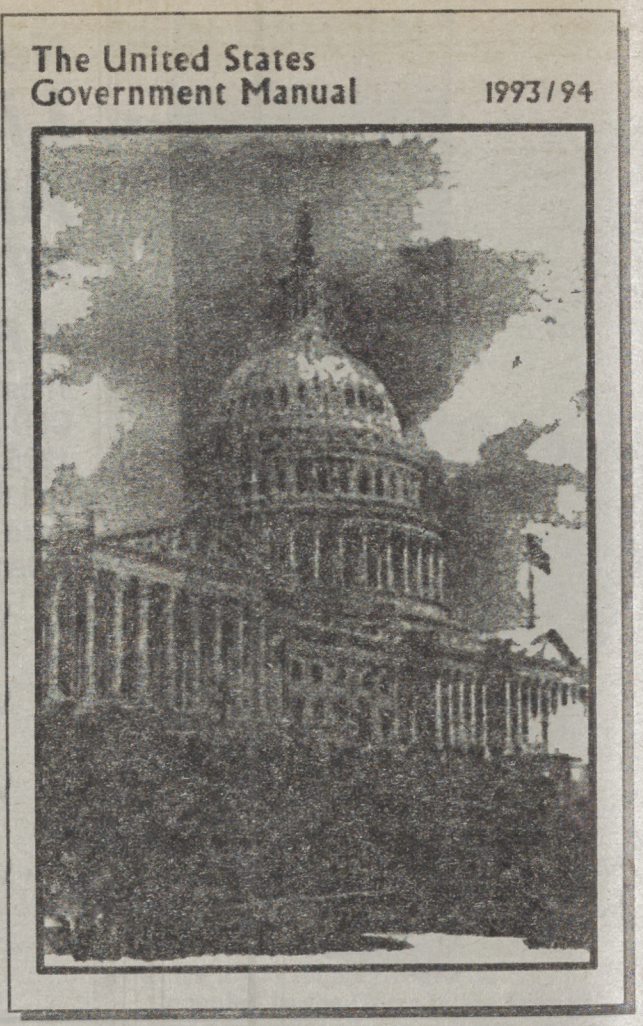

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