12–5–97
Vol. 62 No. 234
Pages 64263–64510

federal register

Friday
December 5, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 62, No. 234

Friday, December 5, 1997

Separate Parts In This Issue

Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

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.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 62, No. 234

Friday, December 5, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–27]

RIN 0579–AA83

Karnal Bunt; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding three alternative treatments for seed originating from a regulated area that will be planted within a regulated area. We are making this change based on new data that demonstrates that these treatments are sufficient to prevent the spread of Karnal bunt through planted seed. This action will reduce the regulatory burden on wheat growers and other affected persons in the regulated area.

DATES: Interim rule effective November 28, 1997. Consideration will be given only to comments received on or before February 3, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–27, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–27. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

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

Section 301.89–4 sets forth requirements for the planting of Karnal bunt host crops in a regulated area. Wheat, durum wheat, and triticale may be planted in surveillance areas and restricted areas for seed, but not in restricted areas for regulated articles other than seed. If the wheat seed, durum wheat seed, or triticale seed to be planted originated within a regulated area, then, prior to planting, the seed must be tested and found free from spores and bunted wheat kernels and treated with a fungicide in accordance with § 301.89–13(d).

Section 301.89–13 provides treatment requirements for seed and regulated articles other than seed that originated within a regulated area. Section 301.89–13(d) provides two options for treating seed that originated within a regulated area and that will be planted within a regulated area. Those two treatment options are: (1) The seed is treated with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. active ingredient (ai.)/gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed; or (2) the seed is treated with 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

Both of the treatment options require the use of a combination of two fungicides: Carboxin thiram and pentachloronitrobenzene. The two treatments differ only in the formulations of these fungicides. We established these double fungicide treatment options in a final rule, published in the **Federal Register** on October 4, 1996 (61 FR 52190–52213, Docket No. 96–016–14). At that time, our decision to require a double fungicide treatment was based on our experience controlling other kinds of plant diseases and on discussions with Karnal bunt experts from other countries. When the regulations were first established, we had had no prior experience with Karnal bunt in the United States. Therefore, initially, we decided on the double fungicide treatment options in an effort to establish safeguards that we could be certain would quickly and effectively control the spread of Karnal bunt.

Now, however, based on new information, we are amending the regulations to allow three alternative treatments for seed that originated in a regulated area and that will be planted in a regulated area. Specifically, we are allowing three different single fungicide treatments for such seed. Seed for planting in the regulated area may be treated with either Carboxin thiram or pentachloronitrobenzene, as follows: (1) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed; (2) with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or (3) with 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We are adding these single fungicide treatment options based on research[1] that demonstrates that any of these single fungicide treatments, together with negative testing for Karnal bunt, is adequate to prevent the spread of Karnal bunt through planted seed. The research that demonstrated this was performed at the International Center for Maize and Wheat Improvement (CIMMYT) in Mexico, in cooperation with Gustafson, Inc. The research protocol involved

[1] Information on this research is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

adding *Tilletia indica* teliospores uniformly to a wheat seed source, applying the fungicides at the specified concentrations, and plating teliospores recovered from the wheat samples onto growth media to assess teliospore viability at 15, 60, 120, and 180 days after treatment. The results indicated that treatment with either of the fungicides Carboxin thiram or pentachloronitrobenzene was comparable in effectiveness to the double treatment using both.

These additional treatment options will offer more flexibility to wheat growers and other affected entities in regulated areas, and will also help minimize the use of pesticides and reduce the costs associated with treating seed originating in a regulated area that will be planted in a regulated area. This action will continue to prevent the spread of Karnal bunt through planted seed while addressing a concern that some growers have regarding a possible reduction in germination of seed treated with one of the double fungicide treatments. We are, however, continuing to offer double fungicide treatments as an alternative seed treatment to enable growers whose seed has already been treated in that manner, or growers who choose to continue to treat seed with a double fungicide treatment, to plant that seed in coming seasons.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Growers have expressed concern that the double fungicide treatment may negatively affect seed germination, and preliminary data from research commissioned by the Arizona Department of Agriculture and industry groups suggests that this effect may occur for at least some varieties of seed. This research data indicates that for the seed varieties tested, untreated seed germinated at a rate of 96.5 percent, while double treated varieties germinated at rates of 91 percent to 95 percent, depending on the seed variety.

Growers are ready to plant seed for this season's wheat crop. Although some seed has been treated with a double fungicide treatment, a significant portion of seed has not yet been treated. As discussed above, we have data indicating that the single fungicide treatments contained in this rule will effectively prevent the spread of Karnal bunt through planted seed, and amending the regulations to allow a single treatment will reduce the loss to growers. Immediate action is necessary to give growers the option of planting seed that has received a single fungicide treatment.

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

Executive Order 12866 and Regulatory Flexibility Act

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

We expect this action to have a slight positive economic impact on growers and other affected persons in regulated areas. However, this emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

The environmental assessment and finding of no significant impact prepared for an earlier final rule provides a basis for the conclusion that the anti-fungicide treatments required under the Karnal bunt regulations do not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. (See Docket No. 96–016–14, October 4, 1996, 61 FR 52189.) Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In § 301.89–13, paragraph (d) is revised to read as follows:

§ 301.89–13 Treatments.

* * * * *

(d) Seed for planting must be treated by one of the following methods:

(1) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed;

(2) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./ gal.) per 100 pounds of seed;

(3) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed;

(4) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or

(5) With 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./ gal.) per 100 pounds of seed.

* * * * *

Done in Washington, DC, this 28th day of November.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31902 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 93

[Docket No. 94–076–2]

Cattle Imported In Bond for Feeding and Return to Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the animal exportation and importation regulations by removing provisions that allowed the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter. That interim rule was necessary because the U.S. Customs Service, to comply with provisions of the North American Free Trade Agreement, had discontinued its collection of duties and cash bonds on cattle imported into the United States from Mexico; without a cash bond, we were unable to meaningfully penalize importers who failed to return those cattle to Mexico. We continue to believe that the termination of the in-bond program was necessary to prevent the dissemination of animal diseases into the United States by in-bond cattle that may have remained in the United States in violation of the regulations.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 93.424 through 93.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

Note: At the time the interim rule referred to in this document was published, the provisions described in the previous paragraph were located in 9 CFR part 92. However, on October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule that redesignated part 92 as part 93. In describing the actions taken in the interim rule, we will use the part and section numbers used in the interim rule; where appropriate, however, we will cross-reference part 92 citations with their current locations in part 93.)

In an interim rule published in the **Federal Register** on March 15, 1995 (60 FR 13896–13898, Docket No. 94–076–1), and effective March 30, 1995, we amended the regulations by removing § 92.427(e), ''Cattle imported in bond for feeding and return to Mexico,'' in its entirety and by removing five references to the in-bond program that were found elsewhere in part 92 and in the animal export regulations in 9 CFR part 91. Before the effective date of the interim rule, § 92.427(e) of the regulations provided for the temporary importation of cattle from Mexico into the United States under U.S. Customs bond for feeding and return to Mexico for slaughter. Cattle imported under that in-bond program were exempt from some animal disease testing requirements that applied to the importation of other cattle from Mexico, but were subject to additional restrictions during the time they were in the United States that did not apply to other cattle imported from Mexico.

We solicited comments concerning the interim rule for 60 days ending May 15, 1995. We received six comments by that date. They were from a foreign government, foreign and domestic trade associations and industry groups, and a customs brokerage. One of the commenters strongly supported the interim rule, while the remaining five commenters opposed the discontinuation of the program. Their comments are discussed below.

Two commenters reported that they had experienced no problems with the in-bond program and felt that it could continue in the absence of a bond, but offered no specific evidence to support their position. Similarly, two other commenters stated that the in-bond program had presented no animal health problems in its 5 years of existence, so there was no reason to believe that the opposite would be true in the future. Those commenters stated that the safeguards contained in the in-bond program, such as the use of sealed vehicles for movement and the requirement that in-bond cattle be held in quarantined feedlots, had proven sufficient in the past to prevent the spread of disease, and could continue to do so. We agree that the quarantine and movement restrictions of the in-bond program were effective in mitigating the disease risk associated with in-bond cattle. However, as we stated in the interim rule, the actions of some importers led us to believe that the posting of a bond was necessary to ensure compliance with those provisions of the in-bond program. Without the authority to institute a bond system similar to that administered by the U.S. Customs Service at U.S. ports of entry on the Mexican border prior to January 1, 1994, we found that it was necessary to terminate the in-bond program in order to prevent animal diseases from being introduced into, and disseminated within, the United States.

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) was incorrect in claiming that cattle imported temporarily for feeding and return to Mexico were no longer covered by a bond; Customs bonds do still apply, the commenter argued, so the in-bond program could continue. We noted in the interim rule that Customs and APHIS continued to allow temporary importations of cattle from Mexico even after January 1, 1994, when the Customs Service discontinued its collection of duties and cash bonds on imported Mexican cattle in order to comply with provisions of the North American Free Trade Agreement (NAFTA). From January 1, 1994, until March 30, 1995, the effective date of the interim rule, the entry of those cattle was covered by a paperwork-only bond, with no money involved, so in terms of a Customs bond being applied to temporary importations of Mexican cattle, the commenter is correct. Our interim rule should have stated that cattle imported for feeding and return to Mexico were no longer covered by a cash bond, and that it was the absence of any cash bond that led to our determination that the in-bond program should be terminated.

One commenter contended that the interim rule violated the terms of NAFTA by instituting a sanitary measure without providing a risk assessment, considering alternatives and economic impacts, or providing the required 60-day notice to Mexico.

The interim rule contained a discussion of the increased disease risks associated with the in-bond program and the measures that had been in place to mitigate those risks. As stated in the interim rule, the additional risks stemmed largely from the fact that in-bond cattle were exempted from meeting certain testing requirements for brucellosis and tuberculosis; those risks had been mitigated by the quarantine and movement restrictions of the in-bond program, and the cash bond had served to ensure that the quarantine and movement restrictions were observed. The termination of the in-bond program was based on our determination that the loss of the cash bond rendered our mitigating measures less effective than we believed was necessary.

The interim rule also discussed alternatives to ending the in-bond program, e.g., continuing with a paperwork-only bond and the possibility of APHIS implementing its own bond system. Further, an economic analysis was provided in the interim rule to satisfy the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

With regard to the 60-day notice, NAFTA allows a party to omit such notice when the party considers it necessary to take measures to address an urgent problem relating to sanitary and phytosanitary protection. In such cases, the party must: (1) Immediately provide a notification of the measures, including a brief description of the urgent problem; (2) provide a copy of such measures upon request; and (3) allow other parties and interested persons to make comments in writing and, upon request, discuss such comments and take such comments and the results of such discussions into account. All three of those requirements were satisfied by the interim rule in that it provided notification of our termination of the in-bond program 15 days prior to the effective date of that action; set forth a description of the urgent problem that led us to publish the interim rule without prior opportunity for public comment; provided a full description of the measures we were taking; and provided a 60-day comment period during which interested persons could submit comments for APHIS' consideration.

One commenter stated that the interim rule is an unjustified nontariff trade barrier because the rule was based not on animal health concerns, but on an administrative problem, i.e., the inability of the Customs Service to collect the bond. We disagree with that argument because Customs' inability to collect the bond is a reality mandated by NAFTA, not an ''administrative problem'' that could be solved by a change in procedure or a reallocation of resources. As explained above and in the interim rule, we found that the bond was an important factor in the enforceability of the restrictions designed to mitigate the higher disease risk posed by cattle imported under the in-bond program. If those restrictions were disregarded, there is the very real possibility that cattle that had not been tested for tuberculosis or brucellosis could be commingled with domestic livestock and spread disease; we regard that as an animal health concern.

As noted above, the interim rule removed § 92.427(e), which contained the in-bond program's provisions, and five references to those provisions found elsewhere in parts 91 and 92. Following the publication of the interim rule, it was brought to our attention that we failed to remove a sixth reference to the in-bond program from the regulations in § 92.427(c)(2) (current § 93.427(c)(2)). We are, therefore, removing that reference in this final rule.

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

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

Executive Order 12988

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

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR parts 91 and 92 (now 9 CFR parts 91 and 93) that was published at 60 FR 13896–13898 on March 15, 1995, is adopted as a final rule with the change set forth below.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.427 [Amended]

2. In § 93.427, in paragraph (c)(2), the second sentence is amended by removing the words ''or in bond for temporary entry in accordance with § 93.427(e)''.

Done in Washington, DC, this 1st day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31899 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board amends its rules to revise and clarify Board procedures relating to procedural rulings, notation voting, Board meetings, and the agenda. This amendment more clearly defines the procedures that are to be followed when a Board member appeals a procedural

ruling and when matters are submitted to the Board for notation vote. Further, this amendment sets forth the authority of Board members to call a special meeting and place items on a regular meeting agenda.

DATES: Effective on December 5, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703) 518–6540. E-mail questions may be sent to ogcmail@ncua.gov.

SUPPLEMENTARY INFORMATION: Part 791 of NCUA Rules and Regulations (12 CFR part 791) governs the manner in which the Board conducts NCUA business; appeal of a procedural ruling, the use of notation votes, the recording of Board actions, and the scheduling and subject matter of Board meetings. At this time, § 791.4 is amended to provide that any Board member may appeal a procedural ruling, and that the Board member's appeal must be considered immediately by the Board.

In addition, § 791.4 is amended to provide that, for every matter submitted for a notation vote, a written memorandum and voting sheet is to be circulated to the office of each Board member simultaneously. Thus, the office of each Board member receives notice of matters for notation voting at the same time. Further, the rule is amended to specify that, if a Board member vetoes the use of notation voting for a particular matter, the matter must be placed on the agenda of the next regularly scheduled Board meeting that is to be held at least 10 days after the date of the veto.

Section 791.5 is amended to specify that a special meeting shall be called by the Chairman on the Chairman's own initiative or within fourteen days of a request from two Board members. The request must be made by submitting an NCUA B–1 form and Board Action Memorandum stating the specific action being recommended to the Board.

Section 791.6 is amended to establish that, although the Chairman determines the order of and the items to be placed on the agenda, any Board member may have an item placed on the agenda of the next regularly scheduled Board meeting. The request must be submitted at least ten days in advance of the next regularly scheduled meeting and accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

Immediate Effective Date

Because these amendments concern the rules of NCUA Board procedure, prior notice and comment are not required by 5 U.S.C. 553. These amendments are effective upon publication in the **Federal Register**.

Regulatory Procedures

Regulatory Flexibility Act

NCUA certifies that part 791 will not have a significant impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required. The rule affects internal NCUA Board operations only. Thus, it will not result in any additional burden for regulated institutions. The purpose of the rule is to enhance the operations of the NCUA Board.

Paperwork Reduction Act

The amendments to the rule do not contain any collection of information requirements pursuant to the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Part 791 only applies to NCUA and the NCUA Board. Accordingly, NCUA has determined that the rule will not have a substantial impact on the states or state interests. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Section 791.4 is amended by revising paragraphs (a)(2), (b) introductory text and (b)(3) to read as follows:

§ 791.4 Methods of acting.

(a) * * *

(2) *Presiding officer.* The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings. Any Board member may appeal a ruling made by the presiding officer. The appeal of a procedural ruling by the presiding officer shall be immediately considered by the Board, and a majority decision by the Board shall decide the procedural ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member simultaneously and the tabulation of responses.

* * * * *

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of the next regularly scheduled Board meeting that is held at least ten days after the date of the veto.

* * * * *

3. Section 791.5 is amended by revising paragraph (a)(2) to read as follows:

§ 791.5 Scheduling of board meetings.

(a) * * *

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

* * * * *

4. Section 791.6 is amended by revising paragraph (a) to read as follows:

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

* * * * *

[FR Doc. 97–31716 Filed 12–4–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–03; Amendment 39–10138; AD 97–19–18]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TSCP700–4B and –5 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–19–18 applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units (APUs) that was published in the **Federal Register** on September 22, 1997 (62 FR 49427). The Amendment number and AD number in the compliance section was inadvertently omitted. This document adds the Amendment number and AD number to the compliance section. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units (APUs), was published in the **Federal Register** on September 22, 1997 (62 FR 49427). The following correction is needed:

§ 39.13 [Corrected]

On page 49428, in the third column, in the Compliance Section, in the first line, ‘‘Amendment 39–XXXX’’ is corrected to read ‘‘Amendment 39–10138’’.

On page 49428, in the third column, in the Compliance Section, in the third and fourth line, ‘‘97–XX–XX AlliedSignal Inc.: Amendment 39–XXXX’’ is corrected to read ‘‘97–19–18 AlliedSignal Inc.: Amendment 39–10138.’’

Issued in Burlington, MA, on November 28, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31894 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–29]

Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Alliance Municipal Airport, Alliance, NE. The FAA has developed Nondirectional Radio Beacon (NDB) Runway (RWY) 12 and NDB RWY 30 Standard Instrument Approach Procedures (SIAP) to serve the Alliance Municipal Airport. The enlarged Class E surface area and Class E airspace area 700 feet Above Ground Level (AGL) will contain the new NDB RWY 12 and NDB RWY 30 SIAPs in controlled airspace. The intended effect of this rule is to provide additional controlled Class E surface area and Class E airspace extending upward from 700 feet AGL to accommodate these SIAPs.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–29, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

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

SUPPLEMENTARY INFORMATION: The FAA has developed NDB RWY 12 and NDB RWY 30 SIAPs at Alliance Municipal Airport, Alliance, NE. The amendment to Class E surface area and Class E 700 feet AGL airspace area at Alliance Municipal Airport will provide additional controlled airspace in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The areas will be depicted on appropriate aeronautical charts. Class E surface areas are published in paragraph 6002 and Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ACE–29.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE NE E2 Alliance, NE [Revised]

Alliance Municipal Airport, NE
(lat. 42°03′12″ N., long. 102°48′14″ W.)
Alliance VOR/DME
(lat. 42°03′20″ N., long. 102°48′16″ W.)
Alliance NDB
(lat. 42°02′35″ N., long. 102°47′58″ W.)

Within a 4.3-mile radius of Alliance Municipal Airport and within 1.3 miles each side of the 124° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles southeast of the NDB and within 2.6 miles each side of the 145° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 302° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 5.7 miles northwest of the VOR/DME and within 1.3 miles each side of the 318° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles northwest of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE NE E5 Alliance, NE [Revised]

Alliance Municipal Airport, NE
(lat. 42°03′12″ N., long. 102°48′14″ W.)
Alliance VOR/DME
(lat. 42°03′20″ N., long. 102°48′16″ W.)
Alliance NDB
(lat. 42°02′35″ N., long. 102°47′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Alliance Municipal Airport and within 1.3 miles each side of the 124° bearing from the Alliance NDB extending from the 6.8-mile radius to 7 miles southeast of the NDB and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 10.5 miles southeast of the VOR/DME and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 8.7 miles northwest of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on October 15, 1997.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31700 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–21]

Amendment of Class E Airspace; New Braunfels Municipal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace at San Antonio, TX. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to runways (RWY) 13 and 17 and a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME)–A SIAP at New Braunfels Municipal Airport, TX, has made this rule necessary. This action is intended to provide adequate additional controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at New Braunfels Municipal Airport, New Braunfels, TX.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–21, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation

Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class E airspace at New Braunfels, TX. The development of GPS SIAP's to RWY 13 and RWY 17 and a VOR/DME–A SIAP at New Braunfels Municipal Airport, TX, has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the GPS SIAPs to RWYs 13 and 17 and a VOR/DME–A SIAP at New Braunfels Municipal Airport, New Braunfels, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–21.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5—San Antonio, TX [Revised]

San Antonio International Airport, TX
(Lat. 29°32′01″ N., long. 98°28′11″ W.)
New Braunfels Municipal, TX
(Lat. 29°42′11″ N., long. 98°02′28″ W.)
San Antonio VORTAC
(Lat. 29°38′39″ N., long. 98°27′41″ W.)
Randolph VOR
(Lat. 29°38′39″ N., long. 98°17′06″ W.)
Stinson VOR
(Lat. 29°15′30″ N., long. 98°26′37″ W.)
Castroville Municipal, TX
(Lat. 29°20′33″ N., long. 98°51′04″ W.)
Castroville RBN
(Lat. 29°20′46″ N., long. 98°50′57″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of San Antonio International Airport and within 6.9-mile radius of New Braunfels Municipal Airport and within 1.6 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 11.2 miles east of the New Braunfels Municipal Airport and within 4 miles each side of the 316° bearing from New Braunfels

Municipal Airport extending from the 6.9-mile radius to 9.7 miles north of the airport and within 3 miles each side of the 331° bearing from New Braunfels Municipal Airport extending from the 6.9-mile radius to 9.7 miles northwest of the airport and within 4 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 9.7 miles east of the New Braunfels Municipal Airport and within 8 miles east and 4 miles west of the 144° radial of the Randolph VOR extending from the 20-mile radius to 20.6 miles southeast of the VOR and within 8 miles east and 4 miles west of the 152° radial of the Stinson VOR extending from the 20-mile radius to 16 miles south of the VOR and within a 6.5-mile radius of Castroville Municipal Airport and within 8 miles west and 4 miles east of the 170° bearing from the Castroville RBN extending from the RBN to 16 miles south of the RBN.

* * * * *

Issued in Fort Worth, TX, on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31930 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–20]

Amendment of Class E Airspace; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace at Camden, AR. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 18 at Harrell Field has made this rule necessary. This action is intended to provide adequate additional controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Harrell Field, Camden, AR.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–AWS–20, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class E airspace at Camden, AR. The development of the NDB SIAP to RWY 18 at Harrell Field has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the NDB RWY 18 SIAP to Harrell Field, Camden, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–20.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5—Camden, AR [Revised]

Camden, Harrell Field, AR
(Lat. 33°37′22″ N., long. 92°45′49″ W.)
El Dorado VORTAC
(Lat. 33°15′22″ N., long 92°44′38″ W.)

The airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Harrell Field and within 1.5 miles each side of the 357° radial of the El Dorado VORTAC extending from the 7.1-mile radius to 9.6 miles north of the airport and within 2.5 miles each side of the 013° bearing from Harrell Field extending from the 7.1-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31931 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–16]

Establishment of Class E Airspace; Encino, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Encino, TX. The development of two Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to runway (RWY) 13 and RWY 31 at El Coyote Ranch Airport has made this rule necessary. This action is intended to establish Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and executing the GPS SIAP’s at El Coyote Ranch Airport, Encino, TX.

DATES: *Effective date*: 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–16, Forth Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace, providing controlled airspace for IFR operations at El Coyote Ranch Airport, Encino, TX. The development of two GPS SIAP’s to RWY 13 and RWY 31 at El Coyote Ranch Airport has made this rule necessary. This action will establish Class E airspace for aircraft operating at El Coyote Ranch Airport, Encino, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–16.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5—Encino, TX [New]

Encino, El Coyote Ranch Airport, TX
(Lat. 26°51′30″ N., long. 98°13′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of El Coyote Ranch Airport.

* * * * *

Issued in Fort Worth, TX, on November 6, 1997.

Albert L. Visselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31932 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–7]

Amendment to Class E Airspace; Belleville, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a direct final rule, request for comments, that was published in the **Federal Register** on October 17, 1997 (62 FR 53943), Airspace Docket No. 97–ACE–7. The direct final rule amends the Class E airspace at Belleville Municipal Airport, Belleville, KS.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–27363, Airspace Docket No. 97–ACE–7, published on October 17, 1997 (62 FR 53943), revised the descriptions of the Class E airspace area at Belleville, KS. An error was discovered in the geographic coordinates for the Republican Nondirectional Radio Beacon (NDB). This action corrects that error.

Correction to Direct Final Rule; Request for Comments

Accordingly, pursuant to the authority delegated to me, the airspace description for the Belleville, KS, Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on October 17, 1997 (62 FR 53943), (**Federal Register** Document 97–27363) is corrected as follows:

§ 71.1 [Corrected]

On page 53944, column 2, the geographic coordinates for the Republican NDB are corrected by removing ''(Lat. 39°548′48″N. long. 97°39′30″W.)'' and adding ''(Lat. 39°48′48″N. long. 97°39′30″W.)'' in its place.

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31698 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 340

RIN 3220–AB32

Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: In an interim rule published August 1, 1997, the Railroad Retirement Board (Board) amended part 340 of its regulations to reflect its authority to compromise debts provided that the amount recoverable does not exceed $100,000 exclusive of interest. The amendment conformed the Board's regulations to present law. This document adopts the interim rule as final without change.

DATES: *Effective Date:* This regulation is effective August 1, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 8(b) of Public Law 101–552, enacted November 15, 1990, amended section 3711 of title 31 of the United States Code to increase from $20,000 to $100,000 (or a higher amount if so prescribed by the Attorney General) the amount of a claim that an agency is authorized to compromise. Consistent with the change in the law, the Board is amending § 340.13 of its regulations under the Railroad Unemployment Insurance Act to reflect this change in law.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a major rule for the purposes of Executive Order 12866. Therefore, no regulatory analysis is required. This rule does not involve any information collection requirements.

The Board published this rule as an interim final rule on August 1, 1997 (62 FR 41270), and comments were invited by September 30, 1997. No comments were received. Accordingly, the interim final rule is adopted as a final rule without change.

Dated: November 25, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31905 Filed 12–4–97; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 422

RIN 0960–AE09

Federal Old-Age, Survivors, and Disability Insurance; Disclosure of Information to Consumer Reporting Agencies and Overpayment Recovery Through Administrative Offset Against Federal Payments

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: In this final rule, we are making several revisions to our regulations dealing with debt collection. First, we are modifying the regulations dealing with the recovery of benefit overpayments under title II of the Social Security Act (the Act) to reflect statutory authority for the Social Security Administration (SSA) to selectively refer information to consumer reporting agencies and to recover title II overpayments through administrative offset by the Department of the Treasury against other Federal payments to which the overpaid individual may be entitled. These collection practices are limited to overpayments made to a person after he or she attained age 18 that are determined to be otherwise unrecoverable under section 204 of the Act after the individual ceases to be a beneficiary under title II of the Act. Second, as an independent agency in the executive branch of the U.S. Government, we are establishing a new subpart D in part 422 of title 20 of the Code of Federal Regulations which explains our rules on debt collection procedures for both administrative debts and for title II program overpayments determined to be otherwise unrecoverable under section 204 of the Act. These rules for the new subpart D address the reporting of delinquent debts to consumer and other credit reporting agencies and the use of administrative offset through the Department of the Treasury. Third, we are revising our rules on the recovery of title II program overpayments through the use of the Federal income tax refund offset (TRO) provisions to reflect that, beginning January 1, 1998, the Department of the Treasury, rather than the Internal Revenue Service (IRS), will administer the TRO program, and to reflect other changes in policies and procedures applied by the IRS and the Department of the Treasury in the TRO program.

EFFECTIVE DATE: This final rule is effective January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 204 of the Act prescribes the methods SSA may use to recover Social Security benefits erroneously paid under title II of the Act (title II program overpayments), as distinguished from the methods SSA may use to collect other debts owed the agency (administrative debts) that are recoverable under other statutory authority. Until recently, SSA was authorized to recover title II program overpayments only through adjustment of future benefits payable to the overpaid individual or to others on the earnings record on which the overpayment was made, by direct recovery from the overpaid person (or the overpaid person's estate, if deceased), or by offset against Federal income tax refunds due from the Department of the Treasury. Amendments to section 204 of the Act by section 5 of Pub. L. 103–387 (1994) and section 31001(z)(2) of Pub. L. 104–134 (1996) permit SSA to use several debt collection procedures that have been available to Federal agencies (including SSA) by statute since 1982, but that SSA had been precluded from using to recover title II program overpayments. Among other things, these procedures include reporting delinquent debts to consumer and other credit reporting agencies and recovering debts by administrative offset against other Federal payments to which the debtor is entitled. Under section 204(f) of the Act (42 U.S.C. 404(f)), these additional debt collection procedures may be used to recover title II program overpayments only if the overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the overpaid person is no longer entitled to benefits under title II of the Act.

Before we can refer information to consumer or other credit reporting agencies or refer a debt to the Department of the Treasury for administrative offset (either title II program overpayments or administrative debts), we must (1) send the debtor written notice (or, in the case of an individual for whom we do not have a current address, take reasonable action to locate and send written notice) describing the amount and nature of the debt, the action that we propose to take, and the debtor's rights to an explanation of the debt, to request us to review the debt, to dispute the accuracy of the information about the debt, and to inspect or copy our records about the debt; and (2) give the debtor at least 60 calendar days to present evidence that all or part of the debt is not past-due or not legally enforceable, or enter into a written agreement to pay the debt.

Prior to March 31, 1995, SSA was an operating division of the Department of Health and Human Services (DHHS). SSA relied on the DHHS rules at 45 CFR part 30 for debt collection (other than collection of title II program overpayments). The Social Security Independence and Program Improvements Act of 1994 (SSIPIA), Pub. L. 103–296, established SSA as an independent agency in the executive branch of the Federal government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of the SSIPIA, DHHS regulations in effect immediately before March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated, or repealed by the Commissioner. In this final rule, we are establishing a new subpart D in part 422 of our regulations which sets forth the SSA rules on debt collection for title II program overpayments that have been determined to be otherwise unrecoverable under section 204 of the Act and for administrative debts. At this time, we are setting forth in subpart D our rules on referral to consumer and other credit reporting agencies and referral to the Department of the Treasury for administrative offset. In the future, as we make the necessary systems changes and develop policies and procedures to enable us to use additional debt collection tools for recovery of title II program overpayments, we will modify subpart D of part 422. In the meantime, we will continue to rely on the definitions and additional collection methods contained in the DHHS regulations in 45 CFR part 30 to recover administrative debts owed the Federal government.

We are also revising our rules on the recovery of title II program overpayments through the withholding of amounts due to former beneficiaries as Federal income tax refunds to reflect the fact that, beginning January 1, 1998, the TRO program will be administered by the Department of the Treasury, Financial Management Service (FMS), instead of the IRS. The policy requiring agencies to delay referral of debts for TRO for three months after the right to collect first accrued has been rescinded. Also, the TRO program, as administered by FMS, will be ongoing rather than cyclical so that it will no longer be necessary for agencies to recertify amounts of a particular debt for collection by TRO each year. Instead, if the entire debt is not recovered in a given year, the case will remain with FMS for collection of the remainder by offset in succeeding years.

Public Comments

On August 7, 1997, we published proposed rules in the **Federal Register** at 62 FR 42439 and provided a 60-day period for interested individuals to comment. We received a total of three letters on the proposed rules: one from a private attorney, one from a disability law center, and one from a member of Congress. After carefully considering the comments received, we have decided to adopt the proposed rules with only a few clarifying changes. The comments and our responses to them are summarized below.

Comment: Two commenters objected to the proposed rules based on the assumption that the debtors subject to these rules have no input into the calculation of their debts and are without adequate protections.

Response: The debtors who will be selected for the new debt collection techniques are those from whom SSA has attempted numerous times to collect the debts, both by written notices and personal contacts. In the initial overpayment notice, SSA advises the debtor of the right to request reconsideration of the fact and amount of the debt, and thereby challenge the calculation and existence of the debt. In this same notice, SSA also advises the debtor about the right to request waiver. In addition, SSA's separate notice to the debtor of the Agency's intent to refer information about the debt to the Department of the Treasury and to the consumer reporting agencies offers the debtor the opportunity to request waiver, present evidence showing that the debt is not past-due and/or legally enforceable, and dispute the accuracy of information about the debt that we would refer. We believe that our procedures adequately protect individuals by allowing ample opportunity to the debtors to both dispute the amount of the overpayment and/or to request waiver.

Comment: One commenter asked the Agency not to issue final regulations until it: (1) runs a test program to assure that overpayments preventable by SSA are not occurring; (2) tests a program of appointing free advocates (who may be SSA employees) to counsel and represent those accused of receiving overpayments; and (3) assures that people accused of using overpayments understand that a report is made to a consumer reporting agency immediately unless they appeal or reach agreement with SSA.

Response: We are not adopting this comment. With regard to the commenter's first concern above, SSA has had a longstanding and comprehensive quality assurance program that reviews overpayments, including those preventable by SSA. The program studies significant samples of claims, identifying problem areas that need to be corrected. We believe this quality assurance program corresponds to the test program suggested by the commenter.

With regard to the commenter's second point, SSA already takes several steps toward helping overpaid individuals obtain representation. Information on the individual's right to seek and use representation is included in SSA's initial overpayment notices. In addition, SSA offers to provide information on advocacy groups that do not charge people who qualify for their services.

Regarding the commenter's third point, SSA will not report information to consumer reporting agencies immediately. SSA will wait at least 60 days after the date of the notice to report the delinquency to consumer reporting agencies. During the 60-day due process period, SSA provides the debtor with the opportunity to request review of the debt, dispute the accuracy of the information to be reported, request waiver, or enter into an installment agreement. All of these rights are clearly explained in the notice to the debtor.

Comment: One commenter objected to the practice of sending one pre-offset notice to the debtor explaining that the debt is being referred to the Department of the Treasury for TRO and that future tax refunds will be offset to recover the overpayment. The commenter believes that we should provide separate notices before subsequent offsets.

Response: This practice is consistent with the Department of the Treasury's existing process whereby no additional notice is necessary if there are multiple offsets in one year to recover an overpayment debt. It is also consistent with the Department of the Treasury's regulations and operating procedures which require notice at least 60 calendar days before the date of referral to the Department of the Treasury.

Comment: SSA's notices described in § 404.521 of the proposed rules should contain language explaining that the debtor may enter into a repayment agreement with SSA.

Response: Since the beginning of the TRO program, SSA's notices have contained such language. The notices issued under these final regulations also contain the language which offers the opportunity to pay the debt by installments. One of the principles that SSA uses in the offset program is to extend to the debtor as many opportunities as possible to pay the debt voluntarily, rather than by offset. As long as the debtor repays by regular installments in accordance with his or her payment agreement with SSA, offset will not be used to collect the debt.

Comment: No referral to the Department of the Treasury should occur until all administrative reviews have been completed or until a decision of the Agency becomes final, in the event that no appeal is taken. In addition, recovery efforts by the SSA and the Department of the Treasury should be stopped until a waiver request received after referral to the Department of the Treasury has been given full consideration.

Response: When an individual submits a timely request for reconsideration of the initial overpayment decision and/or requests waiver of collection of the overpayment, SSA is precluded from any recovery action until SSA renders a decision affirming the initial determination and/or denying the waiver request. See *Califano* v. *Yamasaki,* 442 U.S. 682 (1979) and § 404.506. SSA is not required to refrain from taking collection action concerning a title II overpayment debt after a decision on a request for reconsideration of the initial overpayment determination is issued and after a determination on a request for waiver of recovery of the overpayment is made after the debtor had the opportunity for a prerecoupment personal conference. However, under the process adopted to implement these final regulations SSA would not select a title II overpayment debt for referral to the Department of the Treasury while an administrative appeal regarding that debt is pending.

Section 204(f) of the Act, as amended, authorizes SSA to collect such debts through administrative offset by the Department of the Treasury against Federal payments due the debtor when, among other things, SSA determines, under regulations, that such debts are otherwise unrecoverable under section 204 of the Act. In accordance with § 404.527(b) of these final regulations, SSA would not select a debt as ''unrecoverable'' until a reconsideration determination requested on the initial determination of overpayment, or an initial determination (after opportunity for a personal conference) on a request for waiver of collection, is issued and either the billing system sequence is completed or further collection action is suspended or terminated. The billing system sequence on a title II overpayment debt would not be completed, and collection action on such a debt would not be suspended or terminated, while an administrative appeal at any level of adjudication is pending on the matter. Thus, under these final regulations SSA would not select a title II overpayment debt for collection by the Department of the Treasury through offset against other Federal payments while an administrative appeal is pending at any level of adjudication on the fact or amount of the overpayment or on waiver.

Similarly, the changes in these regulations will not affect any former beneficiary's ability to request waiver. If the debtor requests waiver after a case has been referred, SSA will instruct the Department of the Treasury to cease collection efforts until the waiver request is adjudicated.

Comment: SSA should raise its monetary threshold for referral to the Department of the Treasury from $25 to $500.

Response: The $25 debt threshold is consistent with the regulations issued by Treasury and is used governmentwide. SSA has also determined it to be cost-effective. SSA will continue to use the $25 threshold in applying these rules.

Comment: The notice SSA will send to debtors informing them that the Agency intends to report their debts to consumer reporting agencies should include the right to request waiver of the overpayment.

Response: Unlike 31 U.S.C. 3720A(f) pertaining to the TRO notice to debtors, the statute (31 U.S.C. 3711(e)(1)(C)) pertaining to the notice to debtors about referral to consumer reporting agencies does not require an explanation of waiver. However, SSA notifies debtors about TRO, offset of other Federal payments and referral to consumer reporting agencies concurrently, and these notices explain the debtors' waiver rights. If the debtor requests waiver within the 60-calendar-day period allowed by the notice, SSA will not report the debt to the credit bureaus until the waiver request has been adjudicated.

Explanation of Changes to Regulations

We are revising our title II rules on TRO at §§ 404.520–404.526 to reflect several changes in the TRO process promulgated by the Department of the Treasury. Beginning January 1, 1998, we will be referring title II program overpayments for TRO to the Department of the Treasury, rather than to IRS. Section 404.520 is revised to delete the requirement that a debt may not be referred for TRO before the expiration of three months after our right to collect first accrued. Section 404.526 is also revised by deleting reference to the need to recertify an overpayment for TRO in cases where a tax refund is insufficient to recover the entire amount of an overpayment in a given year, reflecting the fact that the case will now remain with the Department of the Treasury for offset in succeeding years without need for recertification. In this final rule, we have inserted at the end of § 404.520(a) a reference to the current regulation of the Department of the Treasury (31 CFR 285.2) which supersedes the IRS regulation (26 CFR 301.6402–6) that was cited in the notice of proposed rulemaking.

We are adding a new § 404.527 to our regulations to explain that we will use the additional debt collection methods authorized by section 204(f) of the Act to recover title II program overpayments if the overpayment occurred after the individual attained age 18, and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the individual is no longer entitled to benefits under title II of the Act. Section 404.527 also contains the criteria under which we determine that an overpayment is ''otherwise unrecoverable under section 204 of the Act.'' An overpayment debt will be determined to be unrecoverable when all of the following conditions are met: we completed our billing sequence or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 and 104.3; there is no installment payment agreement or the overpaid person has failed to pay in accordance with such an agreement for two consecutive months; the overpaid individual has not requested waiver or, after appropriate review of such a request, we have determined that we will not waive collection of the overpayment; the overpaid person has not requested reconsideration of the initial overpayment determination or, after our review of such determination, we have affirmed such determination wholly or partially; we cannot collect the overpayment by adjusting benefits payable to individuals other than the overpaid person. For purposes of § 404.527, an overpayment will be deemed to be unrecoverable from an individual who lived in a separate household from the overpaid person when the overpayment occurred and who did not receive the overpayment.

Adjustment of benefits is waived when waiver is requested under these circumstances. See § 404.509.

We are adding to § 404.903 new paragraphs (t) and (u) to include in the list of administrative actions that are not initial determinations our determinations whether we will refer information about an overpayment debt to consumer reporting agencies and whether we will refer the debt to the Department of the Treasury for offset against other Federal payments due the overpaid person. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of our regulations at 20 CFR Part 404, and they are not subject to judicial review.

We are also creating a new subpart D to part 422 of our regulations to contain our rules on certain debt collection practices and procedures. In § 422.301, we specify that the debt collection tools in subpart D may be used to recover both title II program overpayments the Commissioner has determined to be unrecoverable under section 204 of the Act and overdue administrative debts owed the agency.

In § 422.305, we explain that we will refer all overdue title II program debts over $25, found to be otherwise unrecoverable under section 204 of the Act, to consumer reporting agencies. We describe the information we must include in the notice we send to the debtor before we report the debt to a consumer reporting agency. We also explain in this section that, in cases where an individual disputes the information we propose to refer to a consumer reporting agency within 60 calendar days of our notice of our proposed referral, we will not send the information until we determine the correct information.

In § 422.306, we explain that we will refer all overdue administrative debts over $25 to credit reporting agencies. We also describe the information we must include in the notice we send to the debtor before we report the debt to a credit reporting agency. Examples of administrative debts are overpayments of employees' pay and allowances, debts for civil money penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services by SSA (e.g., disclosure of information), contractor debts, etc.

In § 422.310, we explain our rules relating to referring debts to the Department of the Treasury for administrative offset. Specifically, we explain that we will refer overdue debts over $25 to the Department of the Treasury for offset against any Federal payments due the debtor. We also describe the information we must include in the notice we send to the debtor before referring the debt to the Department of the Treasury for administrative offset.

In this final rule, we are revising the language of §§ 422.305(b)(2), 422.306(b)(2) and 422.310(c)(2) as it appeared in the proposed rules to clearly state that we will not refer information on debts to consumer reporting agencies or to the Department of the Treasury for administrative offset before the expiration of 60 calendar days from the dates of the notices described in those regulations.

In § 422.315, we explain that a debtor has the right to inspect or copy our records related to a debt before we refer the debt to a consumer or credit reporting agency or to the Department of the Treasury for administrative offset, and the procedures for exercising that right.

In § 422.317, we explain that a debtor has the right to have us review the debt. To exercise this right, the debtor must notify us within 60 calendar days from the date of our notice of proposed referral and give us evidence that he or she does not owe all or part of the debt, or we do not have the right to collect it. After our review of the evidence, we explain that we will issue written findings of our review. If the debtor requests review and submits evidence within the 60-day period, we will not refer the debt to consumer or credit reporting agencies or to the Department of the Treasury unless and until we have completed our review and sent our findings to the debtor that all or part of the debt is overdue and legally enforceable.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

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

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: December 2, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts F and J of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended and a new subpart D is added to Part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 404—[AMENDED]

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

Authority: Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a), and 902(a)); 31 U.S.C. 3720A.

2. Section 404.520 is revised to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 404.520 through 404.526. These standards and procedures are authorized by 31 U.S.C. 3720A and are implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Department of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly Social Security benefits under title II of the Act. We will refer an overpayment to the Department of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

3. Section 404.521 is amended by revising the introductory text to read as follows:

§ 404.521 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and send the overpaid individual written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

* * * * *

4. Section 404.526 is revised to read as follows:

§ 404.526 Tax refund insufficient to cover amount of overpayment.

If a tax refund for a given taxable year is insufficient to recover an overpayment completely, the case will remain with the Department of the Treasury for offset, assuming that all criteria for offset continue to be met.

5. Section 404.527 is added to subpart F to read as follows:

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subpart D of part 422, provided:

(1) The overpayment occurred after the individual has attained age 18;

(2) The overpaid individual is no longer entitled to benefits under title II of the Act; and

(3) Pursuant to paragraph (b) of this section, we have determined that the overpayment is otherwise unrecoverable under section 204 of the Act.

(b) *When an overpayment is considered to be otherwise unrecoverable.* An overpayment under title II of the Act is considered to be otherwise unrecoverable under section 204 of the Act if all of the following conditions are met:

(1) Our billing system sequence has been completed (i.e., we have sent the individual an initial notice of the overpayment, a reminder notice, and a past-due notice) or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 or 104.3.

(2) We have not entered into an installment payment arrangement with the overpaid individual or, if we have entered into such an arrangement, the overpaid individual has failed to make any payment for two consecutive months.

(3) The overpaid individual has not requested waiver pursuant to § 404.506 or § 404.522 or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(4) The overpaid individual has not requested reconsideration of the initial overpayment determination pursuant to §§ 404.907 and 404.909 or, after a review conducted pursuant to § 404.913, we have affirmed, in whole or in part, the initial overpayment determination.

(5) The overpayment cannot be recovered pursuant to § 404.502 by adjustment of benefits payable to any individual other than the overpaid individual. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

6. In addition to the amendments set forth above, remove the acronym ''IRS'' and add, in its place, the words ''Department of the Treasury'' in the following places:

(a) Section 404.521(b);

(b) Section 404.522(b);

(c) Section 404.523 (a) and (c) (both places); and

(d) Section 404.525.

7. The authority citation for subpart J of Part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

8. Section 404.903 is amended by deleting the word ''and'' at the end of paragraph (r), replacing the period at the end of paragraph (s) with a semicolon, and adding paragraphs (t) and (u) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(t) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 404.527 and 422.305 of this chapter); and

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter).

PART 422—ORGANIZATION AND PROCEDURES

10. Subpart D is added to read as follows:

Subpart D—Claims Collection

Subpart D—Claims Collection

Authority: Secs. 204(f), 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404(f), 405(a), and 902(a)(5)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

§ 422.301 Material included in this subpart.

This subpart describes the procedures relating to collection of:

(a) Overdue administrative debts, and

(b) Overdue title II program overpayments described in § 404.527 of this chapter.

§ 422.305 Report of overdue title II program overpayment debts to consumer reporting agencies.

(a) *Debts we will report.* We will report to consumer reporting agencies all overdue title II program overpayment debts over $25.

(b) *Notice to debtor.* Before we report any such debt to a consumer reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a consumer reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the consumer reporting agency, including information that identifies the debtor (e.g., name, address, and social security number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the consumer reporting agency;

(6) The debtor may request a review of the debt by giving us evidence

showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

(c) *Disputing the information that we would send to consumer reporting agencies.* If a debtor believes that the information we propose to send to consumer reporting agencies is incorrect, the debtor may ask us to correct such information. If, within 60 calendar days from the date of our notice described in paragraph (b) of this section, the debtor notifies us that any information to be sent to consumer reporting agencies is incorrect, we will not send the information to consumer reporting agencies until we determine the correct information.

§ 422.306 Report of overdue administrative debts to credit reporting agencies.

(a) *Debts we will report.* We will report to credit reporting agencies all overdue administrative debts over $25. Some examples of administrative debts are as follows: overpayments of pay and allowances paid to employees, debts for civil monetary penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services performed by SSA (e.g., disclosures of information), and contractor debts.

(b) *Notice to debtor.* Before we report any administrative debt to a credit reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a credit reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the credit reporting agency, including information that identifies the debtor (e.g., name, address, social security number, and employer identification number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the credit reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Governmentwide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor.

(b) *Debts we will refer.* We will refer for administrative offset all overdue debts over $25.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt for administrative offset at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (c)(4) or (c)(5) of this section;

(3) The debtor may inspect or copy our records relating to the debt;

(4) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(5) The debtor may request an installment payment plan.

§ 422.315 Review of our records related to the debt.

(a) *Notification by the debtor.* The debtor may request to inspect or copy our records related to the debt.

(b) *Our response.* In response to a request from the debtor described in paragraph (a) of this section, we will notify the debtor of the location and time at which the debtor may inspect or copy our records related to the debt. We may also, at our discretion, mail to the debtor copies of the records relating to the debt.

§ 422.317 Review of the debt.

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in § 422.305(b), § 422.306(b), or § 422.310(c) has a right to have us review the debt. To exercise this right, within 60 calendar days from the date of our notice, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt or that we do not have the right to collect it. If the debtor does not notify us and give us this evidence within the 60 calendar-day period, we may take the action described in our notice.

(b) *Review of the evidence.* If the debtor notifies us and presents evidence within the 60 calendar-day period described in paragraph (a) of this section, we will not take the action described in our notice unless and until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable.

(c) *Findings by SSA.* Following our review of all of the evidence presented, we will issue written findings, including the supporting rationale for the findings. Issuance of these findings will be the final Agency action on the debtor's request for review. If we find that the debt is not overdue or we do not have the right to collect it, we will not send information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset.

[FR Doc. 97–32008 Filed 12–4–97; 8:45 am]

BILLING CODE 4190–29–P

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 98–1]

Assignment of Special Research Facilities

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise Library of Congress Regulation 815–3. The revised regulation will reflect the change in availability for assignment of study shelves, study desks and study rooms, the renaming of the responsible division from General Reading Rooms Division to Humanities and Social Sciences Division and to the Congressional Relations Office for study rooms for Congressional use.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lana Kay Jones, Acting General Counsel, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: This Regulation states the Library's policy regarding the assignment of special research facilities, including study shelves, desks, and other facilities designed for the use of scholars involved in extensive research using materials from the Library's collections.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Regulation

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 136.

2. Section 701.8 is revised to read as follows:

§ 701.8 Assignment of Special Research Facilities.

(a) *Study Shelves.* Individually-assigned reserve shelves are available adjacent to several reading rooms for the use of researchers whose work requires access to the same materials over an extended period of time. Shelves are assigned to applicants for a specific period through the Research Facilities Office, Humanities and Social Sciences Division. Shelves must be renewed at designated intervals.

(b) *Study desks.* A limited number of study desks are available for the use of researchers engaged in full-time research projects involving extensive use of materials requiring larger amounts of material drawn from the Library's collections, more work space, greater physical security, and/or a more private environment than might be possible in a reading room. Study desk areas shall not be used as a primary office from which the project undertaken is operated, nor as a business location. Study desks are initially assigned for a period not to exceed one year, with the assignment and termination dates determined by the Head of the Main Reading Room Section, Humanities and Social Sciences Division. The assignment of a study desk beyond the first year may be made by the Chief of the Humanities and Social Sciences Division for a maximum of two years from the first assignment when there is a demonstrated need for the continuation of the assignment. Assignments beyond two years require an exception to this part and shall be specifically authorized by the Associate Librarian for Library Services. Any researcher who demonstrates a continuing need for a facility beyond an expiration date may reapply, but priority will be given to applicants on the waiting list who meet the specific criteria.

(c) *Congressional use of study rooms.* Rooms 225A–225E in the James Madison Building are available for the exclusive use of Members of Congress and Committees for official research that requires use of the Library's collections or files in the Congressional Research Service. Assignment of study rooms shall be made in accordance with the Resolution of the Joint Committee on the Library of September 12, 1959, which states: ''* * * occupancy of study rooms assigned to Members should not be delegated to others than members of their own office staff who are paid no less than 20 hours per week from U.S. Government funds and at a rate of not less than the minimum salary of a GS–3 clerk-typist * * *, and that Members should not request assignments of rooms for themselves merely for the purpose of sponsoring the work of private individuals and non-Government groups. * * *'' Rooms are assigned for one year or the life of the project, whichever is less, with the assignment and termination dates determined by the Director of the Congressional Relations Office.

Dated: November 20, 1997.

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31752 Filed 12–4–97; 8:45 am]

BILLING CODE 1410–04–P

POSTAL SERVICE

39 CFR Parts 262 and 265

Records and Information Management Definitions and Release of Information

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service is amending its regulations relating to the availability of records to the public. This rule is made necessary by amendments to the Freedom of Information Act, made by Public Law 104–231, the ''Electronic Freedom of Information Act Amendments of 1996.'' The amendments address the availability of electronic records, the creation of a new electronic reading room, and procedural aspects, such as time limits, expedited processing, denial specifications, and reporting requirements.

DATES: The interim regulations take effect on December 5, 1997. Comments must be received on or before January 5, 1998.

ADDRESSES: Written comments may be mailed or delivered to Freedom of Information/Privacy Acts Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Room 8800, Washington, DC 20260–5243.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) was amended on October 2, 1996, by Public Law 104–231, the ''Electronic Freedom of Information Act Amendments of 1996.'' Consistent with the amended law, the interim regulations:

a. Add a new category of reading room records consisting of any records processed and disclosed in response to a FOIA request that the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records. These and other reading room records created on or after November 1, 1996 also will be made available through the Postal Service's world wide web home page after November 1, 1997.

b. Define the term ''record'' to include electronic records; provide that the requester may choose the form or format in which to receive records; and state that the Postal Service will make reasonable efforts to search for records in electronic form or format unless such efforts would significantly interfere with the operation of its computer systems.

c. Extend the period for response from 10 to 20 working days as of October 2, 1997; provide for notification of the requester when that period cannot be met to arrange for an alternative time frame or a modified request; and establish a new procedure for handling requests for expedited processing.

d. Require the custodian to indicate on the released portion of a record the amount of information deleted and to include in a written response an estimate of the volume of any records withheld in full.

e. Change the annual reporting period from a calendar year to the fiscal year that, for most of the Executive branch, begins on October 1, and provide that those reports will be made available to the Attorney General and on the Postal Service's world wide web page.

Other interim changes update organizational titles and the schedule of fees for searching for records by computer.

The Postal Service has determined to place the amendments immediately into effect on an interim basis, because many of the key provisions implement statutory changes that take effect by force of law on October 2, 1997. Nonetheless, the Postal Service invites interested persons to submit written comments concerning the interim rule.

These comments will be considered before a final rule is adopted.

List of Subjects

39 CFR Part 262

Archives and records, Records and information management definitions.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out in the preamble, 39 CFR parts 262 and 265 are amended as set forth below.

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

2. Section 262.2(a) is revised to read as follows:

§ 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

* * * * *

3. Section 262.4 introductory text is revised to read as follows:

§ 262.4. Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

* * * * *

PART 265—RELEASE OF INFORMATION

4. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

5. Section 265.3(a) is revised to read as follows:

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of a facility or department at which they are maintained, as defined at § 262.2(a). These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

* * * * *

6. Section 265.5 is revised to read as follows:

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1641, serves as public reading room for the materials which are listed in paragraphs (a) (2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Any such material created by the Postal Service on or after November 1, 1996, also will be available, as of November 1, 1997, in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

7. Section 265.6(a) is revised to read as follows:

§ 265.6 Availability of records.

(a) *Records available to the public on request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a) (2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a) (4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer, Administrative Law Judges, and Board of Contract Appeals, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, and all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Beginning November 1, 1997, any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. *[Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]*

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index

and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available beginning November 1, 1997, in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

(6) *Listings of employees' names.* With written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

8. Section 265.6(e)(1) is amended by revising the citation ''paragraph (a)(5)'' to read ''paragraph (a)(6)''.

9. Section 265.7(a)(2) is amended by revising the citation ''§ 265.6(a)(5)'' to read ''§ 265.6(a)(6)''.

10. Sections 265.7 (b) and (c), (d)(1), (e)(1) and (f) (1) and (2) are revised and sections 265.7 (d)(3) and (g) are added to read as follows:

§ 265.7 Procedure for inspection and copying of records.

* * * * *

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with the Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

* * * * *

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

* * * * *

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The-20 day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

* * * * *

(g) *Expedited processing*—(1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, ‘‘compelling need’’ exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester’s knowledge and belief.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

11. Section 265.10 is revised to read as follows:

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of a fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the Headquarters Library and on the Postal Service’s world wide web site at http://www.usps.gov.

12. Appendix A to Part 265—Information Services Price List is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Service description	Price	Unit
Servers		
A. OS390 Servers:		
Batch or On-line Services	$1,350.00	Hour.
Media Charge (Tape Produced)	25.00	Volume.
Print	.10	Page.
B. Production Servers:		
(Running UNIX or NT OS) On-line Services	155.00	Hour.
Print	.13	Page.
C. Personal Computers:		
On-line search	6.25	15 minutes.
Print	.13	Page.
D. Personnel Charges:		
Software Systems Services	81.00	Hour.
Programming Services	70.00	Hour.
Manual Unit Services	48.00	Hour.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–31598 Filed 12–4–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA–41–1–7355, FRL–5899–8]

Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of the Designation for Lafourche Parish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On July 17, 1997, EPA published a proposed rulemaking to correct the designation of Lafourche Parish, Louisiana, to nonattainment for ozone (62 FR 38237). One adverse comment letter was received during the 30-day comment period, and the issues raised in that letter are addressed in this document. Pursuant to the Clean Air Act (the Act), which allows EPA to correct its actions, EPA is today correcting the designation of Lafourche Parish to nonattainment for ozone.

DATES: This action is effective on January 5, 1998.

ADDRESSES: Copies of the information relevant to this action are available for inspection during normal hours at the following location: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Anyone wishing to review this document at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

The specific rationale EPA used to correct the ozone designation of Lafourche Parish was explained in the proposed correction document (62 FR 38237, July 17, 1997) and will not be restated here. This document announces EPA's final action regarding the correction of Lafourche Parish to nonattainment for ozone.

II. Response to Comments

The EPA received an adverse comment letter dated August 15, 1997, from the Louisiana Mid-Continent Oil and Gas Association. The commentors believed that EPA either failed to consider or purposefully disregarded several factors. The EPA's responses to these comments are detailed below.

Comment: EPA failed to consider the odd shape of the parish and the location of the monitor with respect to sources in the parish.

Response: 40 CFR part 58, Ambient Air Quality Surveillance, Appendices D and E, describe EPA's monitoring network design and siting criteria for State or Local Air Monitoring Stations (SLAMS). The SLAMS make up the ambient air quality monitoring network which is required by 40 CFR 58.20 to be provided for in the State Implementation Plan (SIP). In general, the SLAMS monitor in Thibodaux was sited in accordance with 40 CFR part 58, Appendices C and D, to measure the maximum population exposure one could reasonably expect to occur in the Parish. The shape of Lafourche Parish and the location of the major emission points were taken into consideration by the State and EPA to determine the appropriate siting scales and monitoring objectives for ozone in Lafourche Parish.

Comment: EPA failed to consider the excellent compliance history of the Parish.

Response: The EPA considered the compliance history of Lafourche Parish, prior to and during 1995, as part of our evaluation and approval process for the Parish's ozone redesignation request. But despite the prior compliance history of Lafourche, the operative facts showed a violation of the standard that disqualified the area from redesignation to attainment. The language of section 107 (d)(3)(E)(i) and (d)(1)(A) provides that EPA may not redesignate an area unless the Administrator determines that the area has attained the standard. This is reinforced by other sections of the Act, including section 175A maintenance plan requirements, and section 172(c)(9) contingency measures. The EPA has long interpreted this language as requiring EPA to disapprove redesignation requests for areas that violate the standard while a redesignation request is pending. See Memorandum dated September 4, 1992, entitled Procedures for Processing Requests to Redesignate Areas to Attainment, p. 5; Pittsburgh-Beaver Valley nonattainment area (61 FR 19123, May 1, 1996); Richmond, Virginia (59 FR 22757, May 3, 1994), Birmingham, Alabama (62 FR 49154, September 19, 1997), Northern Kentucky portion of Cincinnati-Hamilton nonattainment area (61 FR 50718, September 27, 1996), and Detroit-Ann Arbor, (60 FR 12459, March 7, 1995). See also the opinion of the United States Court of Appeals for the Third Circuit in *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F. 3rd. 106 (3rd Cir. 1997).

The Lafourche direct final approval notice itself stated: ''If the monitoring data records a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substitute for the direct final approval.'' (60 FR 43021–22). Although such a violation was recorded during the comment period, EPA failed to withdraw the approval and substitute a disapproval, as it acknowledged would have been the appropriate course of action. The EPA's position is consistent with 40 CFR section 50.9, which states that the NAAQS for ozone is attained ''when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million[] is equal to or less than 1, as determined by Appendix H.'' Appendix H explains the methodology for determining ''attainment'' of the ozone standard. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard.

The United States Court of Appeals for the Third Circuit, in evaluating EPA's disapproval of a redesignation request for an area that violated the standard while its request was pending, stated: ''we accept the view that the EPA may not redesignate an area if the EPA knows that the area is not meeting the NAAQS. The EPA's redesignation of the Lafourche Parish redesignation was thus not proper.'' *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F.3rd at 114. The commenters also complained that 1995 was an unusually warm year. But even if this were the case, this provides no grounds for excluding quality-assured monitored exceedances of the ozone standard. The EPA's applicable regulations governing ozone attainment provide no basis for excluding data due to exceptionally hot weather. 40 CFR section 50.9 appendix D and H and part 58. See Birmingham, 62 FR 49154, and the discussion contained therein.

Comment: The EPA failed to consider Lafourche Parish's performance with respect to the new 8-hour ozone standard.

Response: Compliance with the new 8-hour ozone standard is irrelevant to the issues in this rulemaking, which concerns only the area's failure to meet the 1-hour standard. The EPA's action here concerns only the requirement to meet the 1-hour standard. It should be noted, however, that data collected from 1993–1995 and 1994–1996 indicate that Lafourche Parish would also be in violation of the new 8-hour standard.

Comment: The EPA did not consider the time it took to complete the entire review process, from draft SIP to final notice.

Response: The EPA assumes the commentors are referring to the time it took to develop and act upon the redesignation request for Lafourche Parish. The Louisiana Department of Environmental Quality (LDEQ) submitted its initial redesignation request for Lafourche Parish during the Summer of 1993. However, the plan was found to be deficient in several areas, and did not demonstrate maintenance of the ozone standard. The EPA had the option to disapprove this initial request, or ask LDEQ to revise the request and resubmit the revision to us. The LDEQ submitted a revised redesignation request for Lafourche Parish to EPA on November 18, 1994. The direct final approval of that revised maintenance plan and redesignation request appeared in the **Federal Register** on August 18, 1995, some months after receiving the revised request. Although the entire period of EPA's review, measured from the date of the original redesignation request, was more than eighteen months (though EPA took less than that time period to consider the revised request), this does not alter EPA's authority to consider violations that occurred while its review was pending. *Southwestern Pennsylvania Growth Alliance* v. *Browner, supra.*

Comment: The EPA failed to consider the uniqueness of the weather trends and purposefully disregarded the clear and convincing demonstration by LDEQ of transport in 1995.

Response: the LDEQ submitted a modeling demonstration to EPA on July 31, 1996, to support its belief that the exceedances in Lafourche Parish in 1995 were the result of transport from the Baton Rouge area. As discussed in the September 5, 1996, response letter to LDEQ, EPA concluded that the modeling demonstration did not prove the overwhelming transport theory. Further, whether the cause of the ozone violation in 1995 was due to transport or local sources, the regulatory result would be the same, and would still result in a designation of nonattainment. The EPA carries the responsibility to protect and inform the public about health issues which, in the case of Lafourche Parish's violation of the ozone standard, require us to correct our rulemaking error and designate the area back to nonattainment. As in the case of the Pittsburgh-Beaver Valley nonattainment area that was the subject of the Southwestern Pennsylvania Growth Alliance case, there is here no adequate technical demonstration supporting a claim of transport-dominated nonattainment. See *SWPGA* v. *Browner.* supra. Moreover, even if there had been such a demonstration, the Act provides that an attainment area is one that ''meets'' the NAAQS, and EPA is prohibited from redesignating an area to attainment unless it determines that the area ''has attained'' the NAAQS. Thus, even if an area's nonattainment can be demonstrated to be caused by overwhelming transport, that does not entitle the area to be redesignated to attainment. This is made clear by the provisions of section 182(h), which establishes ''rural transport'' areas. In this section, Congress addressed the situation confronted by the most pristine areas which fail to meet the NAAQS, but make no significant contribution to the ozone concentrations in their area. For these areas, Congress provided some relief in the form of relaxed control requirements; however, Congress insisted on retaining the ''nonattainment'' designation for these areas that fail to meet the NAAQS due to overwhelming transport. Thus, although Congress provided relief for these areas, it did not change their nonattainment designations. In contrast, Congress did provide that transport may be taken into account in the classification of nonattainment areas (Act section 181(a)(4)). Thus Congress expressed its intent to allow limited adjustments for transport in the context of classifying nonattainment areas, but not for redesignations. See the discussion of this issue in *SWPGA* v. *Browner.*

Comment: The EPA did not consider or purposefully disregarded the President's directive to be flexible and minimize paperwork.

Response: On July 16, 1997, the President of the United States issued a Presidential Directive entitled Memorandum for the Administrator of the Environmental Protection Agency. This Presidential Directive required EPA to maximize common sense, flexibility, and cost-effectiveness when implementing the 8-hour ozone standard. However, this Presidential Directive also stated that the 1-hour standard will continue to apply in areas where air quality does not meet the current standard (62 FR 38421, July 18, 1997).

Comment: The EPA failed to consider the unnecessary paperwork and review burdens on LDEQ and EPA since compliance with both standards is expected by year-end 1998.

Response: This action will entail no unnecessary paperwork and review burdens. If the area attains the 1-hour standard and the 8-hour standard in the future, it will be eligible for appropriate designation to attainment of the 8-hour standard and revocation of the 1-hour standard.

III. Final Action

The EPA issued a direct final rule promulgating a change to the designation of Lafourche Parish, Louisiana, to attainment for ozone, and amended 40 CFR parts 52 and 81 accordingly (60 FR 43020, August 18, 1995). In today's action, EPA is correcting this error by changing the designation of Lafourche Parish to an ozone nonattainment area, and classifying it as an incomplete data area. Today's action also amends 40 CFR parts 52 and 81 to reflect the change in designation. These actions are being taken in accordance with section 110(k)(6) of the Act.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, requires any Federal agency, when it develops a rule, to identify and address the impact of the rule on the small businesses and other small entities that will be subject to the rule (5 U.S.C. 603 and 604). This requirement applies to any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (605(b)). Besides small businesses, small entities include small governments with jurisdictions of less than 50,000 people and small nonprofit organizations. The Regulatory Flexibility Act requirement applies to any rule subject to notice and comment rulemaking requirements.

As set forth in the proposal, 62 FR 38238–239, this action is not subject to notice-and-comment rulemaking requirements, and therefore is also not subject to the RFA requirement to prepare regulatory flexibility analyses. Moreover, this action will not establish any requirements applicable to small entities. It simply corrects the designation of the area by restoring the nonattainment designation that was erroneously changed to attainment. The RFA requires analyses of a rule's requirements as they would apply to small entities. If the rule does not apply to small entities, an RFA analysis is inapplicable.

Further, it is unlikely that this action will result in State imposition of control requirements that are different from those applicable in Lafourche Parish before the erroneous change in designation status. Under Title I of the Act, States are primarily responsible for establishing control requirements needed to attain and maintain the NAAQS. Louisiana has adopted an implementation plan that includes control requirements that apply to particular sources or categories of sources, depending on a number of factors, including the designation status of the area in which a source is located. As a result of today's action, Louisiana will once again have to apply some of those control programs in Lafourche Parish. Some of those programs may ultimately impose requirements on small entities in the Parish. However, these controls were applicable before the erroneous designation to attainment; correcting that mistake will only put the small entities in that area in the place they were prior to the mistake being made.

Beyond that, the purpose of the RFA is to promote Federal agency efforts to tailor a rule's requirements to the scale of the small entities that will be subject to it. That purpose cannot be served in the case of State control requirements. Some of the control requirements included in States' SIPs are prescribed to some extent by the Act. Even so, the only issue before EPA in actions such as this one is the proper designation of a particular area. The implementation consequences of a designation are beyond the scope of such actions, and indeed, beyond EPA's reach to the extent they are dictated by the Act itself or are left to States' discretion. In light of all the above, if the RFA were applicable to this action, the Agency would certify that it will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action simply corrects an error in the designation for the reasons described above and does not, in itself, impose any mandates.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks and wilderness areas, Designation of areas for air quality planning purposes.

Dated: November 26, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Under § 52.975, paragraph (f) is added to read as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(f) Lafourche Parish, Louisiana, is designated back to nonattainment for ozone. The original classification of incomplete data is retained.

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

4. In § 81.319, the ozone table is amended by revising the entry for Lafourche Parish to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date	Type
* * * * * * *				
Lafourche Area:				
Lafourche Parish	January 5, 1998	Nonattainment	....	Incomplete data

LOUISIANA—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–31912 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300587; FRL–5754–5]

RIN 2070–AB78

Maleic hydrazide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in or on rice commodities as well as tolerances for secondary residues in animal commodities. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on rice in Louisiana. This regulation establishes a maximum permissible level for residues of maleic hydrazide in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on September 30, 1998.

DATES: This regulation is effective December 5, 1997. Objections and requests for hearings must be received by EPA on or before February 3, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300587], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300587], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300587]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the herbicide maleic hydrazide (1,2-dihydro-3,6-pyridazinedione), in or on rice, grain at 105 part per million (ppm); rice, straw at 75 ppm; rice, hulls at 240 ppm; and rice, bran at 180 ppm. Additionally, the Agency is establishing tolerances for secondary residues in milk at 1.0 ppm; at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses, and sheep; at 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs. These tolerances will expire and are revoked on September 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for Maleic Hydrazide on Rice and FFDCA Tolerances

On June 19, 1997, the Louisiana Department of Agriculture and Forestry availed of itself the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of maleic hydrazide on rice to control red rice. Red rice is normally controlled by flood water management and rotating the rice crop to soybeans, where soybean herbicides are used that control red rice but are also phytotoxic to commercial rice. Over the last 5 years, farm land to be rotated into rice in 1997 has experienced three consecutive soybean seasons with poor control of red rice. This has resulted in increasing red rice infestations in the two intervening rice crop seasons, and a buildup of red rice seed in the soil. This situation gives rise to the possibility of an unprecedentedly high red rice infestation in 1997. Economic loss due to red rice occurs both through reductions in the yield of the rice crop and through reductions in the quality of the harvested crop. Because red rice and cultivated rice are closely related, there are few selective herbicides available; those that are have limited efficacy against red rice. The use of maleic hydrazide would not only increase yield and quality of the harvested crop this year, but would reduce red rice seed in the soil and therefore reduce the level of red rice infestation in the next rice crop. EPA has authorized under FIFRA section 18 the use of maleic hydrazide on rice for control of red rice in Louisiana. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of maleic hydrazide in or on rice. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice grain, bran, hulls and straw or in meat, milk, poultry or eggs after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Risk Assessment and Statutory Findings

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

A. Toxicity

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

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

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants less than 1 year was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of maleic hydrazide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) on rice, grain at 105 ppm; rice, straw at 75 ppm; rice, hulls at 240 ppm; rice, bran at 180 ppm; time-limited tolerances are set at 2.5 ppm in meat, 7.0 ppm in liver, 32.0 ppm in kidney, and 3.0 ppm in fat of cattle, goats, hogs, horses, and sheep; 1.0 ppm in milk; 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts (except liver), and 0.5 ppm in eggs. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. The Agency has determined that an acute dietary risk assessment is not required for this chemical.

2. *Short - and intermediate - term toxicity*. Based on the available data base, the Agency has concluded that determination of short-term Margin of Exposure (MOE) calculations is not required. For intermediate-term MOE calculations, the Agency recommends use of the NOEL of 29 milligrams/ kilogram/day (mg/kg/day) from the 1–year feeding study in dogs. Decreased weight gain and reduced heart weight are the effects observed at the Lowest Effect Level (LEL) of 87 mg/kg/day.

3. *Chronic toxicity*. EPA has established the RfD for maleic hydrazide at 0.25 mg/kg/day. This RfD is based on a NOEL of 25 mg/kg/day taken from a 2–year feeding study in rats in which decreased weight gain in males was the effect observed at the LEL of 500 mg/kg/ day. An uncertainty factor of 100 was assigned to allow for inter- and intra-species variability.

4. *Carcinogenicity*. Maleic hydrazide has been classified as a Group E--evidence of non-carcinogenicity for humans in two species--chemical by the Agency. A carcinogenic risk assessment is not required.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.175) for the residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione), in or on dry bulb onions, potatoes and cranberries. Risk assessments were conducted by EPA to assess dietary exposures and risks from maleic hydrazide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Agency has determined that this risk assessment is not required.

ii. *Chronic exposure and risk.* Refined residue and percent of crop treated information were used in the chronic exposure analysis to calculate the Anticipated Residue Contribution (ARC) from published and proposed uses of maleic hydrazide. The use of tolerance level residues for potatoes and dry bulb onions as well as the use of high end anticipated residues for animal commodities results in overestimation of chronic dietary risk.

2. *From drinking water.* Review of available data indicate that maleic hydrazide is neither mobile nor persistent. There is no established Maximum Contaminant Level for residues of maleic hydrazide in drinking water. Health advisory levels for maleic hydrazide in drinking water have been established at the following levels: for a 10 kg child, 10 mg/liter (1–day and 10–day levels) and 5 mg/liter (long term level); for a 70 kg adult, 20 mg/liter (long term level).

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause maleic hydrazide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with maleic hydrazide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Maleic hydrazide is currently registered for use on the following residential non-food sites: outdoor non-food sites such as non-bearing citrus and ornamentals.

i. *Chronic exposure and risk.* Based on the uses registered, a chronic, non-dietary exposure scenario is not expected.

ii. *Short- and intermediate-term exposure and risk.* Maleic hydrazide is currently registered for use on outdoor non-food sites such as non-bearing citrus, ornamental shade trees and plants, turf, lawns, utility and highway rights of way, industrial areas and airports. There are no indoor uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

Maleic hydrazide is a member of the hydrazide class of pesticides; another member of this class is Alar (daminozide). EPA does not have, at this time, available data to determine whether maleic hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, maleic hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that maleic hydrazide has a common mechanism of toxicity with other substances.

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

1. *Chronic risk*. Using the ARC exposure assumptions described in Unit IV.B. of this preamble, EPA has concluded that aggregate exposure to maleic hydrazide from food will utilize 14% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old (discussed in Unit IV.E. of this preamble). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maleic hydrazide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to maleic hydrazide residues.

2. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Data to quantify intermediate-term exposure from non-occupational, non-dietary uses are not available at this time. In the absence of a quantitative estimate of exposure, the Agency believes that the large MOEs calculated for mixers, loaders and applicators of the product (1,000 to 1,800, where 100 is considered to be the level at which the Agency has reasonable certainty of no harm resulting from occupational exposure to the chemical) demonstrate that intermediate aggregate risk from non-occupational uses of maleic hydrazide is below the Agency's level of concern.

D. Aggregate Cancer Risk for U.S. Population

Maleic hydrazide has been classified as a Group E chemical. A carcinogenic risk assessment is not required for this chemical.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of maleic hydrazide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. In the developmental toxicity study in rats, the maternal (systemic) NOEL was 1,600 mg/kg/day, the highest dose tested (HDT). The developmental NOEL was 1,200 mg/kg/day, based on minor skeletal variations at the LOEL of 1,600 mg/kg/day. In a second developmental toxicity study in rats, the maternal and developmental NOELs were greater than 1,000 mg/kg/day, the HDT. The Agency concluded that skeletal variations observed in the first study occurred at doses above 1 mg/kg/day, the limit dose, and therefore were of minimal concern. In the developmental toxicity study in rabbits, the maternal and developmental NOELs were 1,000 mg/kg/day, the HDT.

iii. *Reproductive toxicity study*. In the 2-generation reproductive toxicity study in rats, the maternal NOEL was 500 mg/kg/day, based on decreased body weight at the LOEL of 1,500 mg/kg/day. The reproductive/developmental NOEL was 500 mg/kg/day, based on post-natal decrease in body weight of pups during lactation at the LOEL of 1,500 mg/kg/day.

iv. *Pre- and post-natal sensitivity*. The toxicity data base for evaluating pre- and post-natal toxicity for maleic hydrazide is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion*. Based on review of the required studies, EPA concludes that reliable data support use of the standard hundredfold MOE/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to maleic hydrazide from food will utilize between 14 and 54% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maleic hydrazide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to maleic hydrazide residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is maleic hydrazide (as specified in 40 CFR 180.175). The nature of the residue in animals is adequately understood for this section 18. The residue of concern is maleic hydrazide .

B. Analytical Enforcement Methodology

Adequate enforcement methodology (with spectrophotometric detection) for plants is available in PAM II to enforce the tolerance expression. An enforcement method has not been validated for animal commodities. However, a method for animal commodities is available, see Wood, P.R., ‘‘Determination of Maleic Hydrazide Residues in Plant and Animal Tissue,’’ *Analytical Chemistry*, 25, 1879 (1953).

C. Magnitude of Residues

Residues of maleic hydrazide at a 14–day PHI are not expected to exceed 105.0 ppm on rice grain, 75.0 ppm on rice straw, 240.0 ppm on rice hulls, 180.0 ppm on rice bran, and 75.0 on the processed commodity polished rice as a result of this section 18 use. Time-limited tolerances should be established for rice grain, straw, bran, and hulls at these levels.

No tolerances on animal commodities have been established for maleic hydrazide. Secondary residues in animal commodities resulting from this use on rice and the registered use on potatoes are not expected to exceed 2.5 ppm in meat, 7.0 ppm in liver, 32.0 ppm in kidney, and 3.0 ppm in fat of cattle, goats, hogs, horses, and sheep; 1.0 ppm in milk; 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts (except liver), and 0.5 ppm in eggs.

D. International Residue Limits

There are currently no Codex, Canadian, or Mexican limits for residues of maleic hydrazide in or on rice or animal commodities. Therefore, establishment of time-limited tolerances will not pose a concern for international harmonization.

E. Rotational Crop Restrictions.

There are no rotational crop restrictions in the section 18 or Federal label.

VI. Conclusion

Therefore, tolerances are established for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in rice, grain at 105 ppm, rice, straw at 75 ppm, rice, hulls at 240 ppm, and rice, bran at 180 ppm. Additionally, tolerances are established for secondary residues of maleic hydrazide at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses, and sheep; 1 ppm in milk; 0.5 ppm in meat, liver and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs.

In addition because FQPA has eliminated the distinctions between tolerances for raw and processed food, OPP is transferring the food additive tolerances now found in § 185.3900 to § 180.175, and is removing § 185.3900.Therefore, to accomplish the transfer, and for the convenience of the user, OPP is revising § 180.175 in its entirety, although only paragraph (b) of § 180.175 is new.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ‘‘object’’ to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 3, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor’s contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300587] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ‘‘ADDRESSES’’ at the beginning of this document.

IX. Regulatory Assessment Requirements

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

Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

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

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

i. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

ii. Section 180.175 is revised to read as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the herbicide and plant regulator maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) are established in or on the following raw agricultural commodities:

Commodity	Parts per million
Onions, dry bulb	15.0
Potatoes	50.0

(2) A food additive known as maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) may be present in potato chips when used in accordance with the following conditions:

(i) The food additive is present as a result of the application of a pesticide formulation containing maleic hydrazide to the growing potato plant in accordance with directions registered by the U.S. Environmental Protection Agency.

(ii) The label of the pesticide formulation containing the food additive conforms to labeling registered by the U.S. Environmental Protection Agency.

(iii) The food additive is present in an amount not to exceed 160 parts per million by weight of the finished food.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	3	9/30/98
Cattle, liver	7	9/30/98
Cattle, kidney	32	9/30/98
Cattle, meat	2.5	9/30/98
Eggs	0.5	9/30/98
Goats, fat	3	9/30/98
Goats, liver	7	9/30/98
Goats, kidney	32	9/30/98
Goats, meat	2.5	9/30/98
Hogs, fat	3	9/30/98
Hogs, liver	7	9/30/98
Hogs, kidney	32	9/30/98
Hogs, meat	2.5	9/30/98
Horses, fat	3	9/30/98
Horses, liver	7	9/30/98
Horses, kidney	32	9/30/98
Horses, meat	2.5	9/30/98
Milk	1	9/30/98
Poultry, fat	0.5	9/30/98
Poultry, liver	0.5	9/30/98
Poultry, meat	0.5	9/30/98
Poultry, meat byproducts (except liver)	1.4	9/30/98
Rice, bran	180	9/30/98
Rice, grain	105	9/30/98
Rice, hulls	240	9/30/98
Rice, straw	75	9/30/98
Sheep, fat	3	9/30/98

Commodity	Parts per million	Expiration/Revocation Date
Sheep, liver	7	9/30/98
Sheep, kidney	32	9/30/98
Sheep, meat	2.5	9/30/98

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

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

PART 185—[Amended]

2. In part 185:

i. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.3900 [Removed]

ii. Section 185.3900 is removed.

[FR Doc. 97–31553 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300586; FRL–5756–5]

RIN 2070–AB78

Fluorine Compounds; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the insecticidal fluorine compounds cryolite and/or synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity (RAC) potatoes and in the processed animal feed commodity, potato waste. A petition requesting these tolerances was submitted by The Cryolite Task Force under the Federal Food Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). The tolerance will expire on November 21, 2001.

DATES: This regulation is effective December 5, 1997. Objections and requests for hearings must be received by EPA on or before February 3, 1998.

ADDRESSES: Written objections and hearing requests, identified by the document control number, OPP–300586, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300586], must be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: OPP-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300586]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Mosby, Environmental Scientist, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6792, e-mail: mosby-romney.jackie2epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices as follows regarding petitions for pesticide tolerances for insecticidal fluorine compounds in or on potatoes and in the processed animal feed, potato waste.

1. March 23, 1989 (54 FR 12009); PP 9F3739; filing notice;

2. April 3, 1991 (56 FR 13643); PP 1F3959 and FAP 1H5604; filing notice.

3. May 5, 1993 (58 FR 26687); PP 9F3739 and FAP 1H5604; final rule for time-limited tolerances.

4. May 8, 1996 (61 FR 20781) (FRL–5362–6); PP 9F3739 and FAP 1H5604); proposed rule for permanent tolerances.

The Agency did not publish a final rule establishing permanent tolerances prior to the enactment of the Food Quality and Protection Act (FQPA) of 1996. Because of new procedures under FQPA, The Cryolite Task Force, c/o Gowan Company, P.O. Box 5569, Yuma, AZ 85336 was required to submit a notice of filing requesting issuance of these tolerances in compliance with FQPA.

In the **Federal Register** of March 12, 1997 (62 FR 11437) EPA issued a notice of filing pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by The Cryolite Task Force. This notice contained a summary of the petition prepared by The Cryolite Task Force.

The petition requested that 40 CFR 180.145 be amended by establishing tolerances for residues of the insecticidal fluorine compounds cryolite and synthetic cryolite in or on potatoes at 2.0 parts per million (ppm) and processed potato waste at 22.0 ppm. These tolerances will expire on November 21, 2001.

I. Risk Assessment and Statutory Findings

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

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

A. Toxicity

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

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

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cryolite and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cryolite on potatoes at 2.0 ppm, and processed potato waste at 22.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity studies*. Oral, dermal, and inhalation studies place cryolite in toxicity category III, for acute dermal and in category IV for acute oral, and inhalation. No effects are observed in a skin irritation study, the eye irritation study shows it to be a moderate irritant to the eyes; and results of the dermal sensitization study shows it to be a non-sensitizer.

2. *Subchronic toxicity studies*. i. A 28-day range-finding feeding study conducted with cryolite in rats at dose levels of 0, 250, 500, 1,000, 2,000, 4,000, 10,000, 25,000 and 50,000 ppm in the diet (representing approximately 0, 25, 50, 100, 200, 400, 1,000, 2,500 and 5,000 milligrams/kilograms/day) (mg/kg/day) with the only compound related effect being a change in coloration and physical property of the teeth.

The NOEL was not determined. The LOEL is 250 ppm (25 mg/kg/day) based on dental fluorosis.

ii. A 90-day rat feeding study conducted with cryolite at dose levels of 0, 50, 5,000, and 50,000 ppm (corresponding to 0, 3.8, 399.2 and 4172.3 mg/kg/day in males and 0, 4.5, 455.9 and 4758.1 mg/kg/day in females).

The NOEL is 50 ppm (3.8 mg/kg/day) for effects other than fluoride accumulation. The LOEL is 5,000 ppm (399.2 mg/kg/day) based on lesions observed in the stomach. Fluoride accumulated at all dose levels.

iii. A 90-day dog feeding study conducted with cryolite at dose levels of 0, 500, 10,000, and 50,000 ppm (corresponding to 0, 17, 368 and 1692 mg/kg/day).

The NOEL is 10,000 ppm (368 mg/kg/day). The LOEL is 50,000 ppm (1,692 mg/kg/day) for effects other than fluoride accumulation. Fluoride accumulation occurred at all dose levels.

3. *Chronic/carcinogenicity studies*. i. A 2-year rat bioassay conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 1.3, 5.2 and 8.6 mg/kg/day in males and 0, 1.3, 5.5 and 9.5 mg/kg/day in females.

Osteosarcoma of the bone was only observed in one male in the 100 ppm group and in three males in the 175 ppm group. NTP considers this to be equivocal evidence of carcinogenicity in male F344/N rats. The NOEL is less than 25 ppm (1.3 mg/kg/day). The LOEL is 25 ppm (1.3 mg/kg/day) based on mottling of teeth, dentine incisor dysplasia, increased serum, urine and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males. There was ''equivocal evidence'' of carcinogenic activity in male rats and ''no evidence'' of carcinogenic activity in female rats.

The NTP study utilizing sodium fluoride as the test material in lieu of cryolite or synthetic cryolite satisfies the guideline study requirement for both the rodent chronic feeding study and the rat carcinogenicity study. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and the available data show that these compounds act as free fluoride.

ii. A 2-year mouse bioassay conducted by the NTP utilizing sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 2.4, 9.6 and 16.7 mg/kg/day in males and 0, 2.8, 11.3 and 18.8 mg/kg/day in females.

The NOEL is less than 25 ppm (2.4 mg/kg/day). The LOEL is 25 ppm (2.4 mg/kg/day) based on attrition of the teeth in males, discoloration and mottling of the teeth in males and females and increased bone fluoride in both sexes. There was ''no evidence'' of carcinogenic activity in male and female mice.

This study utilizing sodium fluoride in lieu of cryolite or synthetic cryolite as the test material satisfies the guideline study requirement for a mouse carcinogenicity study for the reason described above under item 3.i.

iii. A 1-year chronic dog feeding study conducted with Cryolite at dose levels of 0, 3,000, 10,000 and 30,000 ppm, representing 0, 95, 366 and 1,137 mg/kg/day in males and 0, 105, 387 and 1,139 mg/kg/day in females (in terms of fluoride the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209 and 615 mg F/kg/day for females).

The NOEL (in terms of Cryolite) is less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOEL is 3,000 ppm (95 mg/kg/day) based on increases in emesis, nucleated cells in males, renal lesions and a decrease in urine specific gravity in females.

4. *Other studies/documents*. i. Mutagenicity studies including an Ames test (negative) at dose levels of 167, 500, 1670, 5,000, 7,500 and 10,000 ug/plate; an *in vitro* assay in human lymphocytes (negative) at 100, 500, and 1,000 µg/ml; and an unscheduled DNA synthesis study in rat hepatocytes (negative) at dose levels up to and including 50 µg/ml.

ii. Drinking water Criteria Document on Fluoride. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and the available data show that these compounds which are approximately 52.8% fluoride, act as free fluoride.

The EPA Office of Drinking Water issued a Drinking Water Criteria Document on Fluoride (October 21, 1985) which presents summaries of experimental and clinical data on the health effects of fluoride in animals and humans. In general, the health effects of fluoride (F) include dental fluorosis and skeletal fluorosis.

B. Toxicological Endpoints

1. *Acute toxicity*. Based on the available toxicity data, EPA has determined that cryolite does not exhibit any adverse health effects occurring as a result of a one day or single dietary or non-dietary exposure.

2. *Short and intermediate-term toxicity*. Based on the available data, EPA has determined that cryolite does not exhibit any adverse heath effects occurring as a result of short- or intermediate-term dietary and non-dietary exposure.

3. *Chronic toxicity.* Rather than the establishment of the traditional Reference Dose (RfD), a weight-of-the-evidence risk assessment was determined by the Agency to be a more appropriate approach for the assessment of the dietary exposure to fluoride residues as a result of agricultural uses of cryolite for the following reasons:

i. National and international regulatory organizations (U.S. EPA Office of Water, U.S. DHHS, the Canadian Government, and the World Health Organization) have assessed potential health risks from exposure to fluoride. The endpoints and estimated effect levels documented by these organizations are similar.

ii. The U.S. Surgeon General (Koop, 1984 and Elders, 1994) has recommended a guideline level of exposure that should provide an adequate ''margin of safety'' based on a large amount of human data, including epidemiology studies.

iii. Animal data considered in evaluating the proposed regulations are consistent with human data with respect to dose related skeletal effects.

4. *Carcinogenicity.* Fluoride has been the subject of a comprehensive review by the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) who concluded that ''... the available laboratory data are insufficient to demonstrate a carcinogenic effect of fluoride in animals.'' and that ''... the weight of evidence from more than 50 epidemiological studies does not support the hypothesis of an association between fluoride exposure and increased cancer risk in humans.'' EPA is in agreement with the conclusions reached by the National Academy of Science (NAS).

The available information does not support the regulation of cryolite as a carcinogen and it has been classified as a Group D chemical (not classifiable as to human carcinogenicity).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.145) for the residues of cryolite In or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from cryolite as follows:

i. *Acute exposure and risk.* Based on the available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

ii. *Chronic exposure and risk.* The weight-of-the-evidence dietary risk assessment was conducted utilizing the following factors. All calculations are based on 2 L/day water consumption and 70 kg adult.

a. There exists no directly applicable scientific documentation of adverse medical effects at levels of fluoride below 8 mg/L 0.23 mg/kg/day. (U.S. EPA. 1985. National Primary Drinking Water Regulations; Fluoride. Proposed Rulemaking. May 14, 1985, 50 FR 20166).

b. Less than 0.4% of the U.S. population (on public water supplies) is exposed to greater than 2 mg/L fluoride 0.057 mg/kg/day in the public water supply. (U.S. EPA. 1985. drinking Water Criteria Document on fluoride. U.S. EPA Office of Drinking Water, Washington, DC TR-832-5. pg. IV-3, Table IV-1.)

The dietary exposure estimates used reassessed tolerances and percent of crop treated. These exposure estimates are conservative since average residues were not calculated and monitoring data were not used to refine residue estimates.

Section 408(b)(2)(F) allows the Agency to use data n the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

(a) That data used are reliable and provided a valid basis for showing the percentage of food derived from a crop that is likely contain residues.

(b) That the exposure estimate does not underestimate the exposure for any significant subpopulation.

(c) Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

Percent of crop treated estimates are derived from federal and market survey data. EPA considers these data reliable. Typically a range of estimates are supplied and the upper end of this range is used for the exposure assessment. By using this upper end estimate of percent crop treated, EPA is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows EPA to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by EPA. EPA has made these findings when appropriate with respect to the proposed tolerance. EPA has not provided for periodic reevaluation of the data on percent crop treated because this tolerance has a time-limitation.

2. *From drinking water*— i. *Acute exposure and risk.* Based on the available acute toxicity data, EPA has determined that fluoride does not pose any acute dietary risk.

ii. *Chronic exposure and risk.* Fluoride levels in public drinking water are regulated under the Safe Drinking Water Act. EPA has established a Maximum Concentration Limit (MCL) at 4.0 mg/L 0.114 mg/kg/day to protect against crippling skeletal fluorosis (April 2, 1986) (51 FR 11396). The MCL established on April 2, 1986 finalizes interim regulations set in the **Federal Register** of November 14, 1985 (50 FR 47142), and proposed in the **Federal Register** of May 14, 1985 (50 FR 20164). In addition, these **Federal Register** notices established a Secondary Maximum Contaminant Level (SMCL) at 2.0 mg/L 0.057 mg/kg/day for cosmetic effects (objectionable dental fluorosis) which are not considered to be adverse health effects by the Surgeon General.

As described above, less than 0.4% of the U.S. population (on public water supplies) is exposed to greater than 2 mg/L fluoride 0.057 mg/kg/day in the public water supply.

3. *From non-dietary exposure.* Cryolite is registered for use on ornamentals, a use which could result in residential, non-occupational exposure. It is not registered for indoor use. EPA has not estimated non-dietary or residential exposure from registered ornamental uses of cryolite because

i. There are no toxicological endpoints identified for cryolite.

ii. Fluoride occurs naturally in the environmental background and there would not be significant exposure to fluoride from the use of cryolite.

iii. It would not be appropriate since the available information regarding solubility and degradation indicates that there would likely be no appreciable dermal absorption. The Agency does not anticipate significant non-dietary exposure from the use of cryolite.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of

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

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

EPA does not have, at this time, available data to determine whether cryolite has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cryolite does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cryolite has a common mechanism of toxicity with other substances. For the purpose of this time-limited tolerance, the Agency has considered risks from cryolite and from fluoride in intentionally fluoridated water.

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

1. *Acute risk*. Based on the available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

2. *Chronic risk*. Fluoride is ubiquitous and may be present at low levels in air, soils and in foodstuffs that have not been treated with cryolite and/or synthetic cryolite as well as in drinking water. The atmospheric levels of fluoride and incidental dietary exposures to fluoride as a toothpaste additive or as a dental treatment contribute relatively little to the average level of dietary fluoride exposure and are not further considered in the exposure estimate.

Dietary exposure estimates using reassessed tolerance/including the subject tolerance for potatoes (which is estimated as approximately 0.00016 mg/kg/day) and percent of crops treated are approximately 0.020 mg/kg/day for the U.S. population and 0.028 mg/kg/day for the highest exposed subgroup (females 13 years old and over, nursing). These exposure estimates are conservative since average residues were not calculated and monitoring data were not used to refine residue estimates.

Therefore, it can be concluded that levels of fluoride in/on food from the agricultural use of Cryolite plus fluoride levels in U.S. drinking water supplies (0.057 mg/kg/day) results in a high-end daily dietary intake of fluoride of approximately 0.085 mg/kg/day. This is less than the Maximum Concentration Limit (MCL) of 4.0 mg/L 0.114 mg/kg/day, a level which provides no known or anticipated adverse health effect as determined by the Surgeon General.

Due to the fact that fluoride naturally occurs at low levels in food and air as well as drinking water, there is a low percentage of the population (0.4%) exposed to levels above the secondary Maximum Contaminant Level (2 mg/L) and below the MCL, dietary exposure from agricultural uses is low (typically much less than ca. 66% of the levels found in intentionally fluoridated water), and aggregate high-end exposure is estimated to be below the MCL, EPA concludes there is a reasonable certainty that no harm will result from aggregate exposure to fluoride residues.

3. *Short-and intermediate -term risk*. Short-and intermediate-term risk aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. As explained above, EPA does not anticipate significant non-dietary (residential) exposure from the use of cryolite.

E. Aggregate Cancer Risk for U.S. Population

As described above, the available information does not support the regulation of cryolite as a carcinogen and it has been classified as a Group D chemical (not classifiable as to human carcinogenicity).

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of cryolite, EPA considered data from oral developmental toxicity studies in the rat and mouse; and a range-finding study in the rabbit as well as data from a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter-and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. A developmental toxicity study conducted with cryolite in rats at dose levels of 0, 750, 1,500, and 3,000 mg/kg/day (gavage) in which the NOEL for both developmental and maternal toxicity was 3,000 mg/kg/day. At this dose level, the only observation was whitening of the teeth of dams.

A developmental toxicity study conducted in female mice with Cryolite at dose levels of 0, 30, 100 and 300 mg/kg/day (gavage) in which the NOEL for maternal toxicity was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on the occurrence of dark red contents of the stomach. Fetuses at the highest dose tested, 300 mg/kg/day exhibited bent ribs and bent limb bones.

A range-finding developmental toxicity study conducted in female rabbits with Cryolite at dose levels of 0, 10, 30, 100, 300 and 1,000 mg/kg/day (gavage) which showed only severe maternal effects at all doses. There were no developmental findings in the fetuses up to 30 mg/kg/day. At doses greater than 30 mg/kg/day, developmental findings were not observed due to the severe maternal toxicity.

A new rabbit developmental study is not required at this time since there are two acceptable rodent developmental studies (rat and mouse) showing no specific adverse developmental effects. In addition, the National Academy of Sciences (NAS) report supports this decision. It is unlikely that an additional rabbit developmental study would alter the risk evaluation for cryolite.

The rabbit range-finding study suggested that severe maternal toxicity occurred at lower doses than external developmental toxicity. However, following an extensive literature evaluation, the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) (NAS) determined that:

> There have been reports of adverse effects on reproductive outcomes associated with high levels of fluoride intake in many animal species. In most of the studies, however, the fluoride concentrations associated with adverse effects were far higher than those encountered in drinking water. ...
>
> Based on these findings, the subcommittee concludes that the fluoride concentrations associated with adverse reproductive effects in animals are far higher than those to which human populations are exposed. Consequently, ingestion of fluoride at current concentrations should have no adverse effects on human reproduction.

iii. *Reproductive toxicity study.* A 2-generation reproduction study conducted with Cryolite in the diet of rats at dose levels of 0, 200, 600, and 1,800 ppm (representing 0, 14, 42, and 128 mg/kg/day for males and 0, 16, 49, and 149 mg/kg/day for females, respectively, during premating) in which the LOEL for systemic toxicity was 200 ppm (15 mg/kg/day) based on dental fluorosis. The NOEL for decreased pup body weight was 46 mg/kg/day and, at the lowest dose tested (8 mg/kg/day) there was parental toxicity. Therefore, there was pup toxicity only in the presence of parental toxicity.

iv. *Pre- and post-natal sensitivity.* Based on current data requirements, the database relative to pre- and post-natal toxicity is complete. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity.

v. *Conclusion.* Therefore, EPA concludes that reliable data support use of the weight-of-the-evidence risk assessment approach for the assessment of risks to infants and children associated with the use of cryolite and that an additional safety factor is not needed.

2. *Acute risk.* As described above, based on available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

3. *Chronic risk.* The high end dietary exposure estimate for infants and children using reassessed tolerances and percent of crops treated is 0.024 mg/kg/day. This is lower than the exposure estimate of 0.028 mg/kg/day which was used in the Agency's determination of safety for the U.S. population described above.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fluoride residues.

4. *Short- or intermediate- term risk.* As described above, EPA has determined that cryolite does not exhibit any adverse health effects occurring as a result of short- or intermediate-term dietary and non-dietary exposure.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of the subject insecticides in plants and animals is adequately understood.

Open literature studies show that human and animal metabolism of cryolite and/or synthetic cryolite manifests itself as normal free fluoride metabolism. That is, dissociation occurs, producing free fluoride ions which are assimilated into bone. The residue of concern in animals is total fluoride.

Plant residues are inorganic surface residues of cryolite which are measured as total fluoride. Uptake and translocation of cryolite residues from soil is unlikely due to the low water solubility of cryolite.

B. Analytical Enforcement Methodology

An adequate analytical method (fluoride specific electrode) is available for enforcement purposes for plant and animal residues. The limit of quantitation is 0.05 ppm. Because cryolite is an inorganic ionic compound, the requirement for data using the multi-residue protocols in the Pesticide Analytical Manual (PAM) Vol. I is not applicable.

Because of the long lead time from establishing these tolerances, to publication of the enforcement methodology in the PAM Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from; Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,Washington, DC 20460. Office location and telephone number; Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., VA 22202, (703)-305-5232.

C. Magnitude of Residues

It has been determined that residues of cryolite are not expected to exceed 2.0 ppm in potatoes and 22.0 ppm in processed potato waste.

Data submitted in support of the subject petition show background levels of fluoride in untreated potatoes ranged from 0.14 ppm to 0.31 ppm and are consistent with the ranges reported in the open literature. Levels of fluoride found in the treated potatoes ranged from 0.18 ppm to 0.94 ppm. The residue analytical method used for enforcing the subject tolerance and regulation cannot distinguish between the naturally occurring fluoride and the fluoride resulting from use of cryolite and/or synthetic cryolite.

A potato processing study showed that cryolite residues did not concentrate in potato chips, flakes or granules. Therefore, tolerances on these commodities are not required.

There is no reasonable expectation of finite fluoride residues in ruminant or poultry tissues as a result of livestock ingestion of cryolite and this situation falls under 40 CFR 180.6 (a)(3). Therefore, tolerances for cryolite residues in meat, milk, poultry, and eggs are not required.

D. International Residue Limits

No Codex Maximum Residue Limits (MRLs) for fluorine compounds (cryolite) exist. Therefore, there are no questions of compatibility with respect to Codex MRLs and U. S. tolerances.

E. Rotational Crop Restrictions

The residue available to rotational crops is expected to be negligible with respect to the amount of free fluorine occurring naturally in soil.

F. Endocrine Effects

No evidence of such effects were reported in the toxicology studies described above. There is no evidence at this time that cryolite causes endocrine effects.

IV. Conclusion

Therefore, the tolerance is established for residues of cryolite in or on potatoes at 2.0 ppm and in potato waste from processing at 22.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 3, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300586] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

b. In § 180.145:

i. By designating paragraph (a) as paragraph (a)(1), by adding paragraph (a)(2), and by adding a heading to paragraph (a).

ii. By removing paragraph (c) and redesignating paragraph (b) as new paragraph (c) and adding a heading.

iii. By adding and reserving new paragraphs (b) and (d) with headings.

The amendments to § 180.145 read as follows:

§ 180.145 Fluorine compounds: tolerances for residues.

(a) *General.* * * *

(2) Time-limited tolerances are established for residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the commodities as follows:

Commodity	Parts per million	Expiration/revocation date
Potatoes	2.0	11/21/2001
Potatoes, waste from processing	22.0	11/21/2001

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

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

[FR Doc. 97–31920 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 232, 233, 235, 250, 251, 255, 256, and 257

RIN 0970–AB84

Repeal of Obsolete Title IV–A and IV–F Program Rules

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule; removal.

SUMMARY: This document removes regulations governing certain programs repealed or eliminated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, including: Emergency Assistance; Job Opportunities and Basic Skills Training; and three child care programs authorized under title IV–A of the Social Security Act. It also repeals some administrative rules of the AFDC program, because the program was repealed effective July 1, 1997.

DATES: Effective date is December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, ACF, at 202–401–9289.

SUPPLEMENTARY INFORMATION: On August 22, 1996, President Clinton signed The Personal Responsibility and Work Opportunity Reconciliation Act of 1996—or PRWORA—into law. This law replaced the nation's largest public assistance program, known as Aid to Families with Dependent Children, and affiliated programs, with a new block grant to States. It also made substantial changes to the Federal child care programs that served welfare recipients and other low-income families.

This legislation made a number of our existing regulations obsolete, effective July 1, 1997, or earlier. The purpose of this rulemaking is to remove many of the obsolete rules. Thus, this rulemaking reflects ACF's continuing commitment to the Administration's regulatory reinvention initiative. In particular, it responds to the first directive in the President's strategy—to "cut obsolete regulations." Through this rulemaking, we are eliminating approximately 82 pages of obsolete rules from the Code of Federal Regulations.

Aid to Families With Dependent Children and Emergency Assistance

Section 103(a) of PRWORA (Pub. L. 104–193) repealed the provisions in the existing part A of title IV of the Social Security Act and replaced them with provisions governing the new welfare block grant. Under section 116 of PRWORA, this change took effect on July 1, 1997, except in States that chose to implement their new welfare programs at an earlier date. The provisions that were repealed governed the existing programs of Aid to Families with Dependent Children (AFDC) and Emergency Assistance (EA).

The regulations for the Emergency Assistance program are found at 45 CFR 233.120. This rulemaking would remove this section of the regulation in its entirety.

The regulations for the AFDC program are found throughout Chapter II of Title 45 in the Code of Federal Regulations.

In this rulemaking we are removing only a limited number of administrative rules. They are those AFDC rules that address the AFDC Quality Control System (authorized under section 408 of the Social Security Act, as in effect under prior law), some provisions related to child support requirements and fraud control, and certain provisions related to financial penalties against the States under prior law.

We will make other conforming changes to the AFDC regulations at a later date. We must exercise care in repealing the AFDC rules because: (1) eligibility for other programs, such as title IV–E (Foster Care) and title XIX (Medicaid), retain a direct connection to the AFDC rules in effect prior to PRWORA; and (2) many of the AFDC provisions are intertwined with provisions for other assistance programs that were not repealed. (The most notable example of this latter problem is the overlap between the AFDC rules and the rules for the adult programs operated by the Territories under titles I, X, IV, and XVI of the Social Security Act.) To address these more sensitive and complicated conforming changes, we need to engage in additional analysis and consult with other Federal agencies and other interested groups. Thus, most of the conforming changes to the AFDC regulations will be reserved for future rulemaking efforts.

The IV–A Child Care Programs

Section 103(c) of PRWORA eliminated the child care provisions that were in title IV–A of the Social Security Act at the time of enactment. Under section 116(c) of PRWORA, the elimination of those provisions took effect on October 1, 1996. The new child care provisions in title VI of PRWORA took effect that same day.

The programs eliminated by PRWORA were: child care for AFDC recipients and JOBS participants under section 402(g) of the Act, transitional child care for former AFDC recipients under section 402(g) of the Act, and child care for at-risk families under section 402(i) of the Act. The rules governing these three programs are found at parts 255, 256, and 257 of Chapter II. In this rulemaking, we are removing all of our child care regulations in these parts.

Section 603(b) of PRWORA created a new section 418 of the Social Security Act that provides new funding for child care assistance under title IV–A of the Social Security Act. Child care funds provided in section 418 are under the control of the lead agency in the State responsible for administering the Child Care and Development Block Grant (CCDBG) program, and they are subject to the rules of that program. Together, we refer to the two types of child care funding as ''The Child Care and Development Fund,'' or CCDF.

The CCDBG regulations are found at 45 CFR part 98. On July 23, 1997, ACF issued an NPRM (at 62 FR 39610) to add the new IV–A child care provisions to part 98 and address the other changes necessitated by PRWORA.

Note that some of the provisions in part 255 (i.e., §§ 255.1(c), 255.1(d), 255.1(h), 255.2(c), 255.2(d), 255.2(e), 255.3(g), 255.3(h), 255.4(d), and 255.4(e)) address supportive services funded under the JOBS program. We are also removing all JOBS-related provisions in the regulations, as discussed below.

Because all the provisions in parts 255 through 257 deal with either child care or JOBS supportive services provisions (or both) that were eliminated, we are removing these three parts in their entirety.

Job Opportunities and Basic Skills Training (JOBS)

Finally, section 108(e) of PRWORA repeals title IV–F of the Social Security Act (i.e., the JOBS program). Under section 116 of PRWORA, this repeal is effective at the same time as the repeal of the AFDC program, or no later than July 1, 1997. With the exception of the rules on JOBS supportive services, which we have already discussed, the JOBS rules are found at parts 250 and 251 of Chapter II of title 45. In this rulemaking, we are removing these JOBS regulations in their entirety.

Effect of Rulemaking on Prior or Pending Actions

You should be aware that the regulations we are removing still would apply with respect to State actions and behavior that occurred before the effective date of the new legislation. Under the transition rules of PRWORA (see section 116(b)(2)–(3) of the Act), the provisions of the new law do not apply ''with respect to * * * duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before'' such effective date. They also do not apply to ''administrative actions and proceedings'' authorized to commence before that date.

Thus, the regulatory provisions that we are removing will continue to apply to State actions that took place prior to the implementation of the new programs, and we would base any penalty, disallowance, or claims against the State on such regulations.

General Statutory Authority

We are publishing these rules under the general authority of section 1102 of the Social Security Act, 42 U.S.C. 1302. This section requires publication of rules that may be necessary for the efficient administration of the functions under the Social Security Act.

Regulatory Authority

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments is unnecessary. This final rule removes only obsolete provisions and programs.

Furthermore, this final rule will be effective immediately upon publication. It is unnecessary to postpone the effective date since none of the provisions being removed are still in effect, and no time for implementation is required.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. Such consultation was not necessary or appropriate for this particular rulemaking effort because of its technical nature in removing only obsolete provisions.

However, we will be engaging in consultation on the subsequent rulemaking that we are planning to address the more complex conforming changes to the AFDC regulation.

These regulations respond to the President's directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative and the National Performance Review by cutting obsolete regulations and getting rid of yesterday's government. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. Because of the nature of this rule, the Secretary certifies that it will not have a significant impact on small entities.

Paperwork Reduction Act

This rule contains no information collection activities subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act

The Department has determined that this rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to Families with Dependent Children, Computer technology, Grant programs—social programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 232

Aid to Families with Dependent Children, Child support enforcement, Grant programs—social programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 235

Aid to Families with Dependent Children, Fraud, Grant programs—social programs, Public assistance programs.

45 CFR Parts 250 and 251

Aid to Families with Dependent Children, Employment, Grant programs—social programs, Manpower training programs, Reporting and recordkeeping requirements, Vocational education.

45 CFR Parts 255 and 256

Aid to Families with Dependent Children, Day care, Education and training, Employment, Grant programs—social programs.

45 CFR Part 257

Day care, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalogue of Federal Domestic Assistance Programs: 93.560—Family Support Payments to States—Assistance Payments; 93.561—Job Opportunities and Basic Skills Training (JOBS); 93.574—Child Care for Families at Risk of Welfare Dependency)

Dated: November 14, 1997.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Under the authority of sections 116 of Pub. L. 104–193 and section 1302 of the Social Security Act, and for the reasons set forth in the preamble, we are amending Chapter II of title 45 of the Code of Federal Regulations, as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 608, 1302, and 1306(a).

2. Remove sections 205.40 through 205.43 (including the appendix to § 205.41) and 205.146.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. Remove part 232 (including appendix A).

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note).

2. Remove § 233.120.

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 235 continues to read as follows:

Authority: 42 U.S.C. 603, 616, and 1302.

2. Remove §§ 235.111, 235.112, and 235.113.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

1. Remove part 250.

PART 251—PROGRAM PARTICIPANT EMPLOYMENT PROTECTION

1. Remove part 251.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. Remove part 255.

PART 256—TRANSITIONAL CHILD CARE

1. Remove part 256.

PART 257—AT-RISK CHILD CARE PROGRAM

1. Remove part 257.

[FR Doc. 97–31770 Filed 12–4–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 170, 171, and 173 and Chapter I, Subchapters K and T

[CGD 85–080]

RIN 2115–AC 22

Small Passenger Vessel Inspection and Certification; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule [CGD 85–080] which was published on September 30, 1997 (62 FR 51326). The rule completely revised Coast Guard regulations that affect small passenger vessels of less than 100 gross tons in 46 CFR parts 170, 171, 173 and Chapter I, Subchapters K and T.

DATES: Effective on December 5, 1997.

ADDRESSES: A copy of the final rule as indicated in the preamble may be obtained via the Internet at http://www.dot.gov/dotinfo/uscg/hq/g-m/nmc/regs/fr97/9__16.htm or by writing Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric P. Christensen, Project Manager, Office of Operating and Environmental Standards, (G–MSO–2), phone 202–267–1181, telefax 202–267–4570.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Coast Guard published a final rule in the **Federal Register** on September 30, 1997 (62 FR 51326), completely revising its regulations in 46 CFR parts 170, 171, and 173 and Chapter I, Subchapters K and T which affect small passenger vessels of less than 100 gross tons.

An incorrect document was inadvertently sent to the **Federal Register**. As published, the final rule contains information in its preamble and errors in the regulations that may prove to be misleading. Parts of the preamble need to be clarified and the regulations need to be corrected. These corrections merely conform the final rule to the document approved by the Commandant, USCG, DOT and OMB.

The Coast Guard acknowledges that publishing these correcting amendments immediately after publication of the final rule may confuse owners and operators of small passenger vessels. Therefore, the Coast Guard will make available via the Internet or upon request a copy of the final rule as it was to have been published. The Internet address is provided under **ADDRESSES**. A copy of the final rule may also be obtained by calling the Coast Guard at 202–267–1181 or by writing to the Coast Guard at the address provide under **ADDRESSES**.

For further clarification, the codified version in the CFR dated October 1, 1997, will contain an editorial note at the end of each part or section affected that it has been corrected by amendment published in the **Federal Register** on December 5, 1997.

Correction of the Preamble

In rule FR Doc. 97–25599 published on September 30, 1997 (62 FR 51326), make the following corrections to the preamble:

1. On page 51328, first column, paragraph (7), second sentence, remove the ''resolved'' and add, in its place, the word ''addressed''.

2. On page 51328, third column, paragraph (c), remove the text and add, in its place, the following:

''A recently published internal instruction titled ''RISK BASED DECISION-MAKING & G–M BUSINESS PLAN GOALS'' provides technical and administrative guidance to the field on how risk assessment and management can and should be used in support of Commandant (G–M)'s Business Plan goals.''

3. On page 51329, third column, paragraph (7), line 27, after the word percent, add the words ''passenger increase''.

4. On page 51330, second column, after paragraph (15), add the following:

''(16) The Coast Guard has added a definition for wood vessel in subchapter

T to clarify which types of wood construction are subject to additional subdivision and lifesaving requirements presented in the IFR. The casualty data used throughout this rulemaking to justify the need for additional requirements for vessels constructed of wood shows the vessels involved were built using ''traditional'' plank-on-frame construction techniques. This type of construction requires the use of mechanical fastenings to maintain the integrity of the hull structure. The loss of fastener structural integrity can result in the ''springing'' of one or more planks and lead to catastrophic flooding. It is this type of construction that the Coast Guard has determined requires additional subdivision or lifesaving equipment requirements to provide an equivalent level of safety to steel, aluminum, and FRP construction. Many wood vessels have been constructed using cold molded, edge-glued epoxy, FRP over plywood, and other composite construction techniques that do not rely on mechanical fasteners to maintain hull integrity. Although these vessels are considered wood vessels for the purpose of certification, they will not be required to meet the additional subdivision and lifesaving requirements contained in Parts 179 and 180, respectively.''

5. On page 51330, second column, under *Sections 114.540 and 175.540 Equivalents*, remove the words ''and 175.540'' from the heading, and remove the words ''and 175.540(b)'' from the text of the section.

6. On page 51334, first column, under *Section 116.438 Stairtowers, Stairways, Ladders, and Elevators*, add a new paragraph (1) to read as follows:

''(1) As previously discussed under sections 144.110 and 175.110, the Coast Guard has added a new paragraph (a) to § 116.438 for vessels carrying over 600 passengers or with overnight accommodations for more than 49 passengers.'', and renumbered paragraphs (1), (2), and (3) as (2), (3), and (4), respectively.

7. On page 51334, second column, under *Section 116.500 Means of Escape*, in the heading remove the words ''Section 116.500'' and add, in their place, the words ''Sections 116.500 and 177.500''; and remove the text and add, in its place, the following:

''Paragraphs 116.500(k)(1) and 177.500(j)(1) are revised to indicate that a ladder and a deck scuttle are acceptable as a second means of egress from crew spaces on any vessel, regardless of length. Difficulty has been encountered in the application of paragraph (h) in subchapter K. In the IFR, this paragraph indicated that the maximum allowable travel distance to a means of egress could not exceed 46 meters (150 ft). Means of egress is (and was in the IFR) defined as ''a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station or area of refuge.'' The intent of § 116.500(h) is to limit the distance of travel to a protected area, such as a stairway, area of refuge, or embarkation station. Section 116.500(h) is revised to clarify that travel distance to an exit may not exceed 46 meters, measured as actual walking distance. A definition was added to § 114.400 to define ''exit'' as either an area protected as a stairway, or a door which leads to an area of refuge or an embarkation station. Sections 116.500(p)(1) and 177.500 (o)(1) are amended to change the maximum dimension for a space that is permitted to have a single means of escape from 3.6 meters to 30 square meters to be consistent with other subchapters.

8. On page 51335, first column, under *Section 177.900 Deck Rails*, in the heading remove the word ''Section'' and add, in its place, the words ''Sections 116.900 and''; and, in the last sentence of paragraph (1) after the word ''spacing'', add the words ''or wire mesh''.

9. On page 51336, first column, under *Section 178.330 Simplified Stability Proof Test*, remove the text and add, in its place, the following:

''The Coast Guard has re-evaluated this section. The simplified stability test on passenger vessels less than 65 feet is done in accordance with § 178.330 (§ 171.030 in subchapter S for old subchapter T). The traditional method for conducting the simplified test is provided on Coast Guard form CG–4006 (Rev. 8–79). This form dates back to ''Ancient'' subchapter T in § 179.10–1, but the language in new subchapter T is quite similar. Basically, the total weight of all persons and other loads are to be on board and ''distributed so as to provide normal operating trim and to simulate the vertical center of gravity (VCG), causing the least stable condition that is likely to occur in service.'' Form CG–4006 goes one step further. On page 2 of 8, paragraph (2), the weight distribution on board a vessel ''having one upper deck above the main deck available to passengers * * *,'' has an additional safety factor thrown in that is not currently taken from or referenced in the regulations. The weight located on the one upper deck is the equivalent of 1.33 times the actual weight of passengers to be located there. The rationale for doing so is understood, however, one problem is it appears ''arbitrary'' with no reference in the regulations and no other apparent basis. It certainly does help to ensure the conservatism of the test, which has been proven by the test of time since it appears no subchapter T boats have been lost due to stability based upon this simple stability test. The Coast Guard affirms keeping the 1.33 safety factor for weight distribution on the upper deck, and has placed it in § 178.330(a)(4) of subchapter T and § 171.030(c) in subchapter S.''

10. On page 51337, second column, under *Sections 117.71 and 180.71 Life Jackets*, paragraph (1), in line 12 after the number § 122.604, add the words ''and 185.604'', and at the end of paragraph (1), add the following sentence: ''Paragraph (e) has been added to both sections to reference the appropriate marking requirements.''

11. On page 51339, first column, under *Sections 118.300 and 181.300 Fire Pumps*, add a new paragraph (1) to read as follows:

''(1) As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 118.300(c) by requiring vessels carrying more than 600 passengers to comply with subchapter H fire pump requirements.''; at the end of the last sentence of paragraph (1) after the word ''deleted'' add the words ''from paragraph (e) in both subchapters''; and renumber paragraph (1), (2), and (3) as (2), (3), and (4), respectively.

12. On page 51341, second column, before *Section 183.322 Multiple Generators*, add a new section to read as follows:

''*Section 120.312 Power sources on vessels of more than 19.8 meters (65 feet) in length with overnight accommodations for more than 49 passengers.*

As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends the title of this section to include vessels carrying more than 600 passengers.''

13. On page 51341, third column, *under Section 120.432 and 183.432 Emergency Lighting*, add the following paragraph to the end of the section:

''As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 120.432(c) to include vessels carrying more than 600 passengers.''

14. On page 51341, third column, after *Section 120.432 and 183.432 Emergency Lighting*, add a new section to read as follows:

''*Section 120.434 Lifeboat and liferaft floodlights on vessels of more than 19.8 meters (65 feet) in length with overnight accommodations for more than 49 passengers.*

As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 120.434 to include vessels carrying more than 600 passengers.''

15. On page 51341, third column, under *Sections 121.220 and 183.220 Cooking Equipment*, in the heading delete the number ''183.220'' and add, in its place, the number ''184.220''.

16. On page 51344, second column, paragraph (7), line 3, after the word ''handrails'', add the words ''should be required to notify passengers of the dangers of low rails''.

17. On page 51345, first column, under *Section 122.604 Lifesaving Equipment Markings*, in the heading delete the words ''Section 122.604'' and add, in their place, the words ''Sections 122.604 and 185.604 and''; and add two new paragraphs at the end of the section to read as follows:

''One comment stated that the prescriptive lettering requirements for lifesaving equipment were unnecessary and not consistent with the subchapter W IFR.

The Coast Guard agrees, and has revised both sections by deleting prescriptive minimum letter size requirements.''

18. On page 51345, second column, in Part 171—Special Rules Pertaining to Vessels Carrying Passengers, line 23 after the words ''subpart K'', add the words ''of part 116.''

List of Subjects

46 CFR Parts 114 and 175

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 115 and 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 116, 117, 119, 171, 178, 179, 180, and 182

Marine safety, Passenger vessels.

46 CFR Parts 118 and 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Parts 120 and 183

Electric power, Marine safety, Passenger vessels.

46 CFR Parts 121 and 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Parts 122 and 185

Alochol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

Correction of Regulatory Text

Accordingly, 46 CFR parts 170, 171, and 173 and Chapter I, Subchapters K and T are corrected by making the following correcting amendments:

SUBCHAPTER K—SMALL PASSENGER VESSELS CARRYING MORE THAN 150 PASSENGERS OR WITH OVERNIGHT ACCOMMODATIONS FOR MORE THAN 49 PASSENGERS

PART 114—GENERAL PROVISIONS

1. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

§ 114.400 [Corrected]

2. In § 114.400(b), in the definition for ''High Speed Craft'', in the equation ''$V=3.7 \times displ^{1667}$ H'', add a decimal point before the number ''1667''.

PART 116—CONSTRUCTION AND ARRANGEMENT

3. The authority citation for part 116 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 116.439 [Corrected]

4. In § 116.439(e), remove the word ''etc.'' and add, in its place, the words ''or other obstructions''.

§ 116.500 [Corrected]

5. In § 116.500(h), remove the word ''be'' immediately before the number ''46''.

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

6. The authority citation for part 117 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

§ 117.130 [Corrected]

7. In § 117.130(b), remove the words ''part 160, subparts 160.062 or 160.162, of this chapter'' and add, in their place, the words ''approval series 160.062 or 160.162''.

§ 117.150 [Corrected]

8. In § 117.150(a), remove the words ''part 160, subpart 160.163, of this chapter'' and add, in their place, the words ''approval series 160.163'', and remove the words ''part 160, subpart 160.175, of this chapter'' and add, in their place, the words ''approval series 160.175''.

§ 117.175 [Corrected]

9. In § 117.175(f)(4), remove the words ''part 161, subpart 161.010, of this chapter'' and add, in their place, the words ''approval series 161.010''.

§ 117.200 [Corrected]

10. In § 117.200, in paragraph (a)(1), remove the words ''part 160, subpart 160.151, of this chapter,'' and add, in their place, the words ''approval series 160.151''; in paragraph (a)(2), remove the words ''part 160, subpart 160.027, of this chapter,'' and add, in their place, the words ''approval series 160.027''; and in paragraphs (a)(3) and (a)(4), remove the words ''part 160, subpart 160.010, of this chapter,'' and add, in their place, the words ''approval series 160.010''.

§ 117.210 [Corrected]

11. In § 117.210(c), remove the words ''complying with part 160, subpart 160.056, of this chapter'' and add, in their place, the words ''approved under approval series 160.056'', and remove the words ''part 160, subpart 160.156, of this chapter'' and add, in their place, the words ''approval series 160.156''.

PART 118—FIRE PROTECTION EQUIPMENT

12. The authority citation for part 118 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 118.320 [Corrected]

13. In § 118.320(c)(1), remove the words ''part 162, subpart 162.027, of this chapter'' and add, in their place, the words ''approval series 162.027''.

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

14. The authority citation for part 121 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 121.710 [Corrected]

15. In § 121.710, remove the words ''part 160, subpart 160.041, of this chapter'' and add, in their place, the words ''approval series 160.041''.

PART 122—OPERATIONS

16. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 122.604 [Corrected]

17. In § 122.604, in paragraph (a) introductory text, remove the words ''at least 76 millimeters (3 inches) high''; in paragraph (d), add the words ''and numbers'' after the word ''letters'' and remove the words ''in letters and numbers at least 40 millimeters (1.5 inches) high''; in paragraph (e) introductory text add the words ''and numbers'' after the word ''letters'' and remove the words ''in letters and numbers at least 40 millimeters (1.5 inches) high''.

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

18. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 175.900 also issued under 44 U.S.C. 3507.

19. In § 175.400, in the definition for ''High Speed Craft'', in the equation ''$V = 3.7 \times \text{displ}^{1667}$ h'', add a decimal point before the number ''1667'', and add, in alphabetical order, a definition for ''wood vessel'' to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Wood vessel means, for the purposes of subdivision and lifesaving equipment requirements in this subchapter, a traditionally-built, plank-on-frame vessel, where mechanical fasteners (screws, nails, trunnels) area used to maintain hull integrity.

* * * * *

PART 177—CONSTRUCTION AND ARRANGEMENT

20. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. In § 177.500, in paragraph (j)(1), remove the last word ''and'' and add, in its place, the word ''or''; and revise paragraph (o)(1) to read as follows:

§ 177.500 Means of escape.

* * * * *

(o) * * *

(1) The space has a deck area less than 30 square meters (322 square feet);

* * * * *

PART 178—INTACT STABILITY AND SEAWORTHINESS

22. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 178.330 [Corrected]

23. In § 178.330(a)(4)(v), remove the equation

$$\text{``Weight on Upper Deck} = \frac{\qquad}{\text{\# of Passengers on Upper Deck}} \times \frac{\qquad}{\text{Wt per Passenger}} \times 1.33\text{''}$$

and add, in its place, the following equation:

''Weight on Upper Deck = (# of Passengers on Upper Deck) × (Wt per Passenger) × 1.33''.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

24. The authority citation for part 180 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 180.130 [Corrected]

25. In § 180.130(b), remove the words ''part 160, subparts 160.062 or 160.162, of this chapter'' and add, in their place, the words ''approval series 160.062 or 160.162''.

§ 180.210 [Corrected]

26. In § 180.210(d), remove the words ''complying with approval series 160.056'' and add, in their place, the words ''approved under approval series 160.156''.

PART 185—OPERATIONS

27. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 185.604 [Corrected]

28. In § 185.604, in paragraph (a) introductory text, remove the words ''at least 76 millimeters (3 inches) high''; in paragraph (d), add the words ''and numbers'' after the word ''letters'' and remove the words ''in letters and numbers at least 40 millimeters (1.5 inches) high''; and, in paragraph (e) introductory text, add the words ''and numbers'' after the word ''letters'' and remove the words ''in letters and numbers at least 40 millimeters (1.5 inches) high''.

Dated: December 1, 1997.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–31895 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC32

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Callippe Silverspot Butterfly and the Behren's Silverspot Butterfly and Threatened Status for the Alameda Whipsnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for the callippe silverspot butterfly (*Speyeria callippe callippe*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*) and threatened status for the Alameda whipsnake (Alameda striped racer) (*Masticophis lateralis euryxanthus*). The callippe silverspot butterfly is found at two sites on grasslands in the San Francisco Bay

area. Behren's silverspot butterfly is found within coastal terrace prairie at one site in southern Mendocino County. These butterflies are imperiled by overcollecting, urban development, alien plant invasion and competition, and excessive livestock grazing. The Alameda whipsnake occurs in the northern coastal scrub and chaparral habitats of Contra Costa and Alameda counties. This snake and its associated habitat are threatened by fire suppression and related wildfire problems associated with lack of fuel reduction, urban development, genetic isolation, and excessive livestock grazing. This rule implements Federal protection and recovery provisions afforded by the Act for these animals.

DATES: Effective December 5, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821.

FOR FURTHER INFORMATION CONTACT: Mike Westphal or Diane Windham, staff biologists, at the above address or by telephone (916/979–2725).

SUPPLEMENTARY INFORMATION:

Background

The callippe silverspot butterfly (*Speyeria callippe*) is a member of the brush foot family (Nymphalidae). The animal was described by J.A. Boisduval (1852) from specimens collected during the month of June by Pierre Lorquin in San Francisco, California (dos Passos and Grey 1947). It is a medium sized butterfly with a wingspan of approximately 5.5 centimeters (cm) (2.2 inches (in)). The upper wings are brown with extensive black spots and lines, and the basal areas are extremely melanic (dark-colored). Wing undersides are brown, orange-brown, and tan with black lines and distinctive black and bright silver spots. Basal areas of the wings and body are densely pubescent (hairy).

The discal area on the upper hind wings of the callippe silverspot butterfly is a darker, more extensive yellow than on the related Lilian's silverspot butterfly (*Speyeria callippe liliana*). The callippe silverspot butterfly is larger and has a darker ground color with more melanic areas on the basal areas of the wings than Comstock's silverspot butterfly (*Speyeria callippe comstocki*), another related taxon.

The callippe silverspot butterfly is found in native grassland and associated habitats (Thomas Reid Associates 1982; Steiner 1990; Mattoon, *in litt.*, November 22, 1992). The females lay their eggs on the dry remains of the larvae foodplant, Johnny jump-up (*Viola pedunculata*), or on the surrounding debris (Arnold 1981, Thomas Reid Associates 1982). Within about 1 week of hatching the larvae eat their egg shells. The caterpillars wander a short distance and spin a silk pad upon which they pass the summer and winter. The larvae are dark colored with many branching sharp spines on their backs.

The caterpillars immediately seek out the foodplant upon termination of their diapause in the spring. In May, after having gone through five instars, each larva forms a pupa within a chamber of leaves drawn together with silk. Adults emerge in about 2 weeks and live for approximately 3 weeks. Depending upon environmental conditions, the flight period of this single-brooded butterfly ranges from mid-May to late July. The adults exhibit hilltopping behavior, a phenomenon in which males and virgin or multiple-mated females seek a topographic summit on which to mate (Shields 1967).

Arnold (1983, 1985) conducted taxonomic studies on the subspecies of *Speyeria callippe* using wing characters. He concluded that the species consisted of 3 subspecies rather than the widely recognized and accepted 16 subspecies. Based on his study, the range of *Speyeria callippe callippe* would extend from Oregon to southern California and east into the Great Basin (Arnold 1985). A comprehensive analysis of this species found that the original classification remains more appropriate and that subspecies *callippe* is restricted to the San Francisco Bay region (Hammond 1986; Murphy undated). The Service recognizes the conclusions of Hammond (1986) and the distribution of the callippe silverspot butterfly as described by Sterling Mattoon (S. Mattoon, *in litt.*, November 22, 1992).

The callippe silverspot butterfly is known from 14 historic populations in the San Francisco Bay region. The historic range of the callippe silverspot butterfly includes the inner Coast Ranges on the eastern shore of San Francisco Bay from northwestern Contra Costa County south to the Castro Valley area in Alameda County (S. Mattoon, *in litt.*, November 22, 1992). On the west side of the Bay, it ranged from San Francisco south to the vicinity of La Honda in San Mateo County. Five colonies, including the one located at Twin Peaks in San Francisco have been extirpated for a variety of reasons. Currently, extant colonies are known only from private land on San Bruno Mountain in San Mateo County, and a city park in Alameda County (S. Mattoon, *in litt.*, November 22, 1992).

Behren's silverspot butterfly (*Speyeria zerene behrensii*) is also a member of the brush foot family (Nymphalidae). William H. Edwards described this taxon in 1869 based on an adult male collected by an unknown lepidopterist in Mendocino, California (Edwards 1869, dos Passos and Grey 1947). It is a medium-sized butterfly with a wingspan of approximately 5.5 cm (2.2 in). The upper surfaces are golden brown with numerous black spots and lines. Wing undersides are brown, orange-brown, and tan with black lines and distinctive silver and black spots. Basal areas of the wings and body are densely pubescent.

Behren's silverspot butterfly is similar in appearance to two other subspecies of *Speyeria zerene* (Howe 1975, Hammond 1980, McCorkle and Hammond 1988). The Oregon silverspot butterfly (*Speyeria zerene hippolyta*), federally listed as threatened, has lighter basal suffusion on the upper sides of the wings than Behren's silverspot butterfly. Another related taxon, the endangered Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) is larger in size and also lighter in color than *Speyeria zerene behrensii*.

Behren's silverspot butterfly inhabits coastal terrace prairie habitat. The life history of Behren's silverspot butterfly is similar to the callippe silverspot butterfly. The females lay their eggs in the debris and dried stems of the larval foodplant, violet (*Viola adunca*) (McCorkle 1980, McCorkle and Hammond 1988). Upon hatching, the caterpillars wander a short distance and spin a silk pad upon which they pass the fall and winter. The larvae are dark-colored with many branching, sharp spines on their backs. The caterpillars immediately seek out the foodplant upon termination of their diapause in the spring. They pass through five instars before forming a pupa within a chamber of leaves that they draw together with silk. The adults emerge in about 2 weeks and live for approximately 3 weeks. Depending upon environmental conditions, the flight period of this single-brooded butterfly ranges from July to August. Adult males patrol open areas in search of newly emerged females.

The historic range of Behren's silverspot butterfly extends from the mouth of the Russian River in Sonoma County northward along the immediate coast to southern Mendocino County in the vicinity of Point Arena (S. Mattoon, *in litt.*, August 4, 1989). Six historic populations are known from coastal terrace prairie and associated habitats.

The single extant population is located on private land near Point Arena in Mendocino County.

The Alameda whipsnake (Alameda striped racer) (*Masticophis lateralis euryxanthus*) is a member of the family Colubridae (Stebbins 1985). It was described by William J. Riemer (1954) from a total of six specimens collected in the vicinity of Berkeley, Alameda County, and near Somersville, Contra Costa County, and from Mount Diablo, Contra Costa County, California. The Alameda whipsnake is a slender, fast-moving, diurnal snake with a narrow neck and a relatively broad head with large eyes. The dorsal surface is colored sooty black with a distinct yellow-orange stripe down each side. The anterior portion of the ventral surface is orange-rufous colored, the midsection is cream colored, and the posterior and tail are pinkish. Adults range in length from 91 to 122 cm (3 to 4 feet (ft)).

The Alameda whipsnake inhabits the inner Coast Ranges in western and central Contra Costa and Alameda counties (Jennings 1983, McGinnis 1992, Swaim 1994). Urban development has fragmented the originally continuous range of the whipsnake into five populations centered in the (1) Sobrante Ridge, Tilden/Wildcat Regional Parks area to the Briones Hills, in Contra Costa County (Tilden-Briones population); (2) Oakland Hills, Anthony Chabot area to Las Trampas Ridge, in Contra Costa County (Oakland-Las Trampas population); (3) Hayward Hills, Palomares area to Pleasanton Ridge, in Alameda County (Hayward-Pleasanton Ridge population); (4) Mount Diablo vicinity and the Black Hills, in Contra Costa County (Mount Diablo-Black Hills population); and (5) Wauhab Ridge, Del Valle area to the Cedar Mountain Ridge, in Alameda County (Sunol-Cedar Mountain population). These populations all occur on private or public, non-Federal, land.

Due to the fragmentation of the range of the Alameda whipsnake, little or no interchange occurs among the five populations. The ability of the whipsnake to interchange among the first three populations described above is contingent on their dispersing over the Caldecott Tunnel in Contra Costa County and under Highway 580 in Alameda County at the Eden Canyon interchange, the Dublin Boulevard undercrossing, or where San Lorenzo Creek passes under the highway. The ability of the Alameda whipsnake to interchange between the Hayward-Pleasanton Ridge and Sunol-Cedar Mountain populations depends on their dispersing along Alameda Creek in Alameda County and crossing under Highway 680 where the creek passes under the highway, or crossing under the highway at Scott’s Corner along Vallecitos Creek, or where two unnamed tributaries to Arroyo de la Laguna cross under Highway 680 north of Scott’s Corner. The Mount Diablo-Black Hills population has no path for dispersal to any of the other populations.

The Alameda whipsnake is distinguished from the chaparral whipsnake (*Masticophis lateralis lateralis*) by its sooty black dorsum, by wider yellow-orange stripes that run laterally down each side, the lack of a dark line across the rostral, an uninterrupted light stripe between the rostral and eye, and the virtual absence of spotting on the venter of the head and neck.

The Alameda whipsnake is typically found in northern coastal scrub, coastal sage scrub and chaparral plant communities (Ornduff 1974, Swaim 1994), but may also occur in adjacent grasslands and oak and oak/bay woodlands (Swaim 1994). They demonstrate a preference for open-canopy stands and habitats with woody debris and exposed rock outcrops, and they tend to be found on southeast, south, and southwest facing slopes (Swaim 1994). This extremely fast-moving snake holds its head high off the ground to peer over grass or rocks for potential prey and is an active diurnal predator. Its diet includes lizards, small mammals, snakes, and nesting birds.

Radiotelemetry data suggest that Alameda whipsnakes can occupy home ranges varying in size from 1.9 to 8.7 hectares (ha) (5.0 to 21.5 acres (ac)). Home ranges of marked snakes overlapped (Swaim 1994). Some animals were recorded to have moved over 1.8 kilometers (km) (1 mile (mi)) while crisscrossing their areas (McGinnis 1992).

Alameda whipsnakes breed from March through June, with mating appearing to occur near the hibernacula of the female (Swaim 1994). Whipsnakes lay clutches of 6 to 11 eggs, May through July (Stebbins 1985), and the young hatch and emerge in the late-summer to early-fall (Swaim 1994).

Previous Federal Action

A proposed rule to list the callippe silverspot butterfly as endangered with critical habitat was published on July 3, 1978 (43 FR 28938). The critical habitat portion of this proposal was withdrawn by the Service on March 6, 1979 (44 FR 12382) because of procedural and other substantive changes in the Act by the amendments of 1978. The Service again published a proposed rule to designate critical habitat for the callippe silverspot butterfly on March 28, 1980 (45 FR 20503). The proposal to list the callippe silverspot butterfly and the reproposal of critical habitat were withdrawn on September 30, 1980 (45 FR 64607) because the Act amendments of 1978 required that the final rule for the species be completed within 2 years after the date of publication of the proposal to list it as endangered or threatened. This insect was listed as a category 2 candidate species in the Animal Notice of Review on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554). Category 2 species were those taxa for which the Service had data that indicated listing was possibly appropriate, but for which substantial data on their biological vulnerability and threats was not currently available to support issuance of proposed listing rules. The callippe silverspot butterfly was listed as a category 1 species in the Animal Notice of Review on November 21, 1991 (56 FR 58804), because of increased threats from overcollecting (see Factor B in the ‘‘Summary of Factors Affecting the Species’’ section of this rule). Category 1 species were those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support proposed listing rules. As announced in a notice published in the February 28, 1996, **Federal Register** (61 FR 7596), the designation of multiple categories of candidates has been discontinued, and only former category 1 species are now recognized as candidates for listing purposes.

Ms. Dee Warenycia petitioned the Service to list the callippe silverspot butterfly as an endangered species in a letter dated January 14, 1991, which was received on January 22, 1991. The Service completed a status review and determined that sufficient information existed to propose the species for listing. The 12-month petition finding was published on February 4, 1994, with the proposed rule (59 FR 5377).

On March 20, 1975, Behren’s silverspot butterfly was listed as one of 42 insects whose status was being reviewed for listing as either endangered or threatened by the Service (40 FR 12691). This insect was listed as a category 2 species in the Animal Notice of Review on May 22, 1984 (49 FR 21664), and January 6, 1989 (54 FR 554). Dr. Dennis Murphy of Stanford University petitioned the Service to list Behren’s silverspot butterfly as an endangered species in a letter dated June 28, 1989, which was received on June 29, 1989. The Service determined that the petition contained substantial information indicating that the action requested may be warranted and published notice of the 90-day finding on November 1, 1990 (55 FR 46080). It was listed as a category 1 species in the Animal Notice of Review on November 21, 1991 (56 FR 58804), on the basis of significant increases in habitat loss and threats occurring throughout its range. The 12-month petition finding was published with the proposed rule to list the species on February 4, 1994 (59 FR 5377).

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958) which included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. The January 6, 1989, Animal Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. On February 4, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species.

The processing of this final rule follows the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Under this guidance, highest priority (Tier 1) is given to processing emergency listings, and second highest priority (Tier 2) is given to resolving the listing status of outstanding proposed listings. The third highest priority (Tier 3) is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status. The lowest priority (Tier 4) is given to processing critical habitat determinations, delistings, and other types of reclassifications. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the February 4, 1994, proposed rule (59 FR 5377) and associated notifications, all interested parties were requested to submit factual information that might assist the Service in determining whether these taxa warrant listing. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Notices of this proposal were published in the *San Francisco Chronicle* and *San Mateo Times* on February 8, 1994, and the *Oakland Tribune* on February 10, 1994.

During the comment period, the Service received comments from 16 commenters. Six commenters supported the listing of all three taxa. Five commenters supported the listing of the callippe silverspot. The East Bay Regional Park District (EBRPD) supported the listing of the Alameda whipsnake. One commenter provided information on conservation methods for the callippe silverspot, but did not express an opinion on the listing. Letters from the City of Danville, California Department of Parks and Recreation (CDPR), and the U.S. National Biological Survey (now the Biological Resources Division of the U.S. Geological Survey) provided additional information on the Alameda whipsnake but did not express an opinion on the listing. No public hearing was requested.

On November 1, 1996, the Service published in the **Federal Register** (61 FR 56501) a notice reopening the comment period for 30 days for these taxa. The basis for this reopening was the length of time that had elapsed since closure of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available during the decision-making process. Specifically, the Service requested information regarding—(1) the known or potential effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat; (2) any other threats to these taxa; and (3) the size, number, or distribution of populations of these taxa. During the 30-day reopened comment period, the Service received comments from 10 entities and individuals. One commenter stated that the listing of the callippe silverspot butterfly would not be beneficial. Two commenters supported listing of all three taxa and one commenter expressed no opinion on the listing of all three taxa. The remaining letters mentioned only the Alameda whipsnake, with two supporting the listing, one opposing the listing, and three expressing no opinion. In accordance with the Service policy on peer review, published in the **Federal Register** on July 1, 1994 (59 FR 34270), the opinions of three independent scientists were also solicited. No responses were received from these specialists.

The Service has reviewed all of the written comments described above. New information received since publication of the proposed rule is incorporated in the ''Background'' and ''Summary of Factors Affecting the Species'' sections of this final rule. The issues raised in comments received and the Service's responses are summarized as follows:

Issue 1: One commenter disagreed that the Alameda whipsnake would not be impacted by construction and operation of the proposed Los Vaqueros Reservoir. The commenter stated that the snake would be adversely affected by the reservoir project if there are historic records of the snake from the areas that would be inundated.

Service Response: The quarrying operations for the Los Vaqueros project will not be undertaken at the location first proposed for the project, where an Alameda whipsnake was observed (Jones and Stokes 1992). The Service is not aware of any records showing that this species had ever occurred in the inundation zone.

Issue 2: One commenter stated that feral pigs (*Sus scrofa*) prey on snakes and other wildlife.

Service Response: The Service has incorporated this information in this final rule.

Issue 3: One commenter believed that commercial collecting of the Alameda whipsnake was an overstated threat and contended that this was incorrectly used as a justification for not designating critical habitat. Another commenter stated that the location of the callippe silverspot butterfly population at San Bruno Mountain was well known to butterfly collectors. He asserted that the threat of collecting was not a justification for determining that designation of critical habitat is not prudent for the callippe silverspot butterfly.

Service Response: Under section 4(a)(3)(A) of the Act and 50 CFR 424.12, the Secretary must designate critical habitat if such designation is prudent and determinable. Section 4(b)(2) of the Act further states that any area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. In the case of the

Alameda whipsnake and callippe silverspot butterfly, the Service believes that designation of critical habitat for these species would confer little, if any, conservation benefit to these species beyond that provided by listing. Application of the statute and its regulations are described in more detail in the ''Critical Habitat'' section of this rule.

Issue 4: Several commenters contended that the failure of the San Bruno Mountain Habitat Conservation Plan (HCP) is the primary cause of the decline of the callippe silverspot butterfly.

Service Response: In 1982, a Section 10(a)(1)(B) incidental take permit was issued to the cities of Brisbane, Daly City, South San Francisco, and the County of San Mateo for the endangered mission blue butterfly (*Icaricia icarioides missionensis*), San Bruno elfin butterfly (*Incisalia mossii bayensis*), and San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). This permit and HCP is described in the ''Available Conservation Measures'' section of this rule. The Service is not aware of any documented evidence or data showing that the callippe silverspot butterfly is declining as a result of the San Bruno Mountain HCP. However, the HCP does not regulate collecting threats to the callippe silverspot butterfly or other butterfly species inhabiting San Bruno Mountain. Listing the callippe silverspot butterfly will provide this species with regulatory protection from collection and other impacts.

Issue 5: One commenter thought that designation of San Bruno Mountain as critical habitat for the callippe silverspot butterfly would lead to increased levels of environmental review and greater protection for the species.

Service Response: Critical habitat extends additional protection to listed species through section 7 of the Act by requiring that Federal agencies ensure that any actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. However, because development activities on callippe silverspot butterfly habitat on San Bruno Mountain have already been completed, designation of critical habitat would not provide additional benefits to the species. A section 10(a)(1)(B) HCP currently protects habitat in the area.

Issue 6: One commenter was concerned that particulate matter from vehicle exhaust and quarry operations may pose a significant threat to the callippe silverspot butterfly.

Service Response: The adult and early stages of the callippe silverspot butterfly and other lepidopterans may be prone to injury and mortality from dust because their respiratory apparatus (spiracles) are easily clogged. The Service is concerned that high levels of dust from quarry operations on San Bruno Mountain may adversely affect the butterflies in areas immediately bordering this location.

Issue 7: One commenter claimed that the three species are being used by environmentalists as ''roadblocks'' to economic uses of private property. Another commenter stated that public lands should be managed for productivity and sustainability and that the economic impact, customs, traditions and culture of local communities should be considered during the listing process.

Service Response: Under section 4(a)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions'' (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982)). As further stated in the legislative history, ''* * * economic considerations have no relevance to determinations regarding the status of species * * *.'' Because the Service is specifically precluded from considering economic impacts, either positive or negative, in a decision on listing any species, the Service does not evaluate or consider the economic impacts of listing these species.

Section 2(a)(3) of the Act recognizes that species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. The Service recognizes that the species included in this listing have esthetic, ecological, education, historical and scientific value.

Issue 8: One commenter thought it would be prudent for the Service to indicate the percentage of Alameda whipsnake habitat lost since 1971, the year the species was listed as ''threatened'' under the California Endangered Species Act, to document the level of protection afforded the species with State listing.

Service Response: The Service mapped Alameda whipsnake habitat that was extant in 1970 and identified areas where conversion and encroachment into potential habitat had occurred from then until 1996. To the extent determinable from aerial photographs and slides, projects impacting habitat during the 1970–1996 period were mapped. Such projects included road construction and widening, subdivision construction and expansion, and brush removal. Approximately 25 projects in Alameda County and 41 projects in Contra Costa County either converted or encroached upon chaparral in the 1970–1996 period. The extent of conversion and encroachment ranged from approximately 0.8 to 2.0 ha (2 to 5 ac) to approximately 8 to 20 ha (20 to 50 ac) for larger projects. Freeway construction and residential and commercial development have added dispersal barriers measuring up to 4.8 km (3.0 mi) wide. The Service's conclusion, from this review, was that regional development has significantly fragmented the remaining Alameda whipsnake populations and that natural genetic exchange between the five remaining populations is unlikely.

A precise assessment of the amount of habitat loss is difficult, because Alameda whipsnakes are known to use adjacent habitats at a high level (McGinnis 1992), and may be found at distances up to approximately 500 meters (1,640 feet) from scrub and chaparral habitat and utilize riparian habitat as a corridor (Swaim 1994). The substantial amount of habitat loss documented by the Service brings into question the effectiveness of current regulatory protection which is further discussed under factor D in the ''Summary of Factors'' section of this rule.

The issues raised in comments received during the 30 days that the comment period was reopened and the Service's responses to these issues are summarized as follows:

Issue 9: Several commenters noted the benefits of fuels management for snake habitat maintenance and public safety. One commenter noted the difficulty in conducting prescribed burns near residential communities. Another commenter recommended that the Service explicitly recognize the tradeoff between protecting individual snakes from mortality during fuels management and the benefits of maintaining long-term suitable habitat conditions. The commenter further noted that restrictions on fuels treatment activities should meet appropriate standards for reasonableness, given the critical need to provide for public safety.

Service Response: The subject of the effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat was a factor in deciding to reopen the comment period. The Service is concerned that fire suppression has had, and continues to have, negative impacts on habitat for the Alameda whipsnake. Fire suppression is discussed in depth under factor E of the ''Summary of Factors'' section of this rule. The Service also recognizes the need for efficient fire control in urban areas and would work with appropriate management agencies to develop fuels management plans that protect the public while affording the maximum practicable conservation benefit to Alameda whipsnakes.

Issue 10: One commenter expressed concern that the proposed rule to list these taxa may not have complied with the regulatory policies announced by the Department of the Interior on July 1, 1994. In particular, the commenter expressed concern that the listing proposal had not been subjected to peer review, as required by the Notice of Policy Statement published in the **Federal Register** on that date (59 FR 34270).

Service Response: The proposed rule to list these taxa was published on February 4, 1994 (59 FR 5377), predating the Service's formal policy on peer review made final on July 1, 1994 (59 FR 34270). However, the list of interested parties to whom the Service sent the proposed rule for comment included several experts on the life history, taxonomy, and ecology of the taxa proposed for listing. During the reopened comment period discussed above in the ''Previous Federal Actions'' section, the opinions of three independent specialists were solicited in accordance with this policy. No responses were received from these specialists.

Issue 11: One commenter noted that because California has experienced severe fires during the past several years, fire suppression may not be a threat to the Alameda whipsnake.

Service Response: Several areas of California, particularly southern California, have recently experienced wildfires. Within the range of the Alameda whipsnake, however, there have been few large wildfires within the last 10 years with the notable exception of the Oakland Hills firestorm of 1991. Although this fire occurred within the range of the species, the burned areas were mostly located in developed portions of the Oakland Hills that did not contain habitat suitable for the whipsnake. Fire suppression practices that do not include controlled burning can lead to severe fires that damage both urban and wildlife areas, whereas controlled burning can benefit both wildlife habitat and reduce the risk of catastrophes such as the 1991 fire. Fire suppression is discussed in detail under factor E of the ''Summary of Factors'' section of this rule.

Issue 12: One commenter was concerned over the method by which information was gathered on private property.

Service Response: The Service is not aware of any information that was gathered without the permission of the property owner. Information was obtained from Environmental Impact Reports or Statements that are required under the California Environmental Quality Act (CEQA) or National Environmental Protection Act, reports and data summaries prepared by State agencies and independent scientists, information submitted during public comment periods, and other information published in the scientific journals or available in student dissertations.

Issue 13: One commenter stated that the Service did not use sound scientific information as indicated by its use of phrases such as ''may be threatened.''

Service Response: Section 4(b)(a)(A) of the Act requires that listing determinations be based on the best scientific and commercial data available. The Service has relied on the best available scientific and commercial data in making this listing determination. The data upon which this determination is based were collected by the petitioners and qualified scientists. The phrase ''may be threatened,'' in particular, is used to indicate that a potential threat may become an actual one in the foreseeable future. The Service believes that it is sound and responsible science to acknowledge a lack of absolute certainty when that is the case.

Issue 14: One commenter asked what scientific information was used to determine what constitutes ''inappropriate grazing levels.''

Service Response: The final rule includes livestock grazing as one of many factors affecting the species, and ranks it as a contributing factor, rather than as a major factor. Indeed, this final rule states that some grazing could help to keep other plants from outcompeting the butterflies' host plants. Studies on Alameda whipsnakes that have been equipped with radiotelemetry units have shown that the whipsnake forages in grassland between stands of scrub. Livestock grazing that significantly reduces or eliminates plant cover in these grasslands would lead to an increased loss of snakes and their prey to other predators. The Service believes that livestock grazing, if appropriately managed, can benefit both the Alameda whipsnake and the two species of butterflies.

Issue 15: One commenter stated that involvement of State and local governments, as well as all types of land users, should be required prior to listing a species.

Service Response: To solicit comments from the public, a notice of the February 4, 1994, proposed rule (59 FR 5377) was published in the *San Francisco Chronicle* and *San Mateo Times* on February 8, 1994, and in the *Oakland Tribune* on February 10, 1994. In addition, appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. On November 1, 1996 (61 FR 56501), the Service reopened for public comment the proposed listing of the three species with a closing date of December 2, 1996, to allow further comments from the public.

Issue 16: One commenter stated that the expense of amending the San Bruno Mountain HCP to permit incidental take of callippe silverspot butterflies would preclude other habitat management activities.

Service Response: The Service will work with the permit holders involved in the San Bruno Mountain HCP to ensure that the process of amending their Section 10(a)(1)(B) permit will not cause undue diversion of funding from other habitat management activities.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the callippe silverspot butterfly (*Speyeria callippe callippe*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*) should be classified as endangered species, and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the callippe silverspot butterfly (*Speyeria callippe callippe*), Behren's silverspot butterfly (*Speyeria zerene behrensii*), and Alameda whipsnake (*Masticophis lateralis euryxanthus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The primary causes of the decline in the callippe silverspot butterfly and

Behren's silverspot butterfly is the loss and degradation of habitat from human activities, including off-road vehicle use, trampling by hikers and equestrians, inappropriate levels of livestock grazing, and invasive exotic vegetation. Off-road vehicles and uncontrolled off-trail foot traffic pose a threat to the colonies of the two butterfly species. These activities could harass, injure, or kill individuals of the two species by trampling or crushing the early life stages, the foodplants of the larvae, or the adults' nectar sources. The Behren's silverspot butterfly also is imperiled by residential and commercial development.

The callippe silverspot butterfly was once considerably more widespread in the San Francisco Bay area, and at least five populations of this species have been eliminated by urban development and other causes. The species was known historically from 14 sites in San Mateo, Alameda, Sonoma, and Solano counties, only 2 of which are still extant. One of the known extant populations of the callippe silverspot butterfly is located in a city park in Alameda County. This colony is small and likely to be imperiled by anthropogenic and natural causes (S. Mattoon, *in litt.*, November 22, 1992). The population at San Bruno Mountain in San Mateo County is largely protected against further loss of habitat, which will remain undeveloped in perpetuity by virtue of the San Bruno Mountain HCP (Thomas Reid Associates 1982; S. Mattoon, *in litt.*, November 22, 1992). However, overcollection of specimens by lepidopterists at San Bruno Mountain and at sites where hybrids can be found in Solano County continues to pose a threat (see Factor B).

Behren's silverspot butterfly has been extirpated from a significant portion of its former range, which extended from the mouth of the Russian River in Sonoma County north to southern Mendocino County. One of the six historically known colonies was eliminated by a housing development (S. Mattoon, *in litt.*, August 7, 1989). Currently, this species is known from a single locality near Point Arena in Mendocino County (Sally DeBecker, Pacific Gas and Electric, *in litt.*, 1990). The site is subject to grazing by livestock. Although no development plans have been proposed for this site, urban development is occurring in the vicinity. No specimens have been observed at the sites of the other historically known colonies since 1987.

The current threats to the habitat of the Alameda whipsnake are urban development and associated impacts due to increased population densities, inappropriate grazing practices, and alteration of suitable habitat from fire suppression (see factor E below for a full discussion of the effects of fire suppression on Alameda whipsnake habitat). The central and western portions of Alameda and Contra Costa counties are highly urbanized and continue to be subject to increased urbanization. Habitat fragmentation from urban development and associated highway and road construction has led to isolation of the five populations by wholly preventing or severely reducing movement of individuals between areas of suitable habitat as described earlier in this rule. These activities have also reduced the total amount of suitable habitat available for the Alameda whipsnake. Swaim (1994) listed 55 historical localities for this species, of which only 25 are considered to be extant.

McGinnis (1992) documented colonies scattered throughout the range of the snake that are likely to be adversely impacted by various residential developments. In addition, the Service has identified numerous housing developments that threaten the Alameda whipsnake populations. Some housing developments in Alameda County will further fragment habitat areas of the Hayward-Pleasanton Ridge population. These developments include the proposed 200 ha (500 ac) Schaefer Ranch Project with approximately 474 homes, and the 58 ha (146 ac) Hansen Ranch Project, both of which could potentially impact suitable habitat for the Alameda whipsnake. The Schaefer Ranch contains suitable habitat and the adjacent Hansen Ranch is in close proximity to an Alameda whipsnake sighting (California Department of Fish and Game (CDFG), *in litt.*, February 13, 1996). In addition, the proposed dedication of approximately 64 ha (161 ac) of the Schaefer Ranch project to the EBRPD will increase public use and associated recreational impacts to habitat of the Alameda whipsnake. The proximity of urban development will also increase the likelihood of predation from domestic and feral cats to EBRPD lands that are otherwise protected from development (DelVecchio 1997) (see factor C below).

Two other proposed projects to the south affect the Hayward-Pleasanton Ridge population. The 632 ha (1,580 ac) Hayward 1900 project and the 156 ha (391 ac) Bailey Ranch are adjacent housing developments along Walpert Ridge in Hayward (Planning Collaborative 1995, City of Hayward 1996). Both the Walpert Ridge and the Bailey Ranch sites have habitat occupied by the Alameda whipsnake (McGinnis 1992). In addition, contiguous habitat exists between known occupied habitat to the west and east of the Bailey Ranch and Hayward 1900 development projects. Although Bailey Ranch has proposed mitigation to offset impacts to the Alameda whipsnake, both developments will further impact and fragment the Hayward-Pleasanton Ridge population. Hayward 1900 has proposed open space but is planning to construct trails and vineyards in the proposed open space (Planning Collaborative 1995). Vineyards, associated agricultural land uses, and trails could eliminate and fragment whipsnake habitat and further restrict the movement of snakes.

Within the Oakland-Las Trampas population, several proposed developments may impact Alameda whipsnakes and their habitat. Several of these proposed projects are located contiguous to the east side of Las Trampas Regional Wilderness and contain habitat known to be occupied by Alameda whipsnakes. The proposed 9 ha (22 ac) Rossmoor Neighborhood Nine Project would result in the direct loss of snake habitat and could potentially impact mitigation habitat previously provided to offset impacts from an earlier phase of the project (CDFG, *in litt.*, November 25, 1995). The proposed expansion of the Oakland Zoo could potentially impact suitable snake habitat (K. Swaim and S. McGinnis, Hayward State University, pers. comm., 1996). Some of these projects have, or may, set aside suitable habitat for the Alameda whipsnake, preserved either as open space or as mitigation for habitat losses associated with the project. Although these proposed developments may mitigate for impacts to Alameda whipsnakes, the undeveloped hillsides that support chaparral growth will be subject to increased fire suppression due to the close proximity of urban development. This fire suppression will result in habitat degradation and an increased probability of catastrophic wildfires as discussed under factor E below.

The Mount Diablo-Black Hills, Tilden-Briones, and Sunol-Cedar populations are indirectly threatened by urban development. The Mount Diablo-Black Hills population will be adversely affected by the urban expansion of the cities of Pittsburg, Oakley, Brentwood, and Antioch. These cities are projected to expand by over 40,000 units, which will result in increased visitation and associated impacts to nearby EBRPD parks and Mt. Diablo State Park. Specific developments such as the 115-unit Clayton Ranch (412 ha (1,030 ac)) and 5,200-unit Cowell Ranch (1,709 ha (4,272 ac)) will expose the eastern flank of the Mt. Diablo-Black Hills population to these indirect impacts of urbanization. The Mt. Diablo-Black Hills population is also subject to increased urban impacts on the south side from the proposed Dougherty Valley (2,400 ha (6,000 ac)) and Tassajara Valley (1,600 ha, (4,000 ac)) projects, which total over 17,000 units. The Tilden-Briones population will be subject to increased population pressure from the north by the approved 800-unit Franklin Canyon (392 ha (980 ac)) projects (Mooers, 1996). Additional developments are approved or proposed adjacent to the Sunol-Cedar population in the rapidly growing areas near Dublin and Pleasanton in Alameda County. These projects will increase human disturbance from recreational use on regional and state parks, and as urban development encroaches into the current open space buffers between existing developments and whipsnake habitat on public lands, the threat of predation and harassment from domestic and feral cats increases (Coleman *et al.* 1997). Predation threats are discussed in more detail under factor C below.

The past and ongoing fragmentation of Alameda whipsnake habitat makes some populations of this species more vulnerable to extinction. The Tilden-Briones and Oakland-Las Trampas populations occupy a narrow, interrupted band of ridgetop chaparral dividing the heavily urbanized Oakland/Berkeley region to the west from the rapidly urbanizing Highway 680 corridor to the east (USGS 1997). Habitat patches with high ratios of edge to interior are known to provide less value for some species than round or square patches provide (Jimerson and Hoover 1991; Saunders *et al.* 1991). In fragmented habitats, species most prone to extinction are those that depend on native vegetation, require combinations of different habitat types, require large territories, and exist at low densities (Saunders *et al.* 1991). Alameda whipsnakes have been shown to be associated with native Diablan sage scrub, to forage in adjacent grasslands, and to migrate along riparian corridors. While the home range of the Alameda whipsnake, estimated to vary between 2 and 9 ha (5 and 20 ac), is not large compared to that of some animals, the narrow habitats of the Tilden-Briones and Oakland-Las Trampas populations, less than 1.6 km (1 mi) wide in some places, may impose a significant constraint on the species. Few individuals have been captured during trapping studies conducted over thousands of trap days, indicating that Alameda whipsnakes may be sparse even in suitable habitat (Swaim 1994). These factors may combine to cause Alameda whipsnakes to be vulnerable to extinction in small habitat patches resulting from habitat fragmentation.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The callippe silverspot butterfly and Behren's silverspot butterfly are highly prized by insect collectors. Although no studies specifically document the impact of the removal of individuals on natural populations of either butterfly species, based on studies of another endangered nymphalid butterfly (Gall, 1984a and 1984b) and a lycaenid butterfly (Duffey 1968), both butterflies are vulnerable to impacts from collection due to their isolated, possibly small populations. Butterfly collectors have been observed on San Bruno Mountain (S. Stern, *in litt.*, June 21, 1994). Some of these specimens are being traded for other butterfly taxa or are being held by the collectors in anticipation of their greater value should the species be listed. The Service also is aware of reports that Behren's silverspot butterfly is actively sought by amateur lepidopterists. Both collecting from small colonies and scientific studies that repeatedly handle and mark individuals (particularly of females and in years of low abundance) could seriously damage the populations through loss of individuals and the resulting loss of genetic variability within the population (Singer and Wedlake 1981, Gall 1984b, Murphy 1988). Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery, especially when they lack appropriate biological training or when they visit the area for a short period of time (Collins and Morris 1985).

An extensive commercial trade has been documented for the callippe silverspot butterfly and the Behren's silverspot butterfly, as well as for other imperiled and rare butterflies (U.S. Attorney's Office 1994, *United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell, Case No. CR932013, 1993*). The Service is concerned that issuance of a final rule for these animals that is not effective immediately upon publication will result in greatly intensified level of collecting and commercial trade in the callippe silverspot butterfly and Behren's silverspot butterfly. Because of the immediate threat posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

The Alameda whipsnake does not appear to be particularly popular among reptile collectors; however, Federal listing could raise the value of the animals within reptilian trade markets and increase the threat of unauthorized collection above current levels (K. McCloud, U.S. Fish and Wildlife Service, Law Enforcement Division, pers. comm., 1994 and 1996). Even limited interest in the species among reptile collectors could pose a serious threat to smaller populations of the snake.

C. Disease or Predation

It appears that predation or disease do not pose a significant threat to the callippe silverspot butterfly or Behren's silverspot butterfly. The potential impact of disease on the Alameda whipsnake is unknown.

A number of native and exotic mammals and birds are known or likely to be predators of the Alameda whipsnake including the California kingsnake (*Lampropeltis getula californiae*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), opossum (*Didelphis virginianus*), coyote (*Canis latrans*), gray fox (*Vulpes cinereoargenteus*), and hawk (*Buteo* species). Urbanization can lead to increased numbers and access to habitat by native predators, leading to increased levels of predation on native fauna (Goodrich and Buskirk 1995). The recent introduction of the red fox (*Vulpes vulpes*), a species not native to this region of the State, poses an additional threat to the Alameda whipsnake. In situations where Alameda whipsnake habitat has become fragmented, isolated, and otherwise degraded by human activities, increased predatory pressure may become excessive, especially where alien species, such as rats (*Rattus* species), feral pigs (*Sus scrofa*), and feral and domestic cats (*Felis domestica*) and dogs (*Canis familiaris*) are introduced. These additional threats become particularly acute where urban development immediately abuts Alameda whipsnake habitat. A growing movement to maintain feral cats in parklands is an additional potential threats from predation on wildlife (Coleman *et al.* 1997, Roberto 1995). The EBRPD is currently facing public pressure to allow private individuals to maintain feral cats on park lands (DelVecchio 1997). Although the actual impact of predation on Alameda whipsnakes under such situations has not been studied, feral cats are know to prey on reptiles, including yellow racers (Hubbs 1951), a fast, diurnal snake closely related to the Alameda whipsnake (Stebbins 1985). Predation pressure on Alameda whipsnakes may increase from maintained colonies of feral cats in Alameda whipsnake habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The callippe silverspot butterfly and Behren's silverspot butterfly are not specifically protected under any Federal, State or local law. The California Endangered Species Act (CESA) does not provide protection to insects (sections 2062, 2067 and 2068, Fish and Game Code). Although the San Bruno Mountain HCP provides protection from habitat destruction, butterfly collectors have been observed on San Bruno Mountain (S. Stern, *in litt.*, June 21, 1994) and unauthorized collection remains an ongoing threat. The extent of illegal trade in these and other butterfly species and the potential threat poaching poses to small populations is discussed in detail under factor B above.

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency. The CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance. In addition, proposed revisions to CEQA guidelines, if made final, may weaken protections for threatened, endangered, and other sensitive species.

The CEQA and CESA afford the Alameda whipsnake some conservation benefits. The animal was listed as a threatened species by the State of California in 1971 (CDFG 1987). Although these State laws provide a measure of protection to the species, resulting in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain areas of Alameda whipsnake habitat, these laws are not adequate to protect the species in all cases. Further, only State, and not Federal, agencies are required to consult under CESA. In response to a comment on the proposed rule, the Service mapped Alameda whipsnake habitat that was extant in 1970 and identified areas where conversion and encroachment into suitable habitat has occurred since the State listed the Alameda whipsnake as threatened in 1971. Based upon this analysis, the Service has determined that approximately 25 projects in Alameda County, and approximately 41 projects in Contra Costa County, either converted or encroached upon suitable habitat from 1970 to 1996. The extent of conversion and encroachment ranged from approximately 2 to 5 ac to approximately 20 to 50 ac for larger projects. Although some of these projects were required to set aside and preserve suitable habitat for the Alameda whipsnake as open space or as mitigation for habitat losses associated with the project, many of these preserved areas remain threatened by fire suppression practices and catastrophic wildfire for the reasons identified and discussed in factor E below.

With appropriate management, areas of open space managed by the EBRPD, East Bay Municipal Utilities District (EBMUD), and Mount Diablo State Park, conservation strategies for Alameda whipsnake may be developed. Although these public lands include substantial areas occupied by the whipsnake, the quality of the habitat continues to decline because of surrounding urban encroachment. Urban encroachment also exacerbates the habitat fragmentation problems, and greatly restricts the ability of these agencies to conduct effective fire management practices that have the potential to sustain suitable habitat for the Alameda whipsnake and prevent catastrophic wildfires.

E. Other Natural or Man-Made Factors Affecting Their Continued Existence

The use of insecticides would threaten the callippe silverspot butterfly and the Behren's silverspot butterfly if use occurred in proximity to occupied habitat. Silverspot butterfly larvae are extremely sensitive to pesticides, and even the accumulation of runoff in the soil after spraying has proven lethal to the larvae of members of the genus *Speyeria* (Mattoon *et al.* 1971). However, the Service is not aware of plans to apply insecticides or pesticides on or near the habitat occupied by either of these two species.

Livestock grazing could threaten the two butterfly species if it occurs at harmful levels, such that the vegetation is overgrazed and the foodplants and nectar sources of these butterflies are eliminated or greatly reduced in abundance. Grazing animals can also trample the larval foodplants and adult nectar sources. Significant reduction or loss of these food sources could threaten the population viability of these butterflies. However, some livestock grazing could keep other plants from outcompeting the butterflies' host plants.

McGinnis (1992) has suggested that grazing has impacted the habitat of the Alameda whipsnake in many areas east of the Coast Range. Livestock grazing that significantly reduces or eliminates shrub and grass cover can be detrimental to this snake. Many snake species, including the Alameda whipsnake, avoid such open areas because of the increased danger from predators and the lack of prey (McGinnis 1992).

The invasion of California's native grassland and coastal prairie by alien plants has adversely affected native flora and fauna. Numerous non-native species have invaded these plant communities (Heady 1988, Heady *et al.* 1988). Introduced alien plants, such as iceplant (*Carprobrotus* sp.), gum trees (*Eucalyptus* spp.), and gorse (*Ulex europaeus*), often outcompete and supplant native vegetation. In the absence of control and eradication programs, invasive alien plants may eliminate the remaining native plants, including the host plants of Behren's and callippe silverspot butterflies. Adequate levels of *Viola* species are especially critical for the long term survival of populations of these butterflies (S. Mattoon, *in litt*., August 4, 1989, and November 22, 1992). Non-native plants may also replace native vegetation in habitat for the Alameda whipsnake, potentially degrading the habitat and reducing the prey base. Radiotelemetry data indicate that Alameda whipsnakes tend to avoid dense stands of eucalyptus (Swaim 1994).

Periodic fires can be an important factor in maintaining the grassland and coastal prairie habitat of the callippe silverspot butterfly and the Behren's silverspot butterfly. Without fire, succession will eliminate the foodplants of the larvae of the two butterflies (Orsak 1980, Hammond and McCorkle 1984). Periodic cool, fast-moving fires appear important for the maintenance of the habitat of these two species. Dead grass and other vegetation from previous years may not decay quickly enough and may gradually accumulate to form a thick layer of thatch that smothers violets. The larvae of the silverspot butterflies may survive fires that move rapidly through grassland habitats, whereas hotter, slow-moving brush and woodland fires may kill them (Orsak 1980, Hammond and McCorkle 1984). In addition, under windy conditions, fast-moving grassland fires burn in patches that leave ''islands'' of unburned habitat where any butterflies present are not harmed.

The Alameda whipsnake is threatened directly and indirectly by the effects of fire suppression. Fire suppression exacerbates the effects of wildfires through the buildup of fuel (underbrush and woody debris), creating conditions for slow-moving, hot fires as described above. The highest intensity fires occur in the summer and early fall when accumulated fuel is abundant and dry. During this period, hatchling and adult Alameda whipsnakes are aboveground (Swaim 1994), and populations are likely to sustain the heaviest losses from fires. The development of a closed scrub canopy also results in a buildup of flammable fuels over time (Parker 1987, Rundel 1987). Fire suppression has led to the encroachment of nonindigenous and ornamental trees into grassland habitats, further increasing flammable fuel loads in and around Alameda whipsnake habitat.

Fire suppression can alter the structure of snake habitat by allowing plants to establish a closed canopy (Parker 1987) that will tend to create relatively cool conditions. Alameda whipsnakes have a higher mean active body temperature (33.4 degrees centigrade) and a higher degree of body temperature stability (stenothermy) than has been documented in any other species of snake under natural conditions (Swaim 1994). Alameda whipsnakes apparently can maintain this high, stable body temperature by using open and partially open and/or low growing shrub communities that provide cover from predators while providing a mosaic of sunny and shady areas between which Alameda whipsnakes can move to regulate their body temperatures (Swaim 1994). Tall, shaded stands of vegetation, such as poison oak (*Toxicodendron diversilobum*), coyote brush (*Baccharis pilularis*), or other vegetation may not provide the optimum temperature gradient for Alameda whipsnakes. Survey data show that Alameda whipsnakes are less likely to be found where these plant species create a closed canopy (Swaim 1994).

In addition, many of the native coastal scrub and chaparral plant species require periodic fires to stimulate new sprouting, seedling recruitment, and seed dispersal (Parker 1987; Keeley 1987, 1992). The natural fire frequency necessary to provide this stimulus in this habitat type is debated by scientists but ranges from 10 to 30 years (Keeley and Keeley 1987, Rundel 1987). Therefore, depending on the rate of fuel accumulation, prescribed burns can be conducted in areas where fires have been suppressed with a frequency of 10 to 30 years (J. Ferreira, CDPR, pers. comm. 1996).

The California Department of Forestry and Fire Protection (CDFFP) has primary authority for wildfire management in the State of California. Where joint jurisdiction exists, such as with regional or State park lands, a memorandum of understanding (MOU) is often developed. Through these MOUs, consideration of cultural, esthetic, and natural resources, can be addressed during planning and implementation of wildfire management. However, CDFFP has the final decision on wildfire management. The policy of the CDFFP for unprescribed fires, such as those resulting from lightning strikes, is to put them out immediately (B. Harrington, CDFFP, pers. comm. 1996). Similarly, while CDFFP is engaging in some prescribed burn programs, they remain hesitant to fully endorse prescribed burning, especially where there is an urban-parkland interface (CDFFP 1989; J. Di Donato, EBRPD, pers. comm. 1996).

The CDPR has management responsibilities for Mount Diablo State Park, where a considerable portion of the suitable whipsnake habitat occurs. Residential development has occurred around most of the perimeter of the Park (J. Ferreira, pers. comm. 1996). The urban-parkland interface has necessitated that CDPR, with CDFFP, develop and implement a wildfire management plan and program. According to a MOU with CDPR, the CDFFP is the designated lead agency on fire management in Mount Diablo State Park and, therefore, has the final decision on how to manage each fire on CDPR lands (CDPR and CDFFP 1995). The CDPR drafted the *Mount Diablo Wildfire Management Plan* for the Park in 1987. This plan originally sought to reduce the high levels of livestock grazing on parklands to an ''interpretive level'' to manage more successfully for wildlife values (J. Ferreira, pers. comm. 1996). Local ranchers who grazed cattle on or adjacent to parklands were opposed to this plan and gained the support of local fire agencies to continue grazing because grazing was seen as a form of fire management (J. Ferreira, pers. comm. 1996).

In 1995, grazing pressure was significantly reduced and CDPR took a new approach in fire management planning by revising the *Mount Diablo Wildfire Management Plan*. The revised plan was developed in coordination with CDFFP and outlines presuppression, suppression, and fire management programs (CDPR and CDFFP 1995). These programs identify areas for prescribed burns, fire breaks to be maintained, and unique cultural resources, rare and endangered plants, and structures. Rare and endangered animal species (including the Alameda whipsnake) are not specifically identified in the plan. The ultimate decision on ''initial attack'' of any given fire occurrence still lies with CDFFP, which generally prefers to suppress fires on Mount Diablo. In addition, CDFFP has been concerned about conducting prescribed burns due to the proximity of the urban-parkland interface (J. Ferreira, pers. comm., 1996).

Encroaching urban development has necessitated the implementation of rigorous fire suppression practices in and around suitable habitat areas for the Alameda whipsnake by land management agencies to protect people and property. The EBRPD guidelines state that opportunities for prescribed burning on their lands is limited because of the urban-parkland interface and the risk of the fire escaping control lines (EBRPD 1992). Another obstacle the regional climatic conditions required to conduct prescribed burning safely. Although the EBRPD has developed prescribed burning plans and strategies to manage their lands, implementation of these plans has been hindered by the close proximity of adjacent residential and commercial development areas (J. Di Donato, pers. comm., 1996). Although the EBRPD is in the process of updating their prescribed burn program in response to the 1991 Oakland Hills firestorm, the public does not fully endorse prescribed burning (EBRPD 1995).

The breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression). Both the callippe silverspot butterfly and the Behren's silverspot butterfly exist only as very small, isolated populations (S. Mattoon, *in litt.*, August 4, 1989, and November 22, 1992). Alameda whipsnakes tend to be relatively rare even in suitable habitat as is indicated by trapping studies that show low capture rates and relatively high recapture rates (about 3 captures, 1 recapture per 1,000 trap days) (Swaim 1994). Individuals and populations possessing deleterious genetic material are less able to adapt to changes in environmental conditions, even relatively minor changes. Further, small populations are vulnerable to the effects of genetic drift (the loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses. Overall, these factors influence the survivability of smaller, genetically isolated populations of each of the three species listed herein.

The callippe silverspot butterfly, Behren's silverspot butterfly, and the Alameda whipsnake are all vulnerable to the effects of habitat fragmentation. Subdivision of natural land into smaller blocks of suitable habitat is often the result of human activities such as urban development, road construction, fire management policies, and inappropriate livestock grazing practices. Further reduction of population size and genetic interchange among populations through isolation, genetic drift, and inbreeding depression, may result in less vigorous and adaptable populations of these three species listed herein. Small, isolated populations are vulnerable to extinction from random fluctuations in population size or variations in population characteristics (e.g., sex ratios) caused by annual weather patterns, food availability, and other factors. Because most of the populations of these species are isolated from other conspecific populations, natural recolonization from other populations is unlikely or impossible, and the vulnerability of each population to natural events is high.

An additional threat to the San Bruno Mountain population of the callippe silverspot butterfly is the high level of dust from quarry operations in the vicinity. Adult and early stages of the taxon may be prone to injury and mortality from dust because their respiratory apparatus (spiracles) are easily clogged.

The Service has carefully assessed the best scientific and commercial information regarding past, present, and future threats faced by these species in determining this final rule. Based on this evaluation, the preferred action is to list the callippe silverspot butterfly and Behren's silverspot butterfly as endangered species, and the Alameda whipsnake as a threatened species. The current range restrictions of these species make them increasingly vulnerable to threats described above under factors A through E.

Urban development threatens both the callippe silverspot butterfly and Behren's silverspot butterfly. One of the two known extant colonies of the callippe silverspot butterfly is imminently imperiled, and both colonies are threatened by overcollection. The single known population of Behren's silverspot butterfly is similarly threatened. Available habitat and population levels are depleted to the extent that these butterflies are near the brink of extinction. Because the callippe silverspot butterfly and Behren's silverspot butterfly are in danger of extinction throughout all or a significant portion of their ranges, these species fit the definition of endangered as defined by the Act.

All five remaining populations of the Alameda whipsnake are threatened by a variety of factors. Each of these populations consist of several to numerous subpopulations with varying degrees of connectivity between them. In the western portion of the species' range, the Tilden-Briones population is threatened by a high potential for catastrophic wildfire and urban development. However, the remaining habitat, regional parklands, and municipal watersheds in this area overlap to the extent that a regional preserve may be possible. The Oakland-Las Trampas population is threatened by a high potential for catastrophic wildfire and the effects of habitat fragmentation and urban development. The Hayward-Pleasanton Ridge population is the most susceptible to extirpation. This population is scattered in distribution and is, therefore, more vulnerable to the effects of development and subsequent habitat fragmentation. In the eastern portion of the species' range, the Mount Diablo-Black Hills population is threatened by a high potential for catastrophic wildfire, development and its associated impacts, and inappropriate grazing practices. Because of the location of public lands and the potential for improved fire and grazing management on parklands, this population is a good candidate for recovery, if urbanization threats can be controlled. The Sunol-Cedar Mountain population is threatened by development and inappropriate grazing practices. Overall, the Oakland-Las Trampas and Hayward-Pleasanton Ridge populations are the most immediately imperiled with habitat fragmentation becoming prevalent enough to compromise their long-term viability.

In the proposed rule (59 FR 5377), the Service proposed to list the Alameda whipsnake as endangered based primarily on the threats of urbanization and invasive alien vegetation. The Service has reevaluated the available information, including information provided during the public comment period, regarding threats to the species. Urbanization and the negative effects of structural changes in both the native and alien vegetative component of whipsnake habitat continue to threaten the survival of the Alameda whipsnake. However, these threats are not now of sufficient magnitude to create a danger of extinction throughout all, or a significant portion, of the range of the species. The Service now concludes that the failure to implement appropriate fire management practices on public lands to sustain suitable Alameda whipsnake habitat, coupled with the rate of loss of suitable habitat on private lands, make it likely that the Alameda whipsnake will become in danger of extinction throughout all, or a significant portion, of its range in the foreseeable future. Because the Alameda whipsnake is likely to become an endangered species within the foreseeable future, this species fits the definition of threatened as defined by the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Callippe Silverspot and Behren's Silverspot Butterflies

As discussed under factor B in the ''Summary of Factors Affecting the Species'' section above, an extensive international commercial trade has been documented to exist for butterflies in general (Collins and Morris 1985) and for threatened or endangered species of butterflies in particular, which are accorded higher value because of the formal recognition of their rarity (*United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell,* Case No. CR932013, 1993). This trade includes several species of the genus *Speyeria,* including the callippe silverspot butterfly which was illegally collected after the species was proposed for listing under the Act, the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), and the Oregon silverspot butterfly (*S. zerene hippolyta*), the last two of which are listed federally subspecies that are similar in appearance to the Behren's silverspot butterfly (*S. zerene behrensii*) included in this rule (Howe 1975, Hammond 1980, McCorkle and Hammond 1988). Illegal collecting has been observed at one of the two remaining sites for the callippe silverspot butterfly (S. Stern, *in litt.*, 1994).

The Service is also aware of reports that Behren's silverspot butterfly is actively sought by collectors. The fact that this species is not yet a commodity in illegal trade is likely attributable to the lack of specific knowledge of the location of its sole remaining population. Trade in these specimens is not limited to the occasional adult butterfly, but can include dozens of individuals and hundreds of larvae (*United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell,* Case No. CR932013, 1993). The effects that even limited collecting can have on small populations are discussed in detail under factor B in the ''Summary of Factors Affecting the Species'' section above. Because of the increased value of listed species, the illicit commercial trade in the callippe silverspot butterfly and Behren's silverspot butterfly would be likely to increase upon listing. Although the San Bruno Mountain locality is purportedly known to collectors (see issue 3 under the ''Summary of Comments and Recommendations'' section above), this is a large area (340 ha (850 ac)) and precise maps and descriptions of critical habitat, such as those which would appear in the **Federal Register** if critical habitat was designated, are not now available to the general public. The specific localities of the two other localities of the callippe or silverspot butterflies are not well known, but they are near roads or trails and could be easily accessed by the public if precise locality information is provided.

In addition, neither the callippe silverspot butterfly nor the Behren's silverspot butterfly would receive any benefit from the designation of critical habitat beyond that provided by listing. Critical habitat only applies to activities on Federal lands and activities on private lands involving Federal authorization or funding. All known populations of these species occur on non-Federal land. The only Federal land within the historical range of Behren's silverspot butterfly is a small parcel at the U.S. Coast Guard lighthouse at Point Arena. Although this installation is in close proximity to the only known site for this species, no specific records document any historical occurrence at this site. The habitat at this site, and elsewhere within the historical range of the species, is presumed to be currently unsuitable for the species. No activity involving a Federal action currently occurs on the sole site where the species remains. Even if a future Federal project were to occur in the area, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. Because this butterfly exists only as a single, small population, any future activity involving a Federal action that would adversely modify critical habitat, that is, would appreciably diminish the value of the critical habitat for the survival and recovery of the species, would also likely jeopardize the species' continued existence.

Colonies of the callippe silverspot butterfly are known only to exist at two sites, both of which are privately owned. The callippe silverspot butterfly was considered during the formulation of the San Bruno Mountain HCP under the provisions of a section 10(a)(1)(B) of the Act. This HCP, in which the callippe silverspot butterfly was designated as a species of concern, permanently protects approximately 92 percent of its habitat on San Bruno Mountain. The HCP also includes management activities, funded by development projects, that benefit the butterfly including annual monitoring of the colonies on the site (V. Harris, *in litt.*, 1996). Habitat for the other known population is partially protected in a city park in Alameda County. No Federal actions, authorizations, or licensing currently occurs on this site. Although there are scattered Federal landholdings throughout the historical range of the callippe silverspot butterfly, there are no historical collections of this species from any Federal lands. Because of the extensive urbanization within its historical range, no suitable habitat remains for the species other than at the two sites at which it is currently known to persist (Orsak 1980; Steiner 1990; S. Mattoon, *in litt.*, 1992). Federal agency involvement, therefore, is not likely to occur on either of the two sites at which the callippe silverspot butterfly persists. Even if a future Federal project were to occur at either site, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. Because only two small populations of this butterfly remain, any future activity involving a Federal action that would adversely modify critical habitat, that is, would appreciably diminish the value of the critical habitat for the survival and recovery of the species, would also likely jeopardize the species' continued existence.

Critical habitat designation in areas outside of the currently occupied territory of the callippe silverspot butterfly also would serve no purpose because these areas are highly urbanized and essentially have no practical value for the survival and recovery of the species. In addition, activities within these areas are very unlikely to involve a Federal action which would trigger section 7 consultation. Furthermore, in the unlikely event that an activity involving a Federal action is proposed in one of these areas, it is very unlikely that the Service would determine that the activity would appreciably diminish the value of the area for the survival and recovery of the species because these areas essentially have no such value to the species currently. Critical habitat designation in areas outside of the currently occupied territory of the Behren's silverspot butterfly also would serve little purpose because activities within these areas are very unlikely to involve a Federal action which would trigger section 7 consultation.

The Service finds, therefore, that designation of critical habitat for the callippe silverspot butterfly and the Behren's silverspot butterfly is not prudent because doing so would make these butterflies more vulnerable to incidents of collection further contributing to their decline. Designation of critical habitat for the callippe silverspot butterfly and the Behren's silverspot butterfly is also not prudent because it would confer no benefit to the species beyond that provided by listing.

Alameda Whipsnake

As discussed earlier, the historical range of the whipsnake has been fragmented by urbanization into five populations, each of which is effectively isolated from the others. The core of each of these five populations is comprised of relatively large expanses of public, non-Federal lands, which comprise about 80 percent of known whipsnake habitat. Although these public lands are protected from development, other threats to the whipsnake remain, including the negative effects of fire suppression on the structure of whipsnake habitat, the indirect effects of urban development (e.g., increased recreational use of the public lands, increased predation by pets, etc.), and other factors discussed in the ''Summary of Factors Affecting the Species'' section above. The Service is not aware of any Federal lands within the range of the Alameda whipsnake, and activities involving a Federal action are not likely to occur on the public, non-Federal lands.

Private lands comprise the other 20 percent of known whipsnake habitat. There is a remote possibility of Federal agency involvement on these lands in the form of insurance provided by the Department of Housing and Urban Development (HUD) for housing loans. Such actions within whipsnake habitat, however, are likely to be rare. In addition, urban development will only occur along the periphery of the core areas of whipsnake populations. Because of the need for an active fire management program in the form of prescribed burns to maintain the necessary habitat structure for the whipsnake, areas slated for development in this urban-wildland interface do not offer suitable long-term habitat potential for the whipsnake and, therefore, cannot be considered to be habitat essential to the conservation of the species nor habitat requiring special management considerations. Even if Federal involvement in the form of housing loans were to occur in these areas, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. The potential for the involvement of other Federal agencies within the historical range of the Alameda whipsnake is discussed in the ''Available Conservation Measures'' section below.

Critical habitat designation outside of the areas where the Alameda whipsnake currently occurs also would serve no purpose because these areas are not essential for the survival and recovery of the species. The Service believes that sufficient occupied habitat remains which, if managed for greater benefits for the Alameda whipsnake, would ensure the survival and provide for the recovery of the species.

Any potential conservation benefit from designation of critical habitat for the Alameda whipsnake is undermined by the risk of overcollection. The demand for live reptiles as collectibles and exotic pets has increased rapidly in recent years and the high level of demand by reptile collectors often encourages smuggling of wild-caught specimens (U.S. Fish and Wildlife Service 1996). While the Alameda whipsnake has not been particularly popular among reptile collectors in the past, the act of listing increases the attractiveness and value of listed entities to collectors, thereby potentially increasing the threat of unauthorized collection (K. McCloud, pers. comm. 1994, 1996). The identification of localities of the whipsnake through designation of critical habitat would exacerbate the threat of overcollection because many areas in which the whipsnake occurs are readily accessible by road or public trail. The effects that even limited collecting can have on small populations are discussed in detail under factor B in the ''Summary of Factors Affecting the Species'' section above. Because of the likelihood for an increase in the value of a species upon listing, any current illicit commercial trade in the Alameda whipsnake would likely increase with this listing.

Because of the expected rarity of Federal agency involvement and the low conservation value of lands on which Federal involvement is most likely to occur, the Service finds that critical habitat designation is not prudent for the Alameda whipsnake due to lack of any significant benefit beyond that conferred by listing. Moreover, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this snake more vulnerable to incidents of collection further contributing to its decline. Any benefit which might be derived from the designation of critical habitat for the Alameda whipsnake is outweighed by the increased threat of collection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. The protection required of Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As noted previously, HUD may insure housing loans in areas that presently support the Alameda whipsnake. Such actions are likely to be rare but these loans would be subject to review by the Service under section 7 of the Act.

Other Federal agencies that possibly could be affected if these animals are listed would include the Army Corps of Engineers and the Department of Transportation (Federal Highways Administration). Both agencies cooperate in projects within the historical range of the Alameda whipsnake. The projects, however, are typically confined to waterways and highways both of which occur in low-lying areas that no longer provide suitable habitat for the whipsnake. Such areas are surrounded by intense urban development and are, in combination with the urban areas, the primary landscape components that have already effectively isolated the five core populations of the whipsnake. Involvement by the Army Corps of Engineers or the Federal Highway Administration in the core areas that comprise the remaining habitat for the whipsnake is highly unlikely since these areas are comprised primarily of steep mountainous terrain where projects that impact regulated wetlands, flood control projects, and highway construction projects rarely occur. No populations of the callippe silverspot butterfly, Behren's silverspot butterfly, or Alameda whipsnake are known to occur on property owned by the Federal government.

One of the two known extant populations of the callippe silverspot butterfly is protected by the San Bruno Mountain HCP (USFWS permit number PRT 2–9818). In 1982, a Section 10(a) incidental take permit was issued to the cities of Brisbane, Daly City, South San Francisco, and the County of San Mateo, for the endangered mission blue butterfly, San Bruno elfin butterfly, and San Francisco garter snake. The permit allows for the loss of animals and habitat through urban development of approximately 344 ha (850 ac) of San Bruno Mountain. The HCP permanently protects about 1,114 ha (2,752 ac) of natural habitat at this site. The conference report on the 1982 amendments to the Act indicates that Congress intended HCPs to encompass both listed and unlisted species, especially unlisted species that may later require protection. Although the callippe silverspot butterfly was not included as a ‘‘covered’’ species in the Section 10(a) permit, the HCP included specific provisions for the butterfly in the event it did become listed by the Service. These provisions protect 92 percent of the species' habitat at the site through various mechanisms (such as landowner obligations for land dedications, open space set-asides, mitigation measures, and habitat enhancement), implement annual monitoring of its population, and allow for adaptive management to conserve the species. However, no specific provisions were included in the HCP to protect the callippe silverspot butterfly from poachers.

The listing of the callippe silverspot butterfly, Behren's silverspot butterfly, and the Alameda whipsnake will also bring sections 5 and 6 of the Act into effect. Section 5 authorizes acquisition of lands by the Secretary of the Interior (and Secretary of Agriculture in certain cases) for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service would be able to grant funds to affected states for management actions aiding in protection and recovery of these animals.

Listing the callippe silverspot butterfly and the Behren's silverspot butterfly as endangered and the Alameda whipsnake as threatened provides for the development of recovery plans for them. Such plans will bring together State and Federal efforts for conservation of the animals. The plans will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plans will set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also will describe site-specific management actions necessary to achieve conservation of the species.

Listing of the Alameda whipsnake will likely result in the increased ability of public land agencies to promote management plans that address the need to manage for Alameda whipsnakes, including, but not limited to, increased ability to conduct prescribed burns, manage predators, control feral pigs and other feral animals, regulate recreational use, and develop educational programs for the benefit of the Alameda whipsnake.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.31 for threatened species set forth a series of prohibitions and exceptions that apply to all endangered wildlife and to threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is increase public awareness of the effect of this listing on proposed and ongoing activities within a species' range.

With respect to the callippe silverspot butterfly or Behren's silverspot butterfly, the Service believes that neither observing the species (without capture) nor light to moderate grazing of its habitat by livestock would likely result in a violation of section 9.

With respect to the callippe silverspot butterfly or Behren's silverspot butterfly, the following actions likely would be considered a violation of section 9:

(1) Capture or collection of adults or any other life history stages;

(2) Collection, damage, or destruction of foodplants (*Viola* species) or other nectar sources within the species range; and,

(3) Destruction of the species' occupied habitat by actions including, but not limited to, road, street or highway construction; subdivision construction; application of herbicides or other chemical agents; brush removal; or off-road vehicle use.

With respect to the Alameda whipsnakes, the following actions likely would be considered a violation of section 9:

(1) Unauthorized collecting or handling of whipsnakes;

(2) Destruction or degradation of occupied whipsnake habitat by actions including, but not limited to, road construction, road widening, subdivision construction, brush removal, or off-road vehicle use; and,

(3) Destruction or degradation of occupied whipsnake habitat by livestock grazing if conducted following notification by the Service that such grazing constitutes ‘‘take’’ of whipsnakes.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are found in 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited in this rule are available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Mike Westphal, Sheila Larsen and Diane Windham, Sacramento Field Office (see **ADDRESSES** section).

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following in alphabetical order under REPTILES to the List of Endangered and Threatened Wildlife:

3. Amend § 17.11(h) by adding the following in alphabetical order under INSECTS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	
Whipsnake, Alameda (=striped racer, Alameda).	*Masticophis lateralis euryxanthus.*	U.S.A. (CA)	NA	T	628	NA	NA
*	*	*	*	*	*	*	
INSECTS							
*	*	*	*	*	*	*	
Butterfly, Behren's silverspot.	*Speyeria zerene behrensii.*	U.S.A. (CA)	NA	E	628	NA	NA
Butterfly, callippe silverspot.	*Speyeria callippe callippe.*	U.S.A. (CA)	NA	E	628	NA	NA
*	*	*	*	*	*	*	

Dated: November 18, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31836 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–19]

Proposed Establishment of Class D Airspace; Fayetteville (Springdale), AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace extending upward from the surface to and including 3,800 feet mean sea level (MSL), within a 4.4-mile radius of the Northwest Arkansas Regional Airport at Fayetteville (Springdale), AR. An air traffic control tower will provide air traffic control services for pilots operating at Northwest Arkansas Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR.

DATES: Comments must be received on or before February 3, 1998.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–19, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 97–ASW–19.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace, controlled airspace extending upward from the surface to and including 3,800 feet MSL, at Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR. The Northwest Arkansas Regional Airport is a new airport and provides service to the Fayetteville, Springdale, and Rogers, AR, area. An air traffic control tower at the airport will provide air traffic control services for aircraft operating at the airport, and the FAA anticipates that it will be commissioned on or about August 13, 1998. The intended effect of this proposal is to provide adequate Class D airspace for aircraft operating in the vicinity of Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas.

* * * * *

ASW AR D Fayetteville (Springdale), Northwest Arkansas Regional Airport, AR [New]

Fayetteville (Springdale), Northwest Arkansas Regional Airport, AR
(Lat. 36°16′55″N., long. 094°18′25″W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.4-mile radius of Northwest Arkansas Regional Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31929 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–04]

Proposed Establishment of Class E Airspace; Poplar, MT, and Revision of Class E Airspace, Wolf Point, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Poplar, MT and revise Wolf Point, MT Class E 1,200-foot airspace. The development of a new Standard Instrument Approach Procedure (SIAP) at the Poplar Airport, Poplar, MT, utilizing the Global Positioning System (GPS) has made this proposition necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–04.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to establish Class E airspace at Poplar, MT and revise Class E airspace at Wolf Point, MT, in order to fully encircle the GPS Runway 9 SIAP to the Poplar Airport, Poplar, MT. This proposal would make a 700-foot Class E area within a 9.1 mile radius around the Poplar Airport while also amending adjacent 1200-foot Class E airspace at Wolf Point that would fully encompass the holding procedures associated with the Poplar Airport SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe, efficient use of the navigable airspace while protecting for safe flight operations under IFR at the Poplar Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E5 Poplar, MT [New]

Poplar Airport, MT
(Lat. 48°07′00″N, long. 105°11′15″W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of the Poplar, MT, airport.

* * * * *

ANM MT E5 Wolf Point, MT [Revised]

Wolf Point, L M Clayton Airport, MT
(Lat. 48°05′67″N, long. 105°34′50″W)
Wolf Point NDB
(Lat. 48°06′27″N, long. 105°36′12″W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Wolf Point NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°48′00″N, long. 104°58′00″W; to lat. 47°48′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 104°58′00″W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on November 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–31927 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–14]

Proposed Amendment to Class E Airspace; Big Piney, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Big Piney, WY, Class E airspace. If amended, the proposal would provide additional airspace necessary to fully encompass a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Big Piney-Marbleton Airport, Big Piney, WY.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–14, Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) to amend Class E airspace at Big Piney, WY. This proposal is essential in order to fully contain a new GPS SIAP within controlled airspace located at the Big Piney-Marbleton Airport. The existing 1200-foot Class E airspace requires modification to fully encompass the missed approach holding procedures for the new SIAP. The revision to the existing 1200-foot Class E airspace will be an extension to the southeast from approximately 21.4 to 33 nautical miles, thus fully encompassing the new SIAP.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WY E5 Big Piney, WY [Revised]

Big Piney-Marbleton Airport, WY
(Lat. 42°35′06″N, long. 110°06′40″W)
Big Piney VOR/DME
(Lat. 42°34′46″N, long. 110°06′33″W)

That airspace extending upward from 700 feet above the surface within 4.8 miles southwest and 8.3 miles northeast of the Big Piney VOR/DME 134° and 314° radials extending from 4 miles northwest to 16.6 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7.9 miles southwest and 11.8 miles northeast of the Big Piney 134° and 314° radials extending from 10.1 miles northwest to 33 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on November 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–31928 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–97–3032]

RIN 2125–AE25

Revision of the Manual on Uniform Traffic Control Devices: General Provisions and Traffic Control for School Areas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); Request for Comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This document proposes new text for the MUTCD in Part 1, General Provisions, and Part 7, Traffic Control for School Areas. The purpose of this effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before September 8, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The proposed text for Parts 1 and 7 of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10). It is also available on the FHWA home page at the following Internet address: http://www.ohs.fhwa.dot.gov/devices/mutcd.html.

SUPPLEMENTARY INFORMATION: The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments submitted and upon its own experience, the FHWA will issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices.

Although the MUTCD will be revised in its entirety, it will be done in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's recommendations for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The proposed text for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691.

This notice of proposed amendment is Phase 2 of the MUTCD rewrite effort and includes the proposed text for MUTCD Part 1, General Provisions, and MUTCD Part 7, Traffic Control for School Areas. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The FHWA invites comments on the proposed text for Part 1 and Part 7 of the MUTCD. A summary of the significant changes contained in these sections of the Manual is provided in this notice of proposed amendment.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options— representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be solely in metric units.

This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next 2–3 years. Some of the other issues which will be addressed in future notices of proposed amendment are: minimum retroreflectivity standards for signs and pavement markings; signing for low-volume rural roads; and traffic control for light-rail grade crossings. These proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

Discussion of Proposed Amendments to Part 1—General Provisions

The following items are the most significant proposed revisions to Part 1.

Introduction

Under the category heading STANDARD, the FHWA proposes to include the definition of ''traffic control devices'' which is also included in the proposed Section 1A.14, Definition of Words and Phrases. Also proposed is a discussion of 23 CFR part 655, subpart F, related to the MUTCD and the FHWA policies and procedures. Under the category heading SUPPORT, the FHWA proposes to include a discussion of the FHWA role and additional history regarding the MUTCD.

Purpose of Traffic Control Devices

In Section 1A.1, the FHWA proposes to use the term ''road users'' since it encompasses both motorized and non-motorized traffic.

Principles of Traffic Control Devices

In Section 1A.2, under the category heading GUIDANCE, the FHWA proposes to include ''speed'' as a consideration that should govern the design, operation, placement, and location of various traffic control devices since the traveling speed of road users can affect their ability to appropriately respond to the driving task.

In this same section, the FHWA proposes to include a reference to 23 CFR part 655, subpart F, which contains the policies and procedures that address the requirement for national uniformity of traffic control devices on all streets and highways. The last paragraph in this same section is new. The FHWA proposes to include this new discussion to make sure that the minimum capabilities of the road users as described in the Uniform Vehicle Code are considered when selecting, installing, and maintaining traffic control devices.

Design of Traffic Control Devices

In Section 1A.3, under the category heading STANDARD, the FHWA proposes to add the word ''colors'' to the statement that all signs shall be adopted using the procedures described in Section 1A.11. The FHWA also proposes adding a statement under the category heading OPTION to explain that State and local highway agencies may develop word message signs to notify road users of special regulations or to warn of special situations or hazards.

Maintenance of Traffic Control Devices

In Section 1A.5, the FHWA proposes to include language to explain the difference between functional and physical maintenance. Functional maintenance is required to determine if a certain traffic control device needs to be updated to meet current and changing traffic conditions. In addition, physical maintenance is recommended to ensure that the device is legible, visible, and operating properly.

Responsibility of Traffic Control Devices

In Section 1A.7, the FHWA proposes to reference 23 CFR 655.603 which adopts the MUTCD as the national standard for all traffic control devices on any street, highway, or bicycle trail open to public travel and which requires that any State or other Federal agency MUTCD shall be in substantial conformance with the national MUTCD.

Placement Authority

The 1988 MUTCD states that all traffic control devices must only be installed by a public authority or other official jurisdiction. The FHWA proposes to expand the wording in this sentence to cover not only traffic control devices but other signs and messages within the highway right-of-way. The 1988 MUTCD also states that any unauthorized sign placed on the highway right-of-way by a private organization or individual constitutes a public nuisance. The FHWA proposes to expand this wording to cover not only signs but any unauthorized traffic control device.

Engineering Study or Judgment Required

In the 1988 MUTCD the terms engineering judgment and engineering study were used interchangeably. The FHWA proposes to include distinct definitions in Section 1A.14 to explain the difference between these two terms.

Meaning of Standard, Guidance, Option, and Support

In Section 1A.10, the FHWA proposes to more clearly identify standards, guidance, option, and support information discussed in the new edition of the MUTCD by providing appropriate headings for all text. The FHWA also proposes to include a sentence explaining that figures, tables, and illustrations either complement the text and/or can constitute a standard, guidance, option, or support.

Manual Changes, Interpretations, and Authority to Experiment

In Section 1A.11, the FHWA proposes to include a new standard to indicate that devices that do not conform to the provisions of the MUTCD shall be prohibited unless the procedures discussed in this section are followed.

Definition of Words and Phrases

In Section 1A.14 under the category heading STANDARDS, the FHWA proposes to include a consolidated list of terms and their definitions which are used in and considered important for the uniform use of the MUTCD. This amendment contains a partial list which will be modified and completed in the future amendments for the proposed MUTCD. The amendments will also consider the need to repeat the definitions of some terms in applicable Parts of the MUTCD. The last two versions of the MUTCD defined most terms only in the text of applicable Parts, although previous editions contained a list similar to the list proposed. Only the term ''roadway'' was defined in Section 1A–9 Definition of Words and Phrases of the 1988 MUTCD. As in previous MUTCD editions, the terms which are not defined in the MUTCD shall be defined as in the MUTCD referenced documents.

In Section 1A–14, definitions are proposed for the following terms. These terms are used throughout the 1988 and proposed versions of the MUTCD but were not specifically defined in the 1988 version: ''approach, engineering judgment, engineering study, highway (road and street), intersection, major roadway, minor roadway, median, network, retroreflectivity, road user, traffic, traffic control device, train, traveled way, vehicle, and warrant.''

In Section 1A–14 the definition of ''roadway'' is proposed to be changed from the definition in the 1988 version of the MUTCD. The change would exclude sidewalks and shoulders used by bicycles from being part of the roadway. Also, the change would exclude, through the definition of vehicle, portions of the highway where trains, including some light rail, operate.

In Section 1A–14, definitions are proposed for the terms ''arterial highway'' and ''collector highway.'' The definitions of these terms would refine the proposed standards for the center line and edge line warrants contained in two previous proposed amendments: one dated August 2, 1996, at 61 FR 40484 and one dated January 6, 1997, at 62 FR 691.

In Section 1A–14, the term ''bicycle path'' is proposed to replace the term ''bicycle trail.'' This term will also be proposed in the future amendment for the rewrite of Part 9, Traffic Control for Bicycle Facilities.

In Section 1A–14, the definition for the term ''average day'' would be changed in order to provide more specific detail. ''Average day'' is used in Parts 2 and 4 and is defined in Part 4 of the 1988 MUTCD and in the proposed text for the rewrite of Part 4.

In Section 1A–14, the term ''traffic gate'' is proposed to replace the terms ''resistance gate,'' ''second gate,'' and ''warning gate.''

Discussion of Proposed Amendments to Part 7—Traffic Controls for School Areas

The following items are the most significant revisions to Part 7.

Need for Standards

In section 7A.1, a new Typical School Route Plan Map is proposed. Paragraph 5 of this same section would be modified to include middle and high schools in the development plans for school routes. Also, paragraph 7 would be modified to indicate that the various types of school area traffic control devices should also be included in a traffic control plan.

The discussions contained in the following sections of the 1988 MUTCD are proposed for deletion: Sections 7A–5 through 7A–10, 7B–1 through 7B–4, 7B–7 and 7B–8. The information contained in these sections can be found in Parts 1 and 2 of the MUTCD or in the Standard Alphabets for Highway Signs and Pavement Markings.

The new heading proposed for Section 7B–1 is ''Size of School Signs'' and a new Table 7B.1 would be added to show the dimensions and sizes as shown in the Standard Highway Signs Book. This eliminates the need to show the dimensions and sizes in the associated text discussion.

In section 7B.7, a new Figure 7–2 is proposed to provide guidance on the proper placement of the School Advance Warning Sign (S1–1).

In section 7B.8 under the GUIDANCE category, it is proposed that an engineering study should be conducted before installing the School Crosswalk Warning sign (S2–1).

In section 7B.10, the FHWA proposes changing the title to ''Alternate Plates for School Speed Limit Assembly Signs'.

In section 7B.11, the FHWA proposes a new section to allow the option of installing a School Speed Zone Ahead Assembly Sign in advance of a School Speed Limit Sign or a School Speed Limit Assembly Sign. The School Speed Zone Ahead Assembly Sign would consist of the Reduced Speed Ahead Sign (R5–2a) with a SCHOOL plate (S4–3) mounted directly above it.

In section 7C–4, the following new guidance information is proposed: ''In the absence of a marked crosswalk, the Stop line should be placed at the desired stopping point but should be placed no more than 9m (30 feet) nor less than 1.2m (4 feet) from the nearest edge of the intersecting traveled way.''

The FHWA proposes deleting the discussion in Chapter 7D for school traffic signals and including a reference to the proposed text in the rewrite of Part 4.

The FHWA proposes to modify Chapter 7E, ''Crossing Supervision'' by deleting the discussion on legal authority for adult guards and student patrols since the States and local agencies are responsible for establishing laws regarding these crossing supervisors. For increased safety, the FHWA has also added a discussion in section 7E.4 to include guidance which provides that the uniforms they use should be of high-visibility material which may be seen during daytime, nightime, and twilight hours.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices.

The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations, expand guidance, and clarify application of traffic control devices. As noted previously, any expenses to public entities or the motoring public to implement the proposed changes would be minimal. Therefore, the FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued: November 25, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 97–31911 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–017]

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') and abandoned mine land reclamation plan (hereinafter, the ''Montana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Montana's proposed statutes consist of revisions to statutes pertaining to the designation of the Montana State Regulatory Authority and reclamation agency under SMCRA, a statutory definition of ''prospecting,'' revegetation success criteria for bond release, and prospecting under notices of intent. The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, and to improve program efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., December 22, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Room 2128, Casper, WY, 82601–1918, Telephone: (307) 261–5776.

Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, Telephone: (406) 444–4964.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program and Montana Plan

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administrated by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On October 24, 1980, the Secretary of the Interior conditionally approved the

Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.20.

II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–14–01). Montana submitted the proposed amendment in response to required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of Montana Code Annotated (MCA) that Montana proposed to revise were: 82–4–203, MCA (definitions); 82–4–204, MCA (rulemaking authority); 82–4–205, MCA (administration by Department of Environmental Quality); 82–4–221, MCA (mining permit required); 82–4–223, MCA (permit fee and surety bond); 82–4–226(8), MCA (prospecting permit); 82–4–226, MCA (prospecting permit); 82–4–227, MCA (refusal of permit); 82–4–231, MCA (submission of and action on reclamation plan); 82–4–232, MCA (area mining; bond; alternate plan); 82–4–235, MCA (inspection of vegetation—final bond release); 82–4–239, MCA (reclamation by regulatory authority); 82–4–240, MCA (reclamation after bond forfeiture); 82–4–242, MCA (funds received by regulatory authority); 82–4–251, MCA (noncompliance; suspension of permits); 82–4–254, MCA (violation; penalty; waiver). The proposed amendment consisted of statutory revisions enacted by the 1995 Montana Legislature.

OSM announced receipt of the proposed amendment in the June 5, 1995, **Federal Register** (60 FR 29521), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–14–06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 5, 1995.

During its review of the amendment, OSM identified concerns relating to the definitions of ''Board,'' ''Commissioner,'' and ''Director'' at (MCA) 82–4–203 (6), (10), and (12); Board rules and Administration by Department at (MCA) 82–4–205; Inspection of vegetation—final bond release at (MCA) 82–4–235; the definition of ''prospecting'' at (MCA) 82–4–226(8); and Prospecting permit at (MCA) 82–4–226. OSM also addressed outstanding required program amendments at 30 CFR 926.16 (h), (i), and (j) as they related to prospecting. OSM notified Montana of the concerns by letter dated December 5, 1996 (Administrative Record No. MT–14–08). Montana responded in a letter dated November 6, 1997, by submitting a revised amendment and additional explanatory information (Administrative Record No. MT–14–11). The revisions to the amendment consist of new statutory language enacted by the 1997 Montana Legislature.

Montana proposes revisions to, and additional explanatory information for, the definitions of ''Board,'' ''Commissioner,'' and ''Director'' at (MCA) 82–4–203 (6), (10), and (12); Board rules and Administration by Department at (MCA) 82–4–205; Inspection of vegetation—final bond release at (MCA) 82–4–235; the definition of ''prospecting'' at (MCA) 82–4–226(8); and Prospecting permit at (MCA) 82–4–226.

Specifically, the revisions and additional explanatory information submitted by Montana includes the following:

1. Definition of ''Director'' in the Department of Environmental Quality at (MCA) 82–4–203(12)

Montana has defined the role of the ''Director'' in the newly created Department of Environmental Quality. Montana has provided explanatory information concerning the Department of Environmental Quality responsibilities in the implementation of the Montana program under SMCRA.

2. Board Rules and Administration by Department at (MCA) 82–4–204 and 82–4–205

Montana has revised the responsibilities of the ''Board'' and the ''Department'' to alleviate a duplication of duties.

3. Revegetation Criteria for Bond Release at (MCA) 82–4–235

The 1997 Montana Legislature revised 82–4–235(a) to delete language which would have allowed final bond release (in some cases) with introduced species providing a major or dominant component of the reclaimed vegetation.

4. Definition of ''Prospecting'' and Prospecting Permit at (MCA) 82–4–203(5) and 82–4–226(8)

Montana has submitted a revised definition of ''prospecting.'' In addition, Montana has revised 82–4–226(8) to provide that prospecting under a notice of intent would only be allowed in those situations in which less than 250 tons of coal would be removed and on lands not determined to be unsuitable for mining.

5. Required Program Amendments at 30 CFR 926.16 (h), (i), and (j)

Montana has presented a revision to address required program amendment (h) concerning the removal of more than 250 tons of coal. (See above discussion.) Montana has presented explanatory information concerning required program amendments (i) and (j).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 23, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–31810 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–189–0059; FRL–5932–3]

Approval and Promulgation of State Implementation Plans; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California to provide for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. The demonstration of attainment in the SIP depends, in part, upon reductions from an enhanced inspection and maintenance (I/M) program for motor vehicles. Since EPA has previously granted interim approval to the California I/M program, the Agency is proposing interim approval of the CO attainment demonstration portion of the plan.

DATES: Written comments on this proposal must be received by January 5, 1998.

ADDRESSES: Comments should be addressed to the EPA contact below.

The rulemaking docket for this notice, Docket No. 97–17, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

FOR FURTHER INFORMATION CONTACT: Dave Jesson (415) 744–1288, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Carbon Monoxide Problem

Carbon monoxide is a colorless, odorless gas emitted in combustion processes. In the South Coast, like most urban areas, CO comes primarily from tailpipe emissions of cars and trucks.[1] Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

Under section 109 of the CAA, EPA has established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances).

The South Coast has continuously achieved the 1-hour NAAQS for the past 6 years. For this reason, the South Coast SIP and this action address primarily the 8-hour NAAQS. In 1995, the South Central Los Angeles County area recorded 13 exceedances of the 8-hour NAAQS, the largest number of CO exceedances within the SCAB and, in fact, within the country. Most of the CO exceedances in the SCAB occur during the months of January, November, and December, with peak concentrations typically around 7 a.m. and 10 p.m.

B. Clean Air Act Requirements

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.[2] Under section 186(a) of the Act,

[1] In the 1990 base year planning (winter) inventory for the South Coast, onroad vehicles accounted for approximately 80 percent of CO emissions, while nonroad engines and stationary sources contributed roughly 18 and 2 percent, respectively. Despite continued growth in vehicle use, the percent of CO emissions from onroad vehicles is predicted to decline to about 50 percent by the year 2010, as a result of the cleaner motor vehicles mandated by the California low-emission vehicle program.

[2] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange

Continued

each CO area designated nonattainment under section 107(d) was also classified by operation of law as either moderate or serious, depending on the severity of the area's air quality problem. CO areas with design values at and above 16.5 ppm, such as the South Coast, were classified as serious.

Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas. Sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas.

The most fundamental of these provisions is the requirement that CO nonattainment areas submit by November 15, 1992, a SIP demonstrating attainment of the NAAQS as expeditiously as practicable but no later than the deadline applicable to the area's classification: December 31, 1995, for moderate areas, and December 31, 2000, for serious areas like the South Coast. CAA sections 186(a)(1), 187(a)(7), and 187(b)(1). Such a demonstration must provide enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

EPA has issued a ''General Preamble'' describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA is applying these policies to the South Coast CO SIP submittal, taking into consideration the specific factual issues presented.

C. EPA Actions on Prior South Coast CO SIP Revisions

The South Coast Air Quality Management District (SCAQMD) adopted a CO plan on November 6, 1992. This plan was forwarded to the California Air Resources Board (CARB), which submitted the plan as a proposed revision to the California SIP on December 31, 1992. On April 29, 1993, CARB submitted a letter correcting certain adoption and implementation dates for measures under CARB's jurisdiction. On May 5, 1994, EPA proposed to approve in part and disapprove in part the SIP submittal (59 FR 23264). The proposed disapprovals derived from the State's failure, at the time, to adopt and submit regulations for an enhanced I/M program, since progress and attainment under the South Coast CO plan depended, to a large extent, on this program.

On December 28, 1994, CARB amended and submitted the South Coast Carbon Monoxide Attainment Plan (Revised), adopted by the SCAQMD on September 9, 1994. The 1994 CO plan provided technical amendments to the 1992 submittal and wholly superseded it.

On February 14, 1995, the Administrator signed final and direct final partial approval and partial disapproval of the revised South Coast CO plan, as part of a notice promulgating Federal Implementation Plans (FIPs) for California, including a CO FIP for the South Coast. Again, the disapproval actions were the result of the plan's dependence upon reductions from an enhanced I/M program, which had not yet been adopted.

On April 10, 1995, legislation was enacted mandating that the California FIPs ''shall be rescinded and shall have no further force and effect'' (Pub. L. 104–6, Defense Supplemental Appropriation, H.R. 889). At the time of enactment of this legislation, the FIP and SIP actions had not yet been published in the **Federal Register**.[3] Because the State was in the process of adopting legislation and regulations for an enhanced I/M program and developing a revised CO attainment plan, EPA did not reissue the South Coast CO SIP partial approval and partial disapproval actions. For this reason, the Agency's direct final approval and disapproval action did not become effective. As part of today's action, EPA is proposing to rescind the 1995 approval and disapproval actions taken on the 1994 CO SIP submittal.

On January 22, 1996, CARB submitted regulations adopted by the California Bureau of Automotive Repair for the implementation of an enhanced I/M program. California's program mandates loaded mode testing of all vehicles, with the majority of vehicles to be tested at test-and-repair facilities.

On March 18, 1996 (61 FR 10920), EPA proposed to grant interim approval to the enhanced I/M program and regulations, as meeting the high enhanced performance standard requirements of 40 CFR Part 51, Subpart S, as amended, and section 348(c) of the National Highway System Designation Act (''the Highway Act,'' Public Law 104–59, enacted on November 28, 1995). The Highway Act provides for approval of decentralized or test-and-repair programs for the full credit proposed by the state if the proposed credits reflect a good faith estimate and the program otherwise complies with the CAA. The approval remains effective for up to 18 months after the date of final rulemaking. After the 18-month period, permanent approval of the program is granted if the data collected on operation of the program demonstrates that the credits are appropriate. In order to ensure that at least 6 months of operational data can be collected to evaluate program performance, EPA requires program start-up no later than 12 months after the effective date of approval.

On January 8, 1997 (62 FR 1160), EPA finalized the interim approval of California's enhanced I/M program, effective February 7, 1997. This action set February 9, 1998, as the deadline for program start-up. The approval expires on August 7, 1998, or earlier if by such date the State has submitted as a SIP revision the required demonstration that the credits claimed for the program are appropriate and that the program is otherwise in compliance with the CAA, and EPA takes final action approving the revision.

EPA's final interim approval of California's enhanced I/M program also granted interim approval to the State's submittal as meeting the requirements of section 187(a)(6) of the Act for enhanced I/M for the South Coast. Section 187(a)(6) requires CO nonattainment areas with a design value greater than 12.7 ppm to implement enhanced I/M programs in the urbanized portion of the nonattainment area, as defined by the Bureau of Census, with 1980 populations of 200,000 or more.

On February 5, 1997, CARB submitted as a revision to the California SIP the 1997 Air Quality Management Plan for the South Coast Air Basin (SCAB), Antelope Valley, and Coachella Valley, adopted by the SCAQMD on November 15, 1996. This submittal, which included the South Coast Carbon Monoxide Attainment Plan (Revised), was found to be complete on April 1, 1997, with respect to portions of the AQMP relating to CO and nitrogen dioxide SIP requirements.[4] This 1997 CO plan supersedes all prior submittals.

This 1997 CO plan provides, among other things, a revised CO attainment demonstration based on updated vehicle

County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[3] On August 21, 1995 (60 FR 43468), EPA issued a notice of Congressional action rescinding the California FIP and also published notices relating to many of the SIP approvals included with the final FIP.

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

miles traveled (VMT) projections reflecting new forecasts prepared by the Southern California Association of Governments (SCAG), an amended Regional Mobility Element adopted by SCAG, revised motor vehicle emissions modeling, new emissions inventories, amended control measures, and updated areawide Urban Airshed Modeling (UAM) and hotspot (CAL3QHC) air quality modeling analyses using the updated inventories and improvements to other modeling inputs.

II. EPA Action

A. Summary of Proposed Action

In this document, EPA is proposing to approve the 1997 CO plan, with respect to the CAA requirements for notice and adoption, baseline and projected emissions inventory, and VMT forecasts. EPA proposes to grant interim approval to the CO attainment demonstration, quantitative milestones, and reasonable further progress. Along with EPA's prior interim approval of California's enhanced I/M program under section 187(a)(6) of the CAA and section 348(c) of the Highway Act, these interim approvals expire on August 7, 1998, or earlier if by such date California submits the required demonstration that the CO credits are appropriate.

As noted above, EPA is also proposing to rescind the Agency's partial approval and partial disapproval of the 1994 CO SIP submittal, taken on February 14, 1995.

B. Procedural Requirements

Both the SCAQMD and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plan and each of the plan amendments. The SCAQMD conducted numerous public workshops and public hearings prior to the adoption hearing on November 15, 1996, at which the 1997 AQMP was adopted by the Governing Board of the SCAQMD (Resolution No. 96–23). On January 23, 1997, the Governing Board of CARB adopted the plan (Resolution No. 97–1). The plan was submitted to EPA by Michael P. Kenny, Executive Officer of CARB, on February 5, 1997. The SIP submittal includes proof of publication for notices of SCAQMD and CARB public hearings, as evidence that all hearings were properly noticed. Therefore, EPA proposes to approve the 1997 CO plan as meeting the procedural requirements of section 110(a)(1) of the CAA.

C. Baseline and Projected Emissions Inventory

The revised and updated emissions inventory included in the 1997 CO plan is consistent with EPA's guidance documents.[5] This EPA guidance allows approval of California's motor vehicle emissions factors in place of the corresponding federal emissions factors. The motor vehicle emissions factors used in the plan were generated by the CARB EMFAC7G and BURDEN7G program. The gridded CO inventory for motor vehicles was then produced using an updated Caltrans Direct Travel Impact Model (DTIM2) (Systems Applications International, 1994) to combine EMFAC7G data with transportation modeling performed by SCAG.

SCAG provided the baseline socioeconomic data used in the plan. These forecasts include the following predicted growth through the CO attainment year.

1997 AQMP BASELINE SOCIOECONOMIC FORECASTS

[In millions]

Category	1993	2000	% growth
Population	13.8	14.8	7
Daily Vehicle Miles Traveled	293.3	317.9	8
Daily Vehicle Trips	31.2	33.2	6

EPA notes that these predictions assume that the key categories of VMT and daily trip levels will increase at growth rates considerably below long-term historic trends. This makes it particularly important for transportation agencies to track actual VMT and trip numbers carefully, and to trigger remedial actions, if necessary, before the plan fails to meet scheduled reduction targets.

The planning emissions inventory from the 1997 CO plan is summarized in the table below, ''Carbon Monoxide Emissions by Major Source Category,'' from Table 5–3 in Appendix V of the 1997 AQMP.

CARBON MONOXIDE EMISSIONS BY MAJOR SOURCE CATEGORY

[In tons per day]

Source category	1993	1995	2000
Stationary Sources	127	170	297
Onroad Vehicles	5908	5381	3298
Other Mobile	1538	1637	1550
Total	7573	7188	5145

The sharp decline in baseline emissions from onroad vehicles and, consequently, the decrease in total CO emissions, from 1993–2000 is attributed to the adopted California motor vehicle and clean fuels regulations, and benefits from vehicle fleet turnover.

[5] See, for example, Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, EPA—450/4–91–011; Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, EPA—450/4–91–016; Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA—450/4–91–026d Revised.

The methodologies used to prepare the base year and projected emissions inventory, as described in Chapter 3 and Appendix 3 of the AQMP, are acceptable. Accordingly, EPA proposes to approve the 1997 CO plan with respect to the emissions inventory requirements of sections 172(c)(3) and 187(a)(1) the CAA.

D. Attainment Demonstration

The attainment demonstration includes both an areawide and a hot-spot modeling analysis at four heavily traveled intersections.

The areawide analysis was conducted using the Urban Airshed Model, according to EPA's ''Guidance for Application of Urban Areawide Models for CO Attainment Demonstration'' (1992). The UAM analysis uses a December 6–7, 1989 episode. This episode recorded a 1-hour CO concentration of 31 ppm and an 8-hour concentration of 21.8 ppm. These were the highest monitored values in recent years. The UAM analysis performed for the 1997 CO plan makes one significant change in the meteorological inputs: the mixing height was raised from 15 meters to 50 meters, to reflect the results of studies in the Lynwood area. The adjusted mixing height is also within the uncertainties of estimating night time mixing height.

Emissions used in the UAM analysis are shown in the table below, titled ''Peak CO Emissions and South Coast UAM Results.'' These emissions, representing day-specific emissions, were disaggregated into 5 kilometer grid cells throughout the modeling domain.

PEAK CO EMISSIONS AND SOUTH COAST UAM RESULTS

[In ppm]

Scenario	Emissions (tpd)	Regional maximum (8-hour)	Maximum Lynwood (8-hour)	Regional maximum (1-hour)
1989 Base	9140	22.1	16.4	26.1
2000 Base	4511	7.7	6.6	10.7
2000 Control	4349	7.4	6.4	10.3

Source: 1997 AQMP, Appendix V, Tables 5–12 and 5–13.

The table shows the results of the UAM analysis for both the 8-hour and 1-hour average (the corresponding NAAQS are 9 ppm and 35 ppm). Concentrations for the 8-hour average are shown for the Lynwood receptor, since the monitor at this site typically records peak concentrations.

Model performance for the UAM simulation is within EPA's acceptable range of accuracy: +1 percent for the unpaired peak prediction, −25 percent for the paired peak prediction, and 22 percent for the paired absolute error. See 1997 AQMP, Appendix V, pages V–5–6 and V–5–7.

The predicted regional maximum 8-hour average CO concentration is 7.7 ppm in the year 2000, assuming no new control measures. The UAM analysis thus shows attainment with a margin of safety based solely on fully adopted regulations.

The SCAQMD also modeled a ''control'' scenario, which assumes a combined reduction of 173 tpd in the year 2000 from two CARB measures which are currently under development, M1 (Accelerated Retirement of Light-Duty Vehicles) and M2 (Improved Control Technology for Light-Duty Vehicles). These State measures have already been approved as part of the 1994 ozone SIP. Reductions from M1 and M2 are not needed for purposes of the attainment demonstration, but the control scenario illustrates additional ambient air quality improvements possible with a greater level of control.[6]

The hot-spot analysis was performed for four intersections (Lynwood, Hollywood, Westwood and Inglewood), using CAL3QHC (a roadway intersection model) and base case as well as worst case meteorological data. Projected peak 8-hour average hot-spot concentrations under base case meteorology were 2.1 ppm at Lynwood, 2.2 ppm at Inglewood, and 3.2 ppm at Westwood and Hollywood. Under worst case meteorology, concentrations are predicted to range from 3.5 ppm at Lynwood to 5.3 ppm at Hollywood.

The areawide analysis and hot-spot analysis concentrations were not aggregated, because CARB's 1991 study of CO in the Lynwood area indicated that the projected maximum hot-spot concentrations were at different times of day from the maximum areawide peak concentrations.

The hot-spot modeling follows applicable EPA guidelines and demonstrates attainment of the 8-hour CO standard for the year 2000 with the proposed control measures.

Because the enhanced I/M regulations have now been adopted, the 1997 CO plan demonstrates attainment with adopted measures, which reduce areawide emissions to 4511 tpd, substantially below the estimated carrying capacity of 4968 tpd. However, attainment depends, in part, upon specific reductions from the enhanced I/M program, which was granted interim approval in prior rulemaking. Therefore, under section 348(c) of the Highway Act, EPA proposes to grant interim approval to the 1997 CO plan with respect to the attainment demonstration requirement of section 187(a)(7) of the CAA.

E. Quantitative Milestones and Reasonable Further Progress (RFP)

EPA disapproved the 1994 South Coast CO SIP submittal with respect to the milestone and RFP requirement because the plan depended heavily upon reductions from the as yet unadopted enhanced I/M program to achieve scheduled progress and eventual attainment by the year 2000 deadline in the Act. EPA's interim approval of California's enhanced I/M regulations cures this defect and allows for interim approval of the milestone and RFP provision.

The 1997 CO plan shows steady annual reductions in CO emissions from 1993 through 2000, despite annual growth in VMT and stationary source emissions (see 1997 AQMP, Appendix

[6] EPA approved M1 on January 8, 1997 (62 FR 1150). M2 was approved on August 21, 1995 (60 FR 43379) under the provisions of section 182(e)(5) of the CAA, which authorizes the Administrator to approve as part of an extreme ozone area SIP conceptual measures dependent upon new control technologies or new control techniques. EPA notes that the M2 reductions may help ensure maintenance of the CO NAAQS, but any reductions from this measure would not be creditable for purposes of the CO attainment SIP, because the State has committed to begin implementation of the measure in 2004–2005, several years beyond the year 2000 attainment deadline for CO.

V, Tables 5–1, 5–2, and 5–3). The CO emissions decline is displayed below in the summary table entitled ''South Coast CO Emissions,'' taken from Table 5–3 in Appendix V of the 1997 AQMP.

SOUTH COAST CO EMISSIONS

[Planning Inventory—tpd]

Source category	1993	1995	2000
On-Road Vehicles	5908	5381	3298
Other Mobile	1538	1637	1550
Stationary Sources	127	170	297
Total	7573	7188	5145

In this action, therefore, EPA proposes to grant interim approval, under section 348(c) of the Highway Act, to the 1997 CO plan with respect to the RFP requirements in sections 171(1), 172(c)(2), and 187(a)(7) of the CAA.

F. Vehicle Miles Traveled (VMT) Forecast

Section 187(a)(2)(A) of the CAA requires the 1997 CO plan to contain a forecast of vehicle miles traveled (VMT) for each year until attainment of the CO NAAQS. Also, as required by section 187(a)(2)(A), the 1997 CO plan must provide for annual updates of the forecasts along with annual reports to be submitted regarding the extent to which the preceding annual forecasts proved to be accurate. These annual reports must contain estimates of actual VMT in each previous year for which the forecast was required, including the year prior to the report.

The 1997 CO plan revises VMT forecasts in the prior South Coast CO plans. The VMT forecasts have been updated by using new transportation modeling and incorporating more recent socioeconomic data compared with the VMT forecasts contained in the earlier plans. The required VMT forecasts for each year from 1993 through 2000 are displayed in Table 5–1 in Appendix V to the 1997 AQMP. The forecasts are broken down by 7 motor vehicle categories. Table 5–2 shows the CO emissions from each category for each year.

EPA proposes to approve these new VMT forecasts as meeting the section 187(a)(2)(A) requirement. Also, EPA proposes to approve the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future.

G. Summary of Proposed EPA Actions

EPA proposes the following actions on elements of the South Coast CO Attainment Plan (Revised), as submitted on February 5, 1997:

(1) Approval of procedural requirements, under section 110(a)(1) of the CAA;

(2) Approval of baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the CAA;

(3) Interim approval of attainment demonstration, under section 187(a)(7) of the CAA and section 348(c) of the Highway Act;

(4) Interim approval of quantitative milestones and reasonable further progress, under sections 171(1), 172(c)(2), and 187(a)(7) of the CAA and section 348(c) of the Highway Act; and

(5) Approval of VMT forecasts and the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future, under section 187(a)(2)(A) of the CAA.

EPA also proposes to rescind EPA's prior partial approval and partial disapproval of the 1994 South Coast CO SIP submittal, taken on February 14, 1995. As discussed above, these actions have not been in effect, since the final rulemaking was never published in the **Federal Register**.

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

IV. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 and 182(b) of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved or disapproved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 26, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–31915 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

RIN 2060–AE30

[FRL–5932–9]

Opportunity To Present Oral Testimony on EPA's Proposed Rule: ''40 CFR Part 194, Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's (WIPP) Compliance With the 40 CFR Part 191 Disposal Regulations: Certification Decision;'' Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearings.

SUMMARY: EPA will conduct public hearings to receive comments on the proposed certification decision, published October 30, 1997, for the Waste Isolation Pilot Plant (WIPP) in Carlsbad, Albuquerque, and Santa Fe, New Mexico.

DATES: The schedule for these hearings is as follows: Carlsbad, January 5, 1998, from 6:00 p.m. to 9:00 p.m. and January 6, 1998, from 9:00 a.m. to 4:00 p.m.; Albuquerque, January 7, 1998, from 12:00 Noon to 9:00 p.m. and January 8, 1998, from 9:00 a.m. to 12:00 Noon; and Santa Fe, January 8, 1998, from 3:00 p.m. to 9:00 p.m. and January 9, 1998, from 9:00 a.m. to 5:00 p.m. Procedures for these public hearings are detailed in the section entitled ''Hearing Procedures'' in **SUPPLEMENTARY INFORMATION.** Specific locations for each city is detailed in the section entitled **ADDRESSES.**

ADDRESSES: EPA's public hearings to accept comments on EPA's Proposed Compliance Certification Decision for the WIPP will be held on January 5–6, 1998, at the Pecos River Village Conference Center, Room #3, 711 Muscatel, Carlsbad, NM; on January 7–8 at the Albuquerque Convention Center, Aztec/Galisteo Room, 401 Second Street, NW, Albuquerque, NM; on January 8–9, 1998, at the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM.

EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC, in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW, Washington, DC 20460. Information on EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and DOE's compliance certification application is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9.

Note: The dockets in New Mexico only contain major items from the official Air docket in Washington, DC, plus all those docu-ments added to the official docket since the October 1992 enactment of the WIPP LWA.

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal Air docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 564–9362 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1997, the Environmental Protection Agency (EPA) announced its proposed decision to issue to the Secretary of the Department of Energy (DOE) a ''certification of compliance'' for the Department of Energy's Waste Isolation Pilot Plant (WIPP), subject to several conditions related to: (1) waste characterization (to determine the radionuclides and other contents of waste disposal containers); (2) quality assurance programs at DOE waste generator sites; (3) implementation of passive institutional controls (PICs) (intended to warn future generations about the hazards of the radioactive waste buried in the WIPP); and (4) panel seals (used to contain the waste within compartments in the facility). In addition, DOE is required to report to EPA any change in the activities or conditions at the WIPP that differ from those described in the Compliance Certification Application (CCA), and to immediately inform EPA of any activities or conditions at the WIPP that might cause the WIPP to exceed the containment requirements of the disposal regulations. This proposal, entitled ''Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision; Proposed Rule,'' was published in the **Federal Register** at 62 FR 58791–58838 on October 30, 1997, which marked the start of a 120-day public comment period.

The WIPP is being constructed by DOE near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste. Pursuant to the WIPP Land Withdrawal Act (WIPP LWA) of 1992, Pub. L. No. 102–579, as amended, EPA is required to perform several activities including certifying whether the WIPP will comply with EPA's radioactive waste disposal standards before DOE may commence disposal of radioactive waste at the WIPP. On October 29, 1996, DOE submitted a CCA containing information intended to demonstrate that WIPP will comply with the EPA's disposal regulations. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on November 15, 1996, announcing receipt of the CCA and requesting comments on all aspects of DOE's application for 120 days until March 17, 1997. EPA conducted a preliminary review of the CCA and requested DOE to submit supplemental information. DOE submitted the additional information EPA requested and on May 22, 1997, the Agency announced that DOE's application was deemed to be ''complete'' (62 FR 27996–27998). EPA's finding that the CCA was complete commenced a statutory one-year period to determine, by rulemaking, whether WIPP will comply with the disposal regulations (WIPP LWA, section 8(d)(2); 40 CFR 194.11).

EPA has conducted an extensive independent technical review and evaluation (including confirmatory audits and inspections) of the DOE's CCA and supplemental materials based on the requirements specified in the WIPP Compliance Criteria at 40 CFR Part 194. In response to public comments, EPA subsequently extended the ANPRM public comment period until publication of the proposed rule, thus resulting in an approximately 264-

day public comment period. All public comments received on or before August 8, 1997, were reviewed and considered as part of EPA's evaluation of the CCA. ANPRM comments received on or before August 8, 1997, were responded to in the Compliance Application Review Documents (CARDs), which are part of the proposed certification decision. Comments received from August 8, 1997, to October 30, 1997, will be responded to with comments on the proposed rule.

DOE is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. As defined by the WIPP LWA, as amended, TRU wastes are materials containing elements having atomic numbers greater than 92, in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste, with half-lives greater than twenty years. Most TRU wastes are items contaminated during the production of nuclear weapons, e.g., rags, equipment, tools, and organic and inorganic sludges.

The WIPP LWA, as amended, specifies the terms and conditions for DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development including the requirement that before beginning disposal of radioactive wastes at the WIPP, DOE must demonstrate that the WIPP will comply with the EPA's radioactive wastes disposal standards, ''Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes'' (40 CFR Part 191).

Under the WIPP LWA, as amended, EPA is required to develop criteria for the Administrator's certification of compliance with the 40 CFR Part 191 disposal standards. EPA's final rule for the compliance criteria was published in the **Federal Register** on February 9, 1996, at 61 FR 5224–5245, approximately one year after proposal. On March 29, 1996, EPA issued the Compliance Application Guidance (CAG) which provided DOE with specific guidelines regarding the format and content of the compliance certification application and a clear description of the information that EPA would need to make its certification decision. The guidance provided in the CAG is within the framework established by 40 CFR Parts 194 and 191. On November 15, 1996, EPA published an ANPRM in the **Federal Register** at 61 FR 58499–58500, entitled ''Decision to Certify Whether the Waste Isolation Pilot Plant Complies With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria.''

If EPA finalizes the decision that the WIPP meets its radioactive waste disposal standards, then DOE may continue to take necessary steps required prior to emplacement of TRU wastes in the repository. Following the initial emplacement of TRU wastes in the facility and throughout its operational phase, DOE will be required to submit a re-certification application to EPA every five years throughout the operational phase of the disposal system. The Agency will review the applications and determine whether the WIPP remains in compliance with the disposal standards.

Hearing Procedures

Those persons wishing to present testimony at the public hearings are requested to pre-register by calling EPA's toll-free WIPP Information Line at 1–800–331–WIPP between the hours of 11:00 a.m. and 7:00 p.m. Eastern Standard Time (EST) with the following information: Name/Organizational Affiliation (if any)/address/hearing date, location, time(s) available to testify, and a daytime telephone number. In order to be guaranteed an opportunity to testify, requests must be received by EPA no later than 12:00 p.m. EST on December 30, 1997. Speakers not registered in advance may register at the door, if time slots are available. Individuals testifying on their own behalf will be allowed 5 minutes. One individual may testify as the official representative or spokesperson on behalf of groups and organizations and will be allocated 10 minutes for an oral presentation. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Requests to testify at a second or possibly third location will be accommodated, to the extent possible, once pre-registration has been completed. Written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearing. All written comments which are submitted outside of the public hearings must be received by the HQ EPA Air Docket by February 27, 1998. These comments will also be given EPA's full consideration. Thus, all comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule.

The public will be permitted to inspect and comment on any re-certification application.

Dated: December 3, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32041 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AD98

Humane and Healthful Transport of Wild Mammals, Birds, Reptiles and Amphibians to the United States; Notice of Reopening of Comment Period and Scheduling of Public Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public meetings and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Lacey Act Amendments of 1981, provides notice of the reopening of the comment period and the scheduling of two public meetings to receive input from the general public for the proposed amendment of 50 CFR part 14, covering the humane and healthful transport of wild mammals, birds, reptiles and amphibians to the United States. The comment period was extended to October 6, 1997 for this proposed rule and has, thus, closed. However, based on requests received, and in order to receive further input from the general public, the Service will reopen the comment period for a period of 30 days and hold two public meetings during that time. Therefore, additional written comments will be accepted during that time, and oral and written comments will be accepted at the public meetings.

DATES: A public meeting in New York City (Queens) will be held on January 17, 1998, from 1:00 pm–5:00 pm, and a public meeting in Los Angeles will be held on January 27, 1998, from 1:00 pm–5:00 pm. Comments in writing will be accepted by the Service beginning January 17, 1998, through February 17, 1998.

ADDRESSES: The public meeting in New York City will be held at St. John's University, Bent Hall Seminar Room, 8000 Utopia Parkway, Jamaica, NY 11439. The public meeting in Los

Angeles will be held at The Westin Hotel (Los Angeles Airport), 5400 West Century Boulevard, Los Angeles, CA 90045. Please note that the rooms for these meetings are accessible to the handicapped. Written comments can be presented to the Service at either of the public meetings or can be sent to: Director, U.S. Fish and Wildlife Service, Office of Management Authority either by mail, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or by fax (703) 358–2298.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce J. Weissgold or Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2095, fax (703) 358–2298.

SUPPLEMENTARY INFORMATION:

Background

On Friday, June 6, 1997, the Service published in the **Federal Register** (62 FR 31044) a proposed rule announcing the Service's intention to amend 50 CFR part 14 subpart J to further implement the requirements of the Lacey Act (18 U.S.C. 42 (c)) for reptiles and amphibians. On August 5, 1997, at the request of two commercial reptile importers, Underground Reptiles and the Reptile Service, the Service published a notice in the **Federal Register** (62 FR 42091) extending the comment period until September 6, 1997. The Lacey Act Amendments of 1981 (Pub. L. 87–79, 95 Stat. 1073) prohibit the importation into the United States of all wild animals and birds under inhumane or unhealthful conditions, and require that the United States Government promulgate regulations governing the importation of wildlife. The purpose of this rulemaking is to ensure the Lacey Act Amendments' consistency and enforceability extend across all species of wildlife, as described by Congress. On June 17, 1992, the Service finalized (57 FR 27094) the rules contained in 50 CFR part 14 subpart J, establishing rules for the humane and healthful transport of wild mammals and birds to the United States. This proposed rule, once finalized, will enable the Secretary of the Interior to meet the responsibilities of the Lacey Act for reptiles and amphibians.

Thus, to more fully implement the amendments of the Lacey Act, which requires the humane and healthful transport of all classes of wild animals and birds and the promulgation of regulations necessary to that end, the Service proposes to extend 50 CFR part 14 subpart J to include rules for the healthful and humane transport of reptiles and amphibians. Furthermore, many reptiles and amphibians are species included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Parties to CITES have adopted a resolution that calls for all CITES-listed species to be packed and shipped in accordance with the International Air Transport Association (IATA) Live Animals Regulations. Therefore, the proposed rule would place these internationally accepted standards into the Code of Federal Regulations for reptiles and amphibians.

For this, and other reasons discussed in the June 6, 1997 **Federal Register** notice, the Service is proposing amendments to 50 CFR part 14 concerning humane and healthful transport of reptiles and amphibians into the United States.

The Service received numerous letters which indicated that there is a great deal of misunderstanding in the commercial reptile and amphibian community regarding the content of the proposed rule and the process followed by the Service while promulgating these regulations under the requirements of the Administrative Procedures Act. Basic confusion partially appears to be present as a result of misrepresentations of the Service's intent and scope of authority to regulate the transport of live reptiles and amphibians. Among the misrepresentations was the suggestion that the Service was moving towards the regulation of the domestic shipping of live reptiles and amphibians and their export, which the Service has neither the intent nor the statutory authority to address, as well as a misrepresentation about the current packing standards of IATA.

The Service received numerous comments on the proposed rule during the extended comment period, which closed October 6, 1997. Many of the comments received were form letters and reiterated the concerns that the proposed rule did not include sufficient ''quantifying information'' to justify its necessity, would not contribute to improving the humane and healthful transport of live reptiles and amphibians, and would substantially increase shipping costs for commercial traders. Other criticisms included complaints that the Service relied too heavily in drafting the proposed rule on input from ''Animal Rights Activists,'' technical aspects of the proposed rule were burdensome and unnecessary, including the Service's proposals regarding the numbers of animals which could be packed in primary enclosures, temperature requirements, venomous/poisonous species shipping requirements, packing materials/techniques restrictions, and other related issues. The Service also received many individual letters expressing similar concerns. Conversely, the Service received many comments critical of the proposal to increase the numbers of small animals which can be packed per primary enclosure, relative to the current IATA standards. (The Service has proposed that five small snakes and lizards can be packed per primary enclosure, while IATA standards limit such packing configurations to one animal). In addition, the numerous criticisms were received regarding the Service's findings in the proposed rule which were made pursuant to Executive Order 12988. The Service will evaluate this in the development of the final rule.

The Service also received many comments supportive of the proposals related to several of the issues discussed above. Many letters generally supportive of the Service's proposed rule cited the Service's draft regulations on the numbers of animals which would be packed per primary enclosure, temperature requirements, and packing materials/techniques restrictions. Comments supportive of the proposed rule also cited the Service's proposal to bar the importation of reptiles and amphibians which have visible external parasites, and to require veterinary examination prior to dispatch, and veterinary certificates with shipments of live reptiles and amphibians entering the United States. Other letters generally supportive of the Service's proposed regulations cited importers' desire to cut costs in shipping animals, while others noted that the proposed prohibition on external parasites would help protect human and wildlife health by reducing the risks of the importation of pests with zoonotic or other transmittable diseases. Another supportive letter stated that the new regulations would keep species poorly suited for international transit from being shipped for the ''pet trade,'' while another cited that it was incumbent on the government to ''step in'' and regulate the trade in common green iguanas (*Iguana iguana*) and other live reptiles because pet purchasers in the United States are unable to ''make human, sensible and logical decisions on their own.''

The Service also received numerous letters which indicated neither support nor opposition to the proposed rule, but instead offered constructive suggestions on making technical changes to the proposed regulations. Many of the technical changes suggested in the letters addressed the issues discussed above, such as temperature requirements, packing densities, materials requirements, venomous species shipping requirements, and other related issues.

In addition the Service has received numerous criticisms of the proposed rule from the commercial trade community involved in exporting hatchling farm raised turtles. The Service notes that this proposed rule does not affect the export of live reptiles and amphibians from the United States or their interstate (domestic) commerce. Under the Lacey Act Amendments of 1981, the Service does not have the statutory authority to regulate humane and healthful transport of live reptiles and amphibians being exported from the United States. Therefore, the only humane and healthful transport rules applicable to the export of non-CITES reptiles and amphibians from the United States are the IATA Live Animals Regulations, which are enforced privately by participating airlines. Exports of live CITES-listed reptiles and amphibians are still required to be shipped in accordance with IATA packing requirements, but that requirement is independent, and not related to, this proposed rulemaking. This proposed rule applies only to live reptiles and amphibians being imported into the United States.

In order to provide the public with additional opportunities to communicate with the Service regarding these proposed regulations, and to provide an opportunity to clarify misunderstandings in the public sector regarding this proposed rule, including its content and the process of Federal rulemaking, the Service will reopen the comment period from January 17–February 17, and hold two public meetings during that time, one in New York, NY, and one in Los Angeles, CA, as discussed above (see **DATES** and **ADDRESSES**). These two cities were selected by the Service because of the high volume of live reptiles and amphibians which are imported into the United States through local Fish and Wildlife Service designated ports, and the corresponding concentration of affected members of the general public. Interested members of the general public are encouraged to attend these meetings to communicate their opinions and pertinent factual information to the Service regarding the proposed regulations which can be utilized by the Service in preparation of a final rule.

Authority

The authority for this action is the Lacey Act, as amended (18 U.S.C. 42 (c)).

Dated: November 26, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31925 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC62

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on the Proposed Rule to List the Arkansas River Basin Population of the Arkansas River Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice reopening the public comment period.

SUMMARY: On August 3, 1994, the U.S. Fish and Wildlife Service (Service) proposed to list the Arkansas River basin population of the Arkansas (AR) River shiner (*Notropis girardi*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act)(59 FR 39532). Public comments were solicited, three public hearings were held, and the last comment period expired on February 3, 1995 (60 FR 2070).

The enactment of Pub. L. 104–6 in April 1995, and a series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium against issuing final listings or critical habitat designations. The Service's listing program was essentially shut down and listing program personnel were reassigned to other duties. When the moratorium was lifted, the Service published guidance for assigning relative priorities to listing actions conducted under section 4 of the Act during Fiscal Year 1997 (61 FR 64475).

This species was proposed for endangered status in 1994. New information concerning the AR River shiner's status has since become available.

This notice identifies possible issues the public should be aware of and provides the public opportunity to comment on these issues. All previous comments submitted in response to the August 3, 1994, proposal, including comments that were received after the expiration of the previous comment periods, will be entered into the public record for the AR River shiner.

DATES: Comments from all interested parties must be received by January 5, 1998.

ADDRESSES: Written comments and materials should be sent to: Supervisor, Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127–8909. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Collins at the above address (telephone 918/581–7458 ext. 230).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994 (59 FR 39532), the Service proposed to list the Arkansas River basin population of the AR River shiner (*Notropis girardi*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*). The introduced population which occurs in the Pecos River basin is not under consideration for protection under the Act because it is not native to the area.

Two public comment periods were established, with the last comment period expiring on February 3, 1995 (60 FR 2070). During the second comment period, the Service held three public hearings, one each in Kansas, Oklahoma, and Texas. The Service received 602 comments (letters and oral testimony) from 567 individuals or agencies, including a petition containing the names of 36 individuals. Contents of the written comments and oral statements obtained during the public hearings and comment periods were being evaluated at the time Public Law 104–6 was enacted.

The enactment of Pub. L. 104–6 in April 1995, and a series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium against issuing final listings or critical habitat designations. Funding for the Service's listing program was severely reduced or eliminated and listing personnel were reassigned to other duties, essentially shutting down the listing program.

On April 26, 1996, President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority granted under this Act to waive the listing moratorium. When the moratorium was lifted, the Service published guidance for assigning relative priorities to listing actions conducted under section 4 of the Act during Fiscal Year 1997 (61 FR 64475). Based on this priority system, the listing of the Arkansas River basin population of the AR River shiner was assigned to Tier 2. Tier 2 includes processing of final decisions on pending proposed listings. The Service has determined that an additional comment period is needed to allow public comment on all relevant information that has arisen since the close of the last comment period for the AR River shiner.

Summary of Information Relevant to the Listing Decision

The Service has received information indicating that populations of AR River shiners in the Canadian River upstream from Lake Meredith may be stable (and not declining as suggested in the proposed rule).

1. Effects of the Bureau of Reclamations's Lake Meredith Salinity Control Project

In the proposed rule, the U.S. Bureau of Reclamation's (Bureau) Lake Meredith Salinity Control Project was identified as a significant, ongoing threat to the aggregations of AR River shiners that occur in the Canadian River between Ute Reservoir in New Mexico and Lake Meredith in Texas. Based on information available at the time of the proposed listing, the abundance of AR River shiners within this stream segment were believed to be declining and operation of the salinity control project would have resulted in significant reductions in stream flow, affecting habitat for the species within the Canadian River above Lake Meredith. New information (J.C. Williams, Canadian River Municipal Water Authority, *in litt.* 1997; Gene Wilde, Texas Tech University, *in litt.* 1997; Bureau 1995) does not support this assertion and the Service solicits questions and comments regarding this issue.

2. Influence of the High Plains Aquifer on Canadian River Stream Flows

New information provided by the U.S. Geological Survey, State of Texas, and High Plains Underground Water Conservation District clarified the influence of the High Plains aquifer (Ogallala Aquifer) on Canadian River stream flows, particularly upstream of Lake Meredith. The High Plains aquifer in Texas underlies all or portions of 48 counties of the Panhandle region. The aquifer is constricted in the vicinity of Randall and Potter counties, Texas, and this constriction is considered a subdivision boundary which divides the Southern High Plains from the Central High Plains regions (Dugan and Sharpe 1996). Groundwater in the Southern High Plains region moves in a southeasterly direction away from the Canadian River, based on the altitude of water levels within the aquifer (Peckham and Ashworth 1993). This region of the aquifer appears to have little influence, if any, over observed stream flows within the Canadian River in Texas.

Upstream of the Hutchinson-Roberts County line, including Lake Meredith, the Canadian River stream bed is below the elevation of the High Plains aquifer (John Ashworth, Texas Water Development Board, *in litt.* 1995). Induced recharge of the High Plains aquifer by the Canadian River within this segment, caused by a lowering of the water table, is not likely to occur. The primary influence of the High Plains aquifer on stream flow within this reach would be predominantly through spring flow and similar emissions (e.g., natural discharge) where the water table intersects the land surface (Peckham and Ashworth 1993, Brune 1981, Texas State Board of Engineers 1938a, 1938b).

The contribution of the High Plains aquifer to stream flows downstream of Lake Meredith, and the influence of groundwater pumping on observed stream flows, is difficult to determine with the existing information available to the Service. Considering the small amounts of springflow within this segment, reductions in such flows are not likely to have had a profound impact on stream flows or habitat for the AR River shiner. Any impact from a reduction or cessation of springflow is considerably less significant than the influence of Lake Meredith on current stream flows. The Service requests questions, comments, or any new information regarding the High Plains Aquifer. Information indicates that withdrawals from the High Plains aquifer may have affected stream flow within the Canadian River in Roberts and Hemphill counties, Texas, but the data necessary to confirm this assumption or determine the degree to which stream flows have been affected is lacking. Comments are sought on this particular issue, including any information that would clarify the influence of the High Plains aquifer on stream flows in this stream segment.

3. Susceptibility of Extant Populations to Catastrophic Events

The proposed rule indicated that the Arkansas River basin population was essentially limited to one river system and was extremely susceptible to extinction from a single catastrophic event. In making this determination, the Service essentially discounted the small aggregations of AR River shiners occurring in the Cimarron River and considered the artificially isolated aggregations upstream of Lake Meredith vulnerable to the same singular catastrophic event. Likewise, the Service considered any AR River shiner aggregations in the Beaver/North Canadian River to be the result of releases by commercial bait operators and such aggregations did not represent a naturally reproducing or self-sustaining population. Upon review of comments received during the comment periods, the Service has reassessed the significance of these factors in the status of the species.

Lake Meredith is an effective artificial barrier to movement of stream fishes and does provide a small degree of protection to AR River shiner aggregations upstream of Lake Meredith from introductions of nonnative fishes that might occur downstream of the reservoir. Essentially two separate events would be required to affect both the upstream and downstream aggregations. Consequently, the Service acknowledges that a single catastrophic event, such as establishment of the non-native Red River shiners, would not necessarily affect existing aggregations of AR River shiners in the Canadian/South Canadian River system simultaneously. However, aggregations of AR River shiners upstream of Lake Meredith are less numerous than those in the remainder of the Canadian/South Canadian River system and the risk of extinction for the Arkansas River basin population would increase if Red River shiners became established downstream of Lake Meredith.

Comments (from one individual) during the public comment period indicate that AR River shiners may still exist in the Beaver/North Canadian River near Turpin, Oklahoma. Likewise, AR River shiners may still occur in the Cimarron River. The Service recognizes that additional aggregations of AR River shiners may occur outside the Canadian/South Canadian River system. However, the viability of these aggregations is unknown and their present contribution to survival of the Arkansas River basin population is likely to be minimal considering the small size of these aggregations.

The Service also did not adequately consider the importance of the Pecos River population to the survival of the Arkansas River basin population of the AR River shiner. The Pecos River population was accidentally established with individuals trans-located from the Arkansas River basin and could be used in conservation efforts following a severe drought within the Arkansas

River basin. While the Pecos River population is nonnative and not currently proposed for protection under the Act, this population essentially represents a refugia population that could be utilized in restoration efforts. The Service requests any additional information, questions, or comments regarding AR River shiner aggregations.

4. Status of Population Above Lake Meredith

Recent (1995–96) data collected by Texas Tech University, supports the position of the Texas Parks and Wildlife Department (TPWD) for the aggregations of AR River shiners upstream of Lake Meredith. At the time of the publication of the proposed rule, AR River shiner aggregations upstream of Lake Meredith were believed to be declining in abundance. However, current data may indicate otherwise. While the number of AR River shiners collected upstream of Lake Meredith has declined since the 1950's, the relative abundance of the AR River shiner in this stream segment has remained almost constant. Except for 1990 collections, the relative abundance of AR River shiners within this stream segment has varied between 22 and 26 percent (Gene Wilde, Texas Tech University, *in litt.* 1997). The Service requests information on the aggregations of AR River shiners between Ute Reservoir and Lake Meredith.

5. The Memorandum of Understanding (MOU) Between the Service and the States of Texas and Oklahoma

On March 7, 1997, the Service met with representatives from four of the five affected State fish and wildlife conservation agencies and the Bureau to discuss conservation of the Arkansas River basin population of the AR River shiner. The Kansas Department of Wildlife and Parks was unable to send a representative to this meeting. The invited parties included those agencies with the responsibility, authority, and funding mechanisms to implement conservation actions for the AR River shiner.

Following this meeting, the Service and the states of Texas and Oklahoma cooperated in drafting a MOU outlining actions the agencies should undertake to conserve the species. The purpose of the draft MOU is twofold—(1) to establish a general framework for cooperation among the signatory parties to conserve the Arkansas River basin population of the AR River shiner, and (2) to seek commitments from the signatory states that will provide conservation benefits to the shiner, thereby lessening the likelihood of extinction.

The TPWD and the Oklahoma Department of Wildlife (ODWC) will accomplish the following actions under the MOU, to the extent that funding and authorities allow:

(A) Work in partnership with the Service and other State fish and wildlife resource agencies to develop and implement a detailed conservation strategy to address known and possible future threats to the AR River shiner, and recovery opportunities; implementation of the conservation strategy will be initiated within 18 months from the effective date of this MOU.

(B) Work in partnership with the Service to coordinate with other applicable State agencies and other stakeholders to develop adequate actions that eliminate or reduce threats to the AR River shiner and identify recovery actions for inclusion in the conservation strategy.

(C) Work in partnership with the Service to develop and implement a systematic program to annually monitor the distribution and abundance of the AR River shiner and other nongame fishes within the Arkansas River Basin within each State (the McClellan-Kerr Arkansas River Navigation System is exempt).

Likewise, the Service agreed to accomplish the following actions under the MOU, to the extent that funding and authorities allow:

(A) Work in partnership with the ODWC, TPWD and other State fish and wildlife resource agencies in the development of a conservation strategy that involves appropriate stakeholders, including applicable Federal and State agencies, that identifies appropriate measures needed to eliminate or reduce threats to the AR River shiner and initiate recovery actions. The Service will coordinate the first meeting with future coordination responsibilities determined by consensus.

(B) Seek to increase Endangered Species Act section 6 funds and assist in obtaining funds from other sources for states within the geographic range of the AR River shiner to assist in the conservation of this species as outlined in this MOU, the conservation strategy, and the recovery plan.

(C) If the species is listed as threatened, work cooperatively with the State fish and wildlife resource agencies in promulgating a 4(d) rule under the Act that encompasses the conservation strategy and other management/recovery actions developed by the Service in partnership with the State fish and wildlife resource agencies.

(D) Initiate delisting activities for the AR River shiner when protection under the Act is no longer warranted and the Service and State fish and wildlife resource agencies fulfill the obligations stipulated in the 4(d) rule, the conservation strategy, and recovery plan.

The draft MOU also contains an appendix specific to Texas that reflects the unique nature of the threats and recovery opportunities available in that State and will serve to guide development of the conservation strategy for the AR River shiner. The Texas appendix contains these principles—

(A) Conservation strategies will not restrict or regulate groundwater use of the High Plains Aquifer (formerly the Ogallala Aquifer) in Texas since, based on current knowledge, there is no hydrologic connection between groundwater resources of this aquifer and surface flows in the Canadian River in Texas. Conservation of the aquifer's water resources, however, is encouraged.

(B) Conservation strategies will not require releases of water from Lake Meredith, except as might be voluntarily agreed to by controlling authorities in contributing to the conservation and recovery of the species and its habitat.

(C) Existing (i.e., traditional, in the sense that they are ongoing) agricultural and land management activities as currently practiced adjacent to occupied AR River shiner habitat in Texas will not be adversely affected as part of developing and implementing conservation strategies, unless—(1) those practices are modified to adversely affect the species or its habitat, existing stream flow, or degradation of water quality; or (2) changes in those practices would benefit the species or its habitat, and are mutually agreed to by the landowner(s), TPWD, and the Service.

The draft MOU will become effective upon signature of all parties, and will remain in force until modified or terminated. The MOU may be modified at any time during the period of performance by mutual consent of the signatory parties. If changes to an appendix are warranted, the respective State and the Service may make such changes. If a proposed change to an appendix would affect other signatory states, then all signatory parties must consent to the change. This MOU, as drafted, may be terminated at any time during the period of performance, upon 30 days written notice, by any of the signatory parties.

The TPWD and the ODWC signed the draft MOU in early May. The State of Kansas declined to enter into the MOU due to staff and fiscal constraints (Steve

Williams, Secretary, Kansas Department of Wildlife and Parks, *in litt.* 1997).

Likewise, the State of New Mexico declined to enter into the MOU due to staff and fiscal constraints (Jerry A. Maracchini, Director, New Mexico Department of Game and Fish, *in litt.* 1997).

Public Comments Solicited

The Service solicits written comments on information described in this notice. All previous comments and information submitted in response to earlier comment periods on this proposed action will be considered. Communications received during this comment period may lead to a final regulation that differs from that presented in this notice.

References Cited

Brune, G. 1981. Springs of Texas volume I. Branch-Smith, Inc. Fort Worth, TX

Dugan, J.T. and J.B. Sharpe. 1996. Water-level changes in the High Plains aquifer predevelopment to 1994. Water-Resources Investigations Report 95–4208. U.S. Geological Survey. Lincoln, NE.

Peckham, D.S. and J.B. Ashworth. 1993. The High Plains aquifer system of Texas, 1980 to 1990 overview and projections. Texas Water Development Board. Austin, TX 34 pp.

Texas State Board of Water Engineers. 1938a. Oldham County, Texas records of wells and springs, driller's logs, water analysis and map showing location of wells and springs. WPA Project 6017–5674. State Board of Water Engineers, U.S. Geological Survey, and Univ. Texas Bureau of Industrial Chemistry. Austin, TX. 50 pp.

Texas State Board of Water Engineers. 1938b. Potter County, Texas records of wells, springs, and representative earthen tanks, driller's logs, water analysis and map showing location of wells. WPA Ground-water Survey Project 5674. State Board of Water Engineers, Univ. Texas Bureau of Industrial Chemistry, and U.S. Geological Survey. Austin, TX. 52 pp.

U.S. Bureau of Reclamation. 1995. Final supplemental environmental assessment Lake Meredith Salinity Control Project Texas-New Mexico. Great Plains Region, Oklahoma-Texas Area Office. Oklahoma City, OK 57 pp.

Author

The primary author of this notice is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

Authority

The authority for this action is 16 U.S.C. 1531–1544.

Dated: November 24, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31840 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE39

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Cave Animals From Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two animals—the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*). These two species are found on the Hawaiian island of Kauai. The Kauai cave wolf spider is known from two populations, and Kauai cave amphipod is known from four populations. These animals and their habitats have been variously affected or are currently threatened by the following: Habitat degradation/loss from development; competition for space, water, and nutrients by naturalized, introduced animals; biological/chemical pesticide use; and an increased likelihood of extinction from proposed development activities and naturally occurring events. This proposal, if made final, would extend Federal protection and recovery provisions of the Act for these animal taxa. Additionally, Hawaii state regulations protecting these animals as endangered species would be triggered.

DATES: Comments from all interested parties must be received by February 3, 1998. Public hearing requests must be received by January 20, 1998.

ADDRESSES: Comments and material concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The Kauai cave wolf spider (*Adelocosa anops*) and Kauai cave amphipod (*Spelaeorchestia koloana*) are known only from the Hawaiian island of Kauai. The Kauai cave wolf spider is known from two populations, and Kauai cave amphipod from four populations.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). Each island was built sequentially from frequent, voluminous basaltic lava flows (Stearns 1985). The youngest island, Hawaii, is still volcanically active, and retains its form of coalesced, gently sloping, unweathered shield volcanoes. Vulcanism on the older islands has long since ceased, with subsequent erosion forming heavily weathered valleys with steep walls, and well-developed streams and soils (Zimmerman 1948).

In the formation of the islands, the lava flows create caves, cracks, gas pockets and smaller, interconnected subterranean spaces or mesocaverns (Howarth 1973; 1987a). While unique subterranean faunas have long been known from temperate continental cave systems, until the 1970's obligate cave inhabiting animals were thought to be absent from tropical and island systems (Howarth 1987a). In the last 3 decades, however, a remarkable assemblage of about 50 species of cave-adapted animals have been discovered in Hawaiian caves (Howarth 1972; 1987a, b). Cave adapted species have evolved directly from native surface dwelling ancestors in at least 12 groups of Hawaiian arthropods (Howarth 1991).

These obligate cave-dwellers are generally found on the younger islands where an abundance of unweathered lava flows exist (Howarth 1983c). On older islands, soil formation, erosion and siltation have filled in most subterranean voids thus eliminating the habitat for cave animals. The island of Kauai is the oldest of the eight major Hawaiian islands and was formed by a single shield volcano approximately 5.6 million years ago (Stearns 1985). Three million years of weathering eliminated most cave habitats formed during this initial vulcanism. Between 0.6 and 1.4 million years ago, the Koloa series of post-erosional lava flows again provided available habitat for subterranean animals. Subsequent erosion also filled in most of the habitat in the Koloa series of flows with the exception of a small area along the arid, southern coast.

Because of the age of this island and the extensive erosion, it was not originally expected to harbor any cave animals. However, in 1971, two eyeless cave arthropods, a spider and amphipod, were discovered from caves in the Koloa series lava flows of Kauai. These animals are known only from a single exposed lava flow in the ''very rocky'' to ''extremely rocky'' Waikomo soil series (U.S. Department of Agriculture, Soil Conservation Service 1972). This unweathered area covers approximately 10.5 square kilometers (4 square miles), and exhibits no blanketing by erosional sediments. The amphipod also occurs in a younger limestone cave formed on top of a portion of the exposed Koloa series flow. These animals are restricted to the dark, moist areas of larger caverns and smaller subterranean spaces. The amphipod is a detritivore and feeds primarily on rotting tree roots whereas the spider is a carnivore and preys upon the amphipod and alien arthropods that venture underground.

The land supporting these two animal species is privately owned, as are areas adjacent with potentially suitable habitat.

Discussion of the Two Animal Taxa Included in This Proposed Rule

Frank Howarth first discovered the Kauai cave wolf spider (*Adelocosa anops*) in Koloa Cave #2 in 1971, and it was formally described by Willis Gertsch (Gertsch 1973). This species is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinct eye pattern, including two particularly large eyes in the middle row. The most conspicuously diagnostic character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and its distinction justifies the recognition of a separate genus for this taxon. A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (0.5 to 0.75 inches) in total length with a reddish-brown carapace, pale abdomen and bright orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and third at the distal end of the chelicera. The tibiae of the two anterior pairs of legs have four pairs of ventral spines, and tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long and silky trichobothria (sensory hairs).

The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds primarily on the Kauai cave amphipod, and to a lesser extent on alien species of arthropods that periodically enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs laid per clutch (Howarth 1981; Wells *et al.* 1983). Newly hatched spiderlings are unusually large, and carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992).

The Kauai cave wolf spider has been found only in two lava tube systems in the Koloa area of Kauai; specifically the Koloa Caves and Kiahuna Caves (Gertsch 1973; Frank Howarth, Bishop Museum, *in litt.* 1979). The spider is restricted to the dark zones of the caves and adjoining fissures. Similar to other Hawaiian cave-adapted spiders, this species is highly susceptible to desiccation (Hadley *et al.* 1981; Ahearn and Howarth 1982). The spider is active in the large caverns only during wetter times of the year (Howarth, *in litt.* 1979) or smaller areas that maintain a saturated atmosphere (Howarth 1981). Because of the seasonal and spatial movement of the spider in and out of areas accessible to biologists, survey methods have not been developed to obtain accurate population estimates.

Frank Howarth also discovered the Kauai cave amphipod (*Spelaeorchestia koloana*) along with the *Kauai* cave wolf spider in Koloa Cave #2 in 1971. Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (cephalothoracic appendage) and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigment, and extremely elongate, spiny, postcephalic appendages. Adult amphipods are 7 to 10 millimeters (0.25 to 0.4 inches) in length and very slender-bodied, with a hyaline cuticle. Gnathopod 1 is highly reduced and gnathopod 2 is mitten-like. Antenna 2 is slender and elongate, with the flagellum only slightly longer than the peduncle. Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well developed prepeduncles, and brood plates in the mature female are vestigial or entirely absent.

The Kauai cave amphipod is a detritivore and has been observed feeding on rotting roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting sticks, branches and other plant material washed into the caves, and arthropod fecal material. In large cave passages, most individuals are found on or underneath roots or rotting debris. However, this amphipod does not appear to be particularly gregarious. When disturbed, this species typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small brood of large offspring (Bousfield and Howarth 1976; Poulson and White 1969).

While found in the same caves in the Koloa lava flow series as the Kauai cave wolf spider, the cave amphipod is also known from a short lava tube (cave #210) located 1 kilometer (0.6 miles) inland of the seaward Kiahuna Cave, and the Limestone Quarry Cave 7 kilometers (4.5 miles) to the east at Mahaulepu. The latter cave occurs in a calcareous sandstone hill formed from a cemented sand-dune that was deposited on top of a disjunct exposure of the Koloa lava formation during a higher stand of the sea (Stearns 1985). The limestone cave was formed by water erosion from the ocean and a still-active fresh water stream that runs through the lowest cave level. The amphipod probably colonized this cave by migrating from the underlying Koloa lava formation. No attempt has been made to estimate the population sizes of the cave amphipod.

The two cave animals are restricted to dark, moist areas of larger caverns and smaller subterranean spaces or mesocaverns (Howarth 1983a). As with the subterranean animals on younger Hawaiian islands (Howarth 1991), the small mesocaverns may be the primary habitat for these species. For example, the Kauai cave amphipod was not seen during initial surveys of Kiahuna cave #210 (Miura and Howarth 1978). On a subsequent survey however, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth, *in litt*. 1979; Howarth 1983a). On younger islands, these mesocaverns also allow animals to move among larger, adjacent lava tubes (Howarth 1991). However, because these smaller voids become filled with erosional sediment in older flows like Koloa and as a result of surface disturbance (Hammatt *et al.* 1988; A. Asquith, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, *in litt.* 1994), it is unlikely that the Kauai cave animals can move among separate lava tube systems. Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod. Kiahuna Cave #210 and the Limestone Quarry Cave each harbor populations of the cave amphipod.

The restricted area in which these animals occur is rapidly undergoing development. The shallow cave habitat is degraded or destroyed through surface alterations such as grading, blasting, paving, and placement of fill. These animals are also increasingly under risk from pesticide use and pollution associated with residential and golf course development.

Previous Federal Action

On June 16, 1978, the Service published in the **Federal Register** (43 FR 26084) a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened. That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of proposal or within 1 year after passage of the Amendments, whichever period was longer. An initial comprehensive notice of review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. The Service published an updated notice of review for animals on January 6, 1989 (54 FR 554). In this notice the Kauai cave wolf spider and Kauai cave amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the notice of review for all animal taxa published by the Service on November 21, 1991 (58 FR 58804), the two Kauai cave arthropods were again listed as category 2 candidates. In the November 15, 1994, notice of review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were elevated to category 1 candidates. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the two cave arthropods as candidate species. Candidate species are those which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting These Species

Procedures found in section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* These animals are restricted to a 10.5 square kilometers (4 square miles) coastal section of the Koloa series lava flows that have not been filled with erosional sediment. Surface modifications in this area directly impact the subterranean habitat that supports the spider and amphipod (Hammatt *et al.* 1988; Miller and Burgett 1995; Asquith, *in litt.* 1994). Prior to arrival of Polynesians in Hawaii the above ground habitat of this area was probably comprised of a coastal dry shrubland and would have included plants such as *Sida fallax* ('ilima), *Myoporum sandwicense* (naio), *Chamaesyce celastroides* ('akoko) and *Santalum ellipticum* ('iliahialo'e) (Gagne and Cuddihy 1990). On the islands of Maui and Hawaii, these plants are known to produce extensive root systems into underlying lava tube fissures (F. Howarth, Bishop Museum, pers. comm. 1994), and probably also formed the primary nutrient source for the cave ecosystem at Koloa.

The first thousand years of Polynesian habitation in Hawaii would have had little significant impact on the cave system at Koloa. With a rapid population increase after 1400 A.D. however, the expansion of agriculture from more favorable, mesic valleys and the use of fire to clear plant communities probably led to heavy modification of most leeward areas of the Hawaiian Islands (Kirch 1982; Cuddihy and Stone 1990). A perennial stream flowing directly through the Koloa area allowed Polynesians to develop extensive irrigated fields of *Colocasia esculenta* (taro), *Ipomoea batatas* (sweet potato) and *Saccharum officinarum* (sugar cane), as well as dry land cultivation of sweet potato (Handy and Handy 1972; Hammatt and Tomonari 1978; Hammatt *et al.* 1988; Sinoto 1975).

Field irrigation of traditional crops continued in the Koloa area until 1835 when the first sugar plantation in the Hawaiian Islands was established at Koloa. Thereafter most of the land with suitable top soil was used for large-scale sugar cane cultivation (Hammatt *et al.* 1988). This activity included the mechanical clearing of stones and boulders, and consolidation of smaller field plots. The surface modifications associated with these past agricultural activities would have greatly reduced underground root biomass through the destruction of perennial vegetation (Howarth 1981; Miller and Burgett 1995), and also increased sediment deposition in subterranean fissures (Hammatt *et al.* 1988; Asquith, *in litt.* 1994).

Thus, with the exception of a narrow 0.5 kilometer-wide (0.25 mile-wide) strip of particularly rocky land immediately along the coast, most of the potential habitat for both the spider and the amphipod was heavily modified prior to the 1950's. On interior lands, small areas of exposed pahoehoe lava, rock outcrops and the entrances to lava tubes were generally unsuited for cultivation of crops and were left less disturbed. In areas improved for pasture use, however, some cave entrances also were filled or covered (Hammatt *et al.* 1988; Howarth, *in litt.* 1977). The remaining pockets of uncultivated land around collapsed lava tubes and exposed lava probably served as refugia for the cave animals. Significantly, all the known populations of both the spider and amphipod are in areas never used for plantation sugar cane cultivation.

In the last 5 decades, the Koloa area has changed from an agriculture-based economy to one increasingly dependent on tourism (Kauai Office of Economic Development, *in litt.* 1994). Approximately 75 percent of the original habitat available for the cave animals is now designated as ''urban'' or ''urban residential'' (County of Kauai, *in litt.* 1994), and the population of the Koloa area is expected to double by the year 2015 (KPMG 1993). This population growth has lead to rapid growth in the number of homes, condominiums, and resort hotels originally centered along the coastal strip. In recent years, interior lands supporting both populations of the spider and all but one population of the amphipod have been rezoned from agriculture to urban usage and are undergoing development. With the construction of roads, residences, and golf courses, the subterranean habitat is degraded through the removal of perennial vegetation and its root systems, the collapse of lava tubes from heavy construction equipment, and increased siltation from grading and filling activities associated with landscaping and construction (Hammatt *et al.* 1988; Asquith, *in litt.* 1994). The population of the Kauai cave wolf spider in Koloa Cave #2 is directly threatened by a proposed bypass road that could destroy the most important section of the cave. The disjunct population of the amphipod in the limestone cave is threatened from a quarrying operation occurring directly above and adjacent to the cave system (Howarth, *in litt.* 1977, 1978; 43 FR 26084). Thus, most of the land that potentially harbored these animals has been highly modified and an estimated 75 percent of the area has probably been rendered uninhabitable. The remaining habitat, harboring virtually all known populations of the spider and amphipod, is being degraded by current land use or threatened with degradation by proposed development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor, but unrestricted collecting for scientific purposes or excessive visits by individuals interested in exploring the lava tubes could result from increased publicity and would seriously impact both of the cave species (Howarth 1982; Culver 1992). Such disturbances by human visitation could also promote greater invasion by alien arthropod species.

C. *Disease and predation.* Several alien spiders including the brown violin spider (*Loxosceles rufescens*), *Dysdera crocata* (NCN) and the spitting spider (*Scytodes longipes*) have invaded the cave habitats in Koloa (Gerstch 1973; F. Howarth, pers comm. 1994; Asquith, *in litt.* 1994), and prey on immature stages of the Kauai cave wolf spider and probably all life stages of the cave amphipod (Howarth 1981). The American cockroach (*Periplaneta americana*) is abundant in some of the caves (Bousfield and Howarth 1976; Asquith, *in litt.* 1994) and probably opportunistically preys on immature cave amphipods (F. Howarth, pers. comm. 1994) and competes for space at amphipod food sources (Asquith, *in litt.* 1994). In the Limestone Quarry Cave, the introduced amphipod *Tallitroides topitotum* (NCN) may compete with the Kauai cave amphipod for detritus food (Bousfield and Howarth 1976; F. Howarth, pers. comm. 1994).

In addition, as noted in the Background section, the Kauai cave wolf spider is a predator. Although predation has not been observed in the field, this spider probably feeds primarily on the Kauai cave amphipod, and to a lesser extent on alien species of arthropods that periodically enter the cave system.

D. *The inadequacy of existing regulatory mechanisms.* The Kauai cave wolf spider and the Kauai cave amphipod are found entirely on private land. One population of the cave spider is provided some protection by a County ordinance requiring the landowner to conserve two Kiahuna lava tubes known to harbor the spider (County of Kauai Development Plan 1979). However, existing conservation measures under this ordinance protect only the cave entrances and not the surface footprint or adjacent mesocaverns which the animals require for habitat. Evaluation of one of the caves conserved under this ordinance showed significant degradation from surface disturbance over the dark zone (Asquith, *in litt.* 1994). In addition, this ordinance protects only a single population of each of the cave animals, which is not sufficient to ensure the continued existence of these species because all other populations are threatened and even the Kiahuna caves populations are susceptible to accidental events such as chemical spills.

There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these animals. However, Federal listing would automatically invoke listing under Hawaii State law. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter.'' Listing of these two arthropod species will therefore also invoke protection available under State law (see Available Conservation Measures).

E. *Other natural or manmade factors affecting its continued existence.* Insecticide use, coincident with the change to urban land development, poses a serious threat to the cave animals (Howarth and Stone 1993). While plantation-scale sugar cane cultivation in the Koloa area involves seasonal use of herbicides, intensive usage is generally limited to spot applications of glyphosate (Roundup), and generally no insecticides are used (Murdoch and Green 1989). Furthermore, in recent years most sugar cane cultivation in the area has been restricted to land with deep soil, which is generally unsuitable habitat for the cave animals.

Golf courses exist or are proposed for the land directly above or adjacent to both populations of the spider and all but one population of the amphipod. At least 30 different pesticides are used on golf courses in Hawaii, including insecticides to control pests of turf grass (Murdoch and Mitchell 1975; Murdoch and Green 1989). Most golf courses in Hawaii apply the insecticide Chlorpyrifos at the rate of 1 pound active ingredients per acre, one to three times per year, but rates and frequency of applications are sometimes much higher (Murdoch and Green 1989; Brennan *et al.* 1992). Predators such as the Kauai cave wolf spider are generally more susceptible to insecticides than the target pests (Croft 1990). Even if not killed outright, the sublethal effects of both insecticides and herbicides on the cave animals could include reduced fecundity, reduced life span, slowed development rate, and impaired mobility and feeding efficiency (Messing and Croft 1990).

In addition to the use of pesticides on golf courses, pesticide usage on residential property also poses a threat. It is estimated that residential lots use more pesticides per unit area than either sugar cane cultivation or golf courses, and that 90 percent of this use involves insecticides. Much of this insecticide is applied directly to the ground for termite control (Hawaii Office of State Planning 1992). With an estimated increase of 4,000 houses in the Koloa area by the year 2015 (KPMG 1993), residential pesticides are considered a serious threat to the cave animals.

These cave animals are particularly susceptible to pesticides because of their tendency to seek water sources (Howarth 1983a; Asquith, *in litt*. 1994). Even if pesticides are not used directly above a lava tube, pesticides that leach into adjacent subterranean caverns with water from runoff or irrigation are serious threats because the animals may be attracted to the water and come into contact with the chemicals.

Biological control agents (living organisms used to control pests) are usually perceived as preferable to the use of chemicals because they represent less of a threat to human health and generally do not stimulate resistance in pests. Some of these organisms, however, attack species other than their intended targets and have caused or contributed to the decline and extinction of several Hawaiian insects (Gagne and Howarth 1985; Howarth 1983b; Howarth 1991). The nematode *Steinernema carpocapsae* (NCN) is marketed for use against turf pests and has been petitioned for use on golf courses in Hawaii (Faust 1992). This nematode can infect at least 250 species of arthropods (Poinar 1979) including arachnids such as the Kauai cave wolf spider (Poinar and Thomas 1985). Biological control has been emphasized for golf course management in the Koloa area (Townscape 1993) and is a potential threat to the cave spider and amphipod.

The small number of populations of the Kauai cave wolf spider (two populations) and Kauai cave amphipod (four populations) increases the risk of extinction from naturally occurring events such as storms or earthquakes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in proposing this rule. Based on this evaluation, the preferred action is to list the Kauai cave wolf spider and Kauai cave amphipod as endangered. These two species are threatened by one or more of the following: Habitat degradation and/or predation by alien arthropods; competition for space and nutrients with alien arthropods; habitat loss from agriculture, residential and resort development, and quarrying activities; human impacts from pesticide use and biological pest control. In addition, the small number of populations and limited distribution make these species particularly vulnerable to extinction from accidental or naturally occurring events. Because the two species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, listing both these species as endangered is proposed.

Critical habitat is not being proposed for the two species included in this rule, for reasons discussed in the ''Critical Habitat'' section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Kauai cave species. Service regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service believes critical habitat is not prudent for the Kauai cave wolf spider and the Kauai cave amphipod because both of the above described situations exist. The entrances to the lava tube caves that provide habitat for these two species are at ground level appearing as holes on the surface, and normally would likely be overlooked by the casual observer. However, these caves are fragile ecosystems and the publishing of a critical habitat map, as required, would attract attention to the area, and could promote vandalism and cause habitat destruction through increased human activity. The same location information would have to be actively sought through additional inquiries if based only on the listing notices.

Many specialized cave species are exceedingly vulnerable to direct human disturbance (Howarth 1983) and human visitation to caves is a widespread problem (Culver 1992). Even if the human activity does not have harmful intent, it would likely result in increased foot traffic, introduction of foreign material, heat and drying from bodies and lamps, and destruction of tree roots and other cave animal food sources all of which would be detrimental to these species (Miura and Howarth 1978). The Kauai cave wolf spider completely lacks eyes and is restricted to dark zones of the caves and adjoining fissures. The spider is active only during wetter times of the year or in smaller cave areas that exhibit saturated atmosphere. This lack of sight and specific life requirement needs make the cave spider especially vulnerable to human intrusion from trampling, casual collection, and modifying the cave environment through changes in air circulation and humidity. The Kauai cave amphipod is generally associated with rotting sticks, branches and miscellaneous plant material, as well as other decomposing organic debris. When disturbed, this species typically moves slowly away rather than jumping like other amphipods. This behavioral pattern and the association with debris occurring on the cave floor make this species especially vulnerable to human activity such as foot traffic. Moreover, since the amphipod is thought to be an important food source for the Kauai cave wolf spider, adverse impacts to the amphipod could also affect the cave spider. For these reasons, the risks posed by human activity to these species that could result from publication of critical habitat maps is significant.

In addition, designation of critical habitat would not be beneficial to these species. Critical habitat designation provides protection only on Federal lands or on private lands when there is

Federal involvement through authorization or funding of, or participation in, a project or activity. The two Kauai cave animals are known to occur only on private land and there presently is no Federal nexus through permitting or funding activities. Therefore, designation would provide no benefit at the present time.

However, even if Federal involvement through permitting or funding occurs sometime in the future, critical habitat would not provide any added conservation benefit to these species. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally-listed species. The consequence of critical habitat designation is that Federal agencies must also ensure that their actions do not result in destruction or adverse modification of critical habitat. However, the prohibition on adverse modification would provide no benefit beyond that provided by the prohibition on jeopardy. The Kauai cave wolf spider has been found in only two lava tube systems and the Kauai cave amphipod in the same two systems and two other caves. If designated for these species, critical habitat would likely involve only occupied habitat because of the specific and unique life requirements of the two cave animals. Thus, because of these few locations of limited size, any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat would, therefore, afford no additional benefit.

In addition, in some cases, critical habitat may provide some benefits to a species by identifying areas important to a species conservation. However, in this case, this information can be disseminated through alternative means. All involved parties and landowners have been notified of the importance of the cave species habitat. The Service is also working with these landowners through the Partners for Wildlife program to fence the cave entrances to discourage human intrusion. Appropriate consultation and coordination with other Federal agencies, such as the Federal Highway Administration and the Department of Agriculture, will occur once the specific federally-supported activity that could affect the two cave species is proposed.

In summary, there would be substantial risks to these species by publicizing maps of the locations of their cave habitats. Weighed against the fact that there would be no additional benefit to the species, the Service finds that designation of critical habitat for the two cave animals is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All known populations of the Kauai cave wolf spider and the Kauai cave amphipod are located on private property. Federally supported activities that could affect these taxa and their habitat in the future include, but are not limited to, the following—construction of roads and highways; construction of public or private facilities; construction of diversions for flood control; and the release of biological control agents.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these); import or export; transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of the policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport, involving no commercial activity, of dead specimens of these taxa that were collected prior to the publication in the **Federal Register** of the final regulation adding these taxa to the list of endangered species; and

(2) Landscaping that does not include filling or grading the area above or adjacent to the surface footprint of the caves.

Potential activities involving these taxa that the Service believes will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of these taxa for private possession or deposition in an institutional collection;

(2) The use of chemical insecticides that results in killing or injuring these taxa;

(3) The unauthorized release of biological control agents that attack any life stage of these taxa; and

(4) Habitat modification that results in actually killing or injuring these taxa by significantly impairing essential life sustaining requirements such as breeding, feeding and shelter. Such

habitat modification may include but may not be limited to: Removal or destruction of perennial vegetation within or adjacent to the surface footprint of the caves; construction, clearing, grading, digging, or filling within or adjacent to the surface footprint of the caves; blasting for construction in proximity to the caves; and alteration of the natural drainage of surface and subsurface water flow into the caves.

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's endangered species act states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter...'' (HRS, Sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State regulations prohibit the removal, destruction, or damage of animals found on State lands. However, the regulations are difficult to enforce because of limited personnel. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)), cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, Sect. 195AD–4 and 5).

Questions regarding specific activities should be directed to the Ecosystem Manager of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.C. 11th Avenue, Portland, Oregon, 97232–4181 (503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be based on the best and most accurate information possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

(5) Additional information regarding whether or not designating critical habitat would be prudent.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Ecoregion Manager (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** above).

Author: The author of this proposed rule is Dr. Adam Asquith, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, part 17, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows—

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section § 17.11(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
ARACHNIDS							
*	*	*	*	*	*	*	
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Amphipod, Kauai cave	*Spelaeorchestia koloana.*	U.S.A. (HI)	NA	E	....	....	....
*	*	*	*	*	*	*	

Dated: November 3, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–31839 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Listing of all Sturgeon and Paddlefish Species and Their Products in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its Implementation by the United States; Public Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: With this notice the U.S. Fish and Wildlife Service (Service) announces 2 public meetings to discuss the implementation of the listing of all sturgeon and paddlefish, and their products in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This listing decision was reached at the Tenth Conference of the CITES Parties (COP10) which was held in June of 1997. The listing becomes effective April 1, 1998. With the listing of all sturgeon and paddlefish species in CITES, this fishery product is now covered by the Service's regulations regarding import or export of wildlife. The focus of the meeting will be on aspects of importation of caviar and other sturgeon products into the United States.

DATES: A public meeting in New York City, NY will be held on January 17, 1998, from 8:00 am–12:00 noon, and a public meeting in Los Angeles, CA will be held on January 27, 1998, from 8:00 am–12:00 noon.

ADDRESSES: The public meeting in New York City will be held at St. John's University, Bent Hall Seminar Room, 8000 Utopia Parkway, Jamaica, NY 11439. The public meeting in Los Angeles will be held at The Westin (Los Angeles Airport) Hotel, 5400 West Century Boulevard, Los Angeles, CA 90045. Please note that the rooms for these meetings are accessible to the handicapped.

FOR FURTHER INFORMATION CONTACT: Dr. Rosemarie Gnam, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2095, fax (703) 358–2298.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the Convention. Currently, 143 countries, including the United States, are CITES Parties.

The Service is the lead agency for the implementation of CITES. As such, we are responsible for implementing recent decisions from the Tenth Conference of the Parties (COP10) which was held this past June in Zimbabwe. Among the decisions made at COP10, was to include all unlisted species of sturgeon and paddlefish in Appendix II of CITES. This listing becomes effective April 1, 1998 (see 62 FR 44627).

The order, Acipenseriformes, are a primitive group of approximately 27 species of fish, whose biological attributes make them vulnerable to intensive fishing pressure or other agents of elevated adult mortality. Although females produce large quantities of eggs, juvenile mortality is high; sturgeons are generally long-lived and slow to mature (reaching sexual maturity at 6–25 years); and depend on large rivers to spawn. Sturgeons are fished for meat and caviar, with caviar being the most valuable product and in highest demand in international trade. Many species of sturgeons, the primary source of commercial caviar, have experienced severe population declines worldwide because of both habitat destruction and excessive take for international trade. Some are at serious risk of extinction.

Sturgeons of the Caspian Sea produce what is claimed to be the highest quality caviar and are the source of more than 90% of the world caviar trade. Russia, Kazakhstan, Azerbaijan, Turkmenistan, and Iran now supply most of the caviar from the Caspian Sea. Since the mid-1970's very marked declines in the populations of all six of the Caspian Sea's sturgeon species have been noted, especially Beluga (*Huso huso*), Russian (*Acipenser gueldenstaedtii*), and stellate (*A. stellatus*) sturgeons. Five of the six species of Caspian Sea sturgeons are considered endangered by IUCN (the World Conservation Union). The problem has become exacerbated in recent years due to deteriorating fishery management and enforcement capabilities in the region, resulting in significant levels of poaching and illegal trade. The total present take is believed to far exceed sustainable levels.

In an effort to curtail the trade in illegally obtained [poached] caviar, and to ensure sustainable use and management of wild sturgeon, particularly those of the Caspian Sea, sturgeon were considered for listing in CITES. These concerns led to the development of the CITES listing proposal by Germany to include all presently unlisted species of sturgeons in Appendix II. CITES could provide a regulatory mechanism for import and export that could curtail the illegal caviar trade and reduce threat to the wild populations. The United States, both as a sturgeon range state and major importer of Caspian Sea caviar, agreed to co-sponsor the CITES listing proposal with Germany.

At COP10 held in Zimbabwe, this past June, the proposal to include all unlisted sturgeon species in CITES was adopted by consensus. Prior to COP10, Short nosed sturgeon (*A. brevirostrum*) and Baltic sturgeon (*A. sturio*) were listed in CITES Appendix I and Atlantic sturgeon (*A. oxyrhynchus*) and American paddlefish (*Polydon spathula*) were listed in CITES Appendix II. Five of the newly listed species were listed in Appendix II because of their population status and trade levels: Beluga, Russian, stellate, Siberian (*A. baerii*), and ship or spiny (*A. nudiventris*) sturgeons. All other species of sturgeons not already listed in CITES before COP10 were included in Appendix II because of the similarity of appearance of their caviar to that of the Caspian Sea species. This includes the white sturgeon (*A. transmontanus*) from North America. The end result is that all sturgeon and paddlefish species worldwide, are now covered under the provisions of CITES.

The listing of sturgeon will provide a regulatory mechanism for the import and export of sturgeon and their products, thereby curtailing the illegal caviar trade and detriment to the wild populations, notably those of the Caspian Sea. It will ensure sustainable use and management of wild sturgeon stocks.

With the listing of all sturgeon and paddlefish species in CITES at COP10, this fishery product is now covered by the Service's regulations regarding import or export of wildlife. All sturgeon species, their parts and products, including meat and caviar, will have to be declared to the Service upon import or export, as well as meet applicable permit, port and licensing requirements.

These public meetings will provide an opportunity for the Service to meet with importers and exporters of sturgeon and their products, notably caviar, Customs brokers and other interested persons on the CITES listing. The Service will explain the wildlife regulations which will now affect sturgeon imports and exports, and how these requirements will be implemented. Given that the United States is the largest importer of caviar from the Caspian Sea region, focus of the meeting will primarily be on imports of caviar products, notably from Russia, Kazakhstan, Azerbaijan, Turkmenistan, and others.

The public meetings will be held in New York City and Los Angeles because of the high volume of caviar imports through these ports, and the corresponding concentration of affected members of the general public.

The Service has prepared a fact sheet, ''Sturgeons and CITES'' to help answer questions on the listing and its implementation. It is available from the Office of Management Authority upon request. Written requests should be sent to: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 700, Arlington VA 22203.

Author: This notice was prepared by Dr. Rosemarie Gnam, Office of Management Authority, U.S. Fish and Wildlife Service.

Dated: November 25, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31926 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors Meeting

TIME: 9:00 a.m.–12:00 noon.
PLACE: ADF Headquarters.
DATE: Wednesday, 10 December 1997.
STATUS: Open.

Agenda

Wednesday, 10 December 1997

9:00 a.m. Chairman's Report
10:00 a.m. President's Report
11:30 a.m. Executive Session (Closed)
12:00 noon Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
President.

[FR Doc. 97–32101 Filed 12–3–97; 3:58 pm]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–088–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Virus-Serum-Toxin Act and regulations.

DATES: Comments on this notice must be received by February 3, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–088–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–088–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Virus-Serum-Toxin Act and regulations, contact Dr. David Espeseth, Director, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245 or e-mail despeseth@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Agency Support Service Specialist, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0013.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the importation, preparation, sale, or shipment of worthless, contaminated, dangerous or harmful veterinary biological products. This program is conducted under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*) and the regulations issued thereunder (9 CFR, chapter I, subchapter E). Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, e.g., antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term ''biological products'' includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

To accomplish this mission, APHIS issues licenses to qualified establishments that produce biological products and issues permits to importers of such products. We also enforce requirements concerning production, packaging, labeling, and shipping of these products, and set standards for the testing of these products.

Fulfilling this responsibility requires us to employ a number of information-gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms, and field study summaries.

The information we obtain with the help of these documents enables us to ensure that biological products used in the United States are pure, safe, potent, and effective. If we did not collect this information, we would be unable to carry out this mission.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.2063 hours per response.

Respondents: U.S. importers of biological products, shippers, operators of establishments that produce or test biological products or that engage in product research and development.

Estimated number of respondents: 114.

Estimated number of responses per respondent: 298.73.

Estimated annual number of responses: 34,056.

Estimated total annual burden on respondents: 75,138 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of November.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31903 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–052–2]

Monsanto Co. and Dekalb Genetics Corp.; Availability of Determination of Nonregulated Status for Genetically Engineered Corn Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a corn line developed by Monsanto Company and Dekalb Genetics Corporation designated as GA21, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company and Dekalb Genetics Corporation in their petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: November 18, 1997.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and any written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ray Dobert, Biotechnology Evaluation, BSS, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–099–01p) from Monsanto Company of St. Louis, MO, and Dekalb Genetics Corporation of Mystic, CT (Monsanto/Dekalb), seeking a determination that a corn line designated as GA21, which has been genetically engineered for tolerance to the herbicide glyphosate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On August 13, 1997, APHIS published a notice in the **Federal Register** (62 FR 43311–43312, Docket No. 97–052–1) announcing that the Monsanto/Dekalb petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the subject corn line posed a plant pest risk. The comments were to have been received by APHIS on or before October 14, 1997. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Corn line GA21 has been genetically engineered to contain a modified corn 5-enolpyruvylshikimate-3-phosphate-synthase (EPSPS) gene, which, when expressed in the plant, confers tolerance to the herbicide glyphosate. The modified corn EPSPS gene was introduced into the parental inbred corn line AT by the particle acceleration method, and its expression is controlled in part by the rice actin promoter and intron and the NOS 3′ termination sequence derived from the plant pathogen *Agrobacterium tumefaciens*.

Corn line GA21 has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of the subject corn line conducted under APHIS notifications since 1994 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto/Dekalb, and a review of other scientific data and field tests of the subject corn line, APHIS has determined that corn line GA21: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not harm other organisms, including agriculturally beneficial organisms and threatened and endangered species; and (5) should not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that corn line GA21 and any progeny derived from hybrid crosses with nontransformed corn varieties will be just as safe to grow as traditionally bred corn lines that are not regulated under 7 CFR part 340.

The effect of this determination is that the Monsanto/Dekalb corn line designated as GA21 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340.

Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of corn line GA21 or its progeny. However, importation of the subject corn line or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the Monsanto/Dekalb corn line GA21 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 28th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31901 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: December 15, 1997.

PLACE: National Archives at College Park, MD.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review of Assassination Records
2. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–32016 Filed 12–3–97; 10:50 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to and deletions from Procurement List

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Marine Corps Air Station, Yuma, Arizona)
NPA: Arizona Industries for the Blind, Phoenix, Arizona

Office and Miscellaneous Supplies
(Requirements for the Marine Corps Air Station, Beaufort, North Carolina)
NPA: Lions Club Industries, Inc., Durham, North Carolina

Services

Janitorial/Custodial
Federal Building
648 Mission
Ketchikan, Alaska
NPA: REACH, Inc., Juneau, Alaska

Janitorial/Custodial
for the following Grand Rapids, Michigan locations:
VA Outpatient Clinic, 3019 Coit Avenue
Special Mental Health Clinic, 3000 Monroe Street
NPA: Hope Network, Grand Rapids, Michigan

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodity and services have been proposed for deletion from the Procurement List:

Commodity

Remover, Floor Polish
7930–00–045–6923

Services

Janitorial/Grounds Maintenance
U.S. Army Reserve Center
6401 Imperial Drive
Waco, Texas
Janitorial/Grounds Maintenance
U.S. Army Reserve Center
200 North New Road
Waco, Texas

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–31939 Filed 12–4–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 26 and October 17, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 50555 and 54041) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Character Lunch Bags
M.R. 402
Case, Radio Set
5895–00–889–3856

Services

Administrative Services
General Services Administration, PBS
Sacramento Field Office
650 Capitol Mall
Sacramento, California

Operation of Customer Supply Center
Hickam Air Force Base, Hawaii.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–31940 Filed 12–4–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Secrecy/License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,476 hours.

Number of Respondents: 2,187.

Avg. Hours Per Response: The PTO estimates the burden hours required by the public to gather, prepare, and submit the various petitions will range anywhere from 30 minutes (.5) to four hours, depending on the situation.

Needs and Uses: Existing patent laws and rules place limitations on the disclosure of inventions when such disclosure is determined by appropriate officials not to be in the national interest. A patent application must also be granted a license by the office to file an application for a patent from a foreign country. Regulations permit applicants to petition to have secrecy orders rescinded or modified or to reconsider a request for a license to submit a patent application abroad. This collection includes that information needed by PTO to review and decide such requests.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C., 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C., 20503.

Dated: December 1, 1997.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31880 Filed 12–4–97; 8:45 am]

BILLING CODE: 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Statutory Invention Registration.

Form Number(s): Agency—PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Revision of a currently approved collection.

Burden: 34 hours.

Number of Respondents: 85.

Avg. Hours Per Response: 24 minutes.

Needs and Uses: When a person invents something solely for personal use, the inventor can register a ''statutory invention'' and have it published. Once published, it cannot be claimed by another person. The information provided by an inventor is used to determine if a statutory invention request should be granted.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: December 1, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31881 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than the last day of December 1997; interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings:	
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/96–11/30/97
Brazil: Silicomanganese, A–351–824	12/1/96–11/30/97
Canada: Elemental Sulphur, A–122–047	12/1/96–11/30/97
Germany: Animal Glue and Inedible Gelatin, A–428–062	12/1/96–11/30/97
India: Stainless Steel Wire Rod, A–533–808	12/1/96–11/30/97
Japan: Business Telephone Systems & Subassemblies Thereof, A–588–809	12/1/96–11/30/97
Japan: Cellular Mobile Telephones and Subassemblies, A–588–405	12/1/96–11/30/97
Japan: Drafting Machines and Parts Thereof, A–588–811	12/1/96–11/30/97
Japan: Polychloroprene Rubber, A–588–046	12/1/96–11/30/97
Japan: P.C. Steel Wire Strand, A–588–068	12/1/96–11/30/97
Mexico: Porcelain-on-Steel Cooking Ware, A–201–504	12/1/96–11/30/97
New Zealand: Low-Fuming Brazing Copper Wire & Rod, A–614–502	12/1/96–11/30/97
South Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/96–11/30/97
Sweden: Welded Hollow Products, A–401–603	12/1/96–11/30/97
Taiwan: Business Telephone Systems & Subassemblies Thereof, A–583–806	12/1/96–11/30/97
Taiwan: Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/96–11/30/97
Taiwan: Porcelain-On-Steel Cooking Ware, A–583–508	12/1/96–11/30/97
Taiwan: Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/96–11/30/97
The People's Republic of China: Cased Pencils, A–570–827	12/1/96–11/30/97
The People's Republic of China: Porcelain-on-Steel Cooking Ware, A–570–506	12/1/96–11/30/97
The People's Republic of China: Silicomanganese, A–570–828	12/1/96–11/30/97
Countervailing Duty Proceedings:	
Mexico: Porcelain-on-Steel Cooking Ware, C–201–505	1/1/96–12/31/96

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1996)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their request to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 1997. If the Department does not receive, by the last day of December 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 28, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–31936 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of Cold-Rolled Carbon Steel Flat Products from the Netherlands. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0405 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in this case, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the final results until March 8, 1998, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See memorandum to Robert S. La Russa from Joseph A. Spetrini regarding the extension of case deadline, dated November xx, 1997.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: November 24, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–31937 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Steel Wire Rope from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke antidumping duty order in part.

SUMMARY: In response to requests by the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, and by six manufacturers/exporters of subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 15 manufacturers/exporters of the subject merchandise. The period of review is March 1, 1996, through February 28, 1997.

We have preliminarily found that, for certain exporters, sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Also, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Chung Woo Rope Co., Ltd., Ssang Yong Cable Manufacturing Co., Ltd. and Sung Jin Company, based on three years of sales at not less than NV. *See Intent to Revoke* section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, at (202) 482–2613, or John Brinkmann, at (202) 482–5288; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 353 (1997).

Case History

On March 26, 1993, the Department of Commerce (Department) published in the **Federal Register** an antidumping duty order on steel wire rope from the Republic of Korea. *See* 58 FR 16397. On March 7, 1997, the Department published a notice providing an opportunity to request an administrative review of this antidumping duty order for the period March 1, 1996, through February 28, 1997. *See* 62 FR 10521. On March 31, 1997, the petitioner requested an administrative review of 15 manufacturers/exporters of steel wire rope from Korea. On March 31, 1997, each of the following companies also requested that the Department conduct an administrative review of their sales: Chung Woo Rope Co., Ltd. (Chung Woo), Chun Kee Steel Wire Rope Co., Ltd. (Chun Kee), Kumho Wire Rope Manufacturing Co., Ltd. (Kumho), Manho Rope Manufacturing Co., Ltd. (Manho), Ssang Yong Cable Manufacturing Co., Ltd. (Ssang Yong) and Sun Jin Company (Sung Jin). In addition, Chung Woo, Kumho, Ssang Yong and Sung Jin each requested that the Department revoke the antidumping duty order with respect to their merchandise (*see Intent to Revoke* section of the notice below). We published a notice of initiation of this administrative review on April 24, 1997. *See* 62 FR 19988.

On April 2, 1997, the Department revoked the antidumping duty order on steel wire rope from the Republic of Korea with respect to Manho and Chun Kee, effective for entries of subject merchandise entered or withdrawn from warehouse on or after March 1, 1996 (*see Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 17171 (April 9, 1997) (''Steel Wire Rope Third Review Final'')). Because the current review covers shipments of merchandise from the Republic of Korea during the period March 1, 1996 through February 28, 1997, on May 7, 1997, the Department terminated the review with respect to Manho and Chun Kee. (*See Steel Wire Rope from the Republic of Korea: Notice of Termination In Part of Antidumping Duty Administrative Review,* 62 FR 26776 (May 15, 1997)).

On April 28, 1997, we issued an antidumping questionnaire to the 13 remaining respondents. The Department received responses from Chung Woo, Kumho, Sung Jin and Ssang Yong in July 1997. The Department issued supplemental questionnaires to these companies on August 11, 1997. Responses to these questionnaires were received on August 25, 1997.

Chung Woo, Kumho, Ssang Yong and Sung Jin each requested revocation of the order with respect to their merchandise. The petitioner, on August 21, 1997, also requested verification of the responses of Chung Woo, Kumho, Ssang Yong and Sung Jin on grounds that each company had requested revocation of the order. Accordingly, the Department scheduled a verification of each company's response pursuant to section 782(i) of the Act. On September 2, 1997, Kumho submitted a letter requesting that the Department postpone the scheduled verification of its responses. According to Kumho, the company entered bankruptcy proceedings on August 20, 1997, and therefore was not able to participate in the verification during the scheduled time in September 1997. Subsequently, on October 10, 1997, Kumho submitted a letter withdrawing its request for revocation of the antidumping duty order. In that letter, Kumho stated that due to bankruptcy proceedings, it was impossible for the company to participate in a verification. Kumho also included in its submission certain documentation supporting its claim that the company is in bankruptcy. Due to this unusual circumstance, Kumho requested that the verification be cancelled on the grounds that its withdrawal of the request for revocation made verification unnecessary.

We would not have verified Kumho's responses in this review if Kumho had not requested revocation of the order with respect to its merchandise. The Department verified Kumho's responses in the preceding 1995/96 administrative review. In addition, the reason the petitioner gave for its request for verification of Kumho's responses was the company's request for revocation. Furthermore, the documentation Kumho provided to the Department sufficiently establishes its claim that the company is in bankruptcy. Therefore, on grounds that Kumho has withdrawn its request for revocation, we canceled the verification of the company. For the preliminary results, we are calculating a dumping margin based on Kumho's home market and U.S. sales databases submitted on July 9, 1997.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Non-Responding Companies

For two respondents, Jinyang Wire Rope Inc. (Jinyang) and Yeonsin Metal (Yeonsin), while we have confirmed that the questionnaires were delivered to the companies, we did not receive responses to our questionnaire. Accordingly, we are assigning to these companies a margin based on adverse facts available. *See Use of Facts Available* section of the notice below.

For four other respondents, Boo Kook Corporation (Boo Kook), Dong-Il Steel Manufacturing Co., Ltd. (Dong-Il), Hanboo Wire Rope (Hanboo) and Seo Jin Wire Rope (Seo Jin), the questionnaires were undelivered and returned to the Department. Thereafter, we received information from the U.S. Embassy in Seoul, South Korea, that two of these companies, Hanboo and Seo Jin, were closed. In accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning to these companies the ''All Others'' rate from the less-than-fair-value (LTFV) investigation, which is 1.51 percent. *See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong: Final Results of Antidumping Duty Administrative Review,* 59 FR 13926 (March 24, 1994).

With respect to Boo Kook and Dong-Il, the U.S. Embassy informed us of their new addresses. Subsequently on July 7, 1997, we sent the questionnaires to these two companies at their new addresses. While we have confirmed that the questionnaires were delivered to both companies, we did not receive responses to our questionnaire.

Accordingly, we are assigning these two companies a margin based on adverse facts available. *See Use of Facts Available* section of this notice below.

Non-Shippers

Two companies, Myung Jin Co., Ltd. and TSK Korea Co., Ltd. notified us that they did not have shipments of subject merchandise during the period of review (POR), and we have confirmed this with the United States Customs Service.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Boo Kook, Dong-Il, Jinyang, Yeon Sin, and Sungsan Special Steel Processing, Inc. (Sungsan). With respect to Boo Kook, Dong-Il, Jinyang, and Yeon Sin, we find that these firms have not provided ''information that has been requested by the administering authority'' because they did not respond to our antidumping questionnaire. Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire and, thus, by not acting to the best of their ability.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996) (where the Department rejected the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the previous three administrative reviews of this proceeding, we have used the highest rate from any prior segment of the proceeding, 1.51 percent, as best information or facts available. In our final results of the 1995/96 administrative review, however, we stated that this rate may no longer have the desired effect of inducing cooperation of potential respondents. *See* SAA at 868. Therefore, we stated that we would collect information bearing on this issue to permit us to make a determination whether the 1.51 percent rate is sufficiently adverse to effectuate the purpose of the facts available rule and, if necessary, adjust the rate accordingly. *See Steel Wire Rope Third Review Final*, 62 FR 17171, 17176. For purposes of these preliminary results, we continue to use 1.51 percent as adverse facts available. However, we are reconsidering the appropriateness of this rate as an adverse facts available rate and intend to adjust this rate for the final results, if necessary. To this end, we invite interested parties in this proceeding to submit comments or information concerning this issue. In particular, we invite interested parties to supply specific data that the Department could consider if its chooses to establish an adverse facts available rate that is more appropriate for uncooperative respondents. Moreover, we invite interested parties to comment on the methods and sources by which the Department could satisfy its statutory requirement to corroborate from independent sources any proposed adverse facts available rate.

With respect to Sungsan, we find the use of facts available is appropriate. Sungsan submitted a letter in response to our questionnaire on June 23, 1997. In the letter, Sungsan stated that the company does not produce steel wire rope. However, the company further stated that it purchased steel wire rope from other companies in Korea and did export a small quantity of the merchandise to the United States during the POR. Subsequently, on November 4, 1997, the Department sent a letter to Sungsan requesting additional information concerning the company's shipment of subject merchandise to the United States during the POR. Specifically, we requested Sungsan to identify the suppliers from which the company purchased the subject merchandise that was shipped to the United States during the POR and to confirm that the suppliers are not affiliated with Sungsan. Additionally, we requested that Sungsan clarify whether each of the suppliers had knowledge or reason to know that the products it sold to Sungsan were destined for the United States at the time of sale.

On November 14, 1997, Sungsan submitted its response to the Department's request for additional information. According to Sungsan, the supplier from which the company purchased the subject merchandise that it shipped to the United States during the POR is not affiliated with Sungsan. Furthermore, Sungsan stated that the supplier did not have knowledge that the merchandise it sold to Sungsan was destined for the United States at the time of sale. Based on this information, we conclude that Sungsan's sale to the United States during the POR is covered by this review and response to our questionnaire was required. Because Sungsan did not provide a full response to our questionnaire, we find that the application of a facts available rate is appropriate for Sungsan. However, in this case, the Department failed to notify Sungsan in a timely manner of the deficiencies in its response to our questionnaire. Accordingly, as facts available, we are assigning the respondent the ''All Others'' rate from the LTFV investigation, 1.51 percent, which has been used in prior segments of this proceeding as facts available.

Verification

As provided in section 782(i) of the Act, we verified information provided by Chung Woo, Sung Jin and Ssang Yong. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Export Price

For sales to the United States, the Department used export price (EP) as defined in section 772(a) of the Act for each of the respondents, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We made company-specific adjustments as follows:

Chung Woo

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees, export license fees, and container taxes, in accordance with section 772(c)(2)(A) of the Act.

The merchandise involved in certain U.S. and home market sales reported by Chung Woo was produced by unaffiliated suppliers. We included these sales by Chung Woo in our analysis because we determined that the suppliers did not know at the time of sale that the subject merchandise was to be exported to the United States. We compared these U.S. sales to the appropriate home market sales of merchandise produced by the same suppliers and sold by Chung Woo.

Kumho

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees, container taxes, and container freight station expenses, in accordance with section 772(c)(2)(A) of the Act.

The merchandise involved in certain U.S. and home market sales reported by Kumho was produced by unaffiliated suppliers. We included these sales by Kumho in our analysis because we determined that the suppliers did not know at the time of sale that the subject merchandise was to be exported to the United States. We compared these U.S. sales to the appropriate home market sales of merchandise produced by the same suppliers and sold by Kumho.

Ssang Yong

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance and containerization expenses, in accordance with section 772(c)(2)(A) of the Act.

Sung Jin

We calculated EP based on packed, delivered to Korean port prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight and brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

Consistent with our practice in the previous review, we did not make any duty drawback adjustments claimed by Chung Woo, Kumho, or Ssang Yong because they were unable to demonstrate a connection between payment of import duties and receipt of duty drawback on exports of steel wire rope, and because they did not demonstrate that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product (*see Steel Wire Rope From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part,* 61 FR 64058, 64059 (December 3, 1996)). Sung Jin did not claim any duty drawback adjustments for its sales to the United States.

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because each company had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value (NV) on the prices at which the foreign like product was first sold for consumption in the exporting country.

For all respondents, pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical or similar merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We increased home market price by the amount of U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by the amount of home market packing costs in accordance with section 773(a)(6)(B) of the Act.

We made company-specific adjustments as follows:

Chung Woo

We calculated NV based on ex-factory or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. bank charges, and U.S. credit expenses.

Kumho

We calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. bank charges, U.S. credit expenses and export recommendation fees.

Ssang Yong

We calculated NV based on f.o.b. or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S.

postage fees, U.S. letter of credit fees, U.S. bank charges, and U.S. credit expenses. We also made adjustments, where applicable, for differences in the physical characteristics of merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

While Ssang Yong made sales of merchandise produced by unaffiliated suppliers in the home market, it did not sell in the United States merchandise produced by unaffiliated suppliers. Accordingly, we have excluded those home market sales of merchandise produced by unaffiliated suppliers from our analysis.

Sung Jin

We calculated NV based on ex-factory or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses, and added U.S. credit expenses.

For all companies, prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. No other adjustments were claimed or allowed.

Intent To Revoke

Chung Woo, Ssang Yong and Sung Jin requested, pursuant to 19 CFR 353.25(b), revocation of the order with respect to their sales of the subject merchandise and submitted the certification required by 19 CFR 353.25(b)(1).[1] In addition, in accordance with 19 CFR 353.25(a)(2)(iii), these companies have agreed in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that these companies, subsequent to revocation, sold merchandise at less than NV.

Based on the preliminary results in this review and the final results of the two preceding reviews (*see Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 55965 (October 30, 1996), and *Steel Wire Rope Third Review Final*), Chung Woo, Ssang Yong and Sung Jin have preliminarily demonstrated three consecutive years of sales at not less than NV.

[1] As discussed above in the *Case History* section of the notice, Kumho withdrew its request for revocation of the order on October 10, 1997. Accordingly, we do not intend to revoke the order with respect to merchandise produced and exported by Kumho in this review.

Given the results of the two preceding reviews, if the final results of this review demonstrate that Chung Woo, Ssang Yong and Sung Jin sold the merchandise at not less than NV, and if we determine that it is not likely that these companies will sell the subject merchandise at less than NV in the future, we intend to revoke the order with respect to merchandise produced and exported by Chung Woo, Ssang Yong and Sung Jin.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve in effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period March 1, 1996, through February 28, 1997:

Manufacturer/exporter	Margin (percent)
Boo Kook Corporation	*1.51
Chung Woo Rope Co., Ltd.	0.00
Dong-Il Steel Manufacturing Co., Ltd.	*1.51
Hanboo Wire Rope, Inc.	1.51
Jinyang Wire Rope, Inc.	*1.51
Kumho Wire Rope Mfg. Co., Ltd.	0.04
Myung Jin Co.	[1] 1.51
Seo Jin Rope	1.51
Ssang Yong Cable Manufacturing Co., Ltd.	0.02
Sung Jin Company	0.00
Sungsan Special Steel Processing	1.51
TSK Korea Co., Ltd.	([2])
Yeonsin Metal	*1.51

*Adverse Facts Available Rate.

[1] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments subject to this review. The firm has no individual rate from any segment of this proceeding.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with each argument: (1) a statement of the issues, and (2) a brief summary of the arguments. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Chung Woo, Kumho and Ssang Yong, for duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For Sung Jin, we do not have the information to calculate an estimated entered value. Accordingly, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of subject merchandise sold during the POR. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is zero or *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 1.51 percent, the ''all others'' rate established in the LTFV investigation (58 FR 16397, March 26, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–31938 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Conditional Approvals, Findings Documents, Responses to Comments, and Records of Decision

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of Conditional Approval of Coastal Nonpoint Pollution Control Programs and Availability of Findings Documents, Responses to Comments, and Records of Decision for Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico and the U.S. Virgin Islands.

SUMMARY: Notice is hereby given of the conditional approval of the Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the Findings Documents, Responses to Comments, and Records of Decision for Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico and the U.S. Virgin Islands. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995.

NOAA and EPA have approved, with conditions, the coastal nonpoint programs submitted by Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands.

NOAA and EPA have prepared a Findings Document for each 6217 program submitted for approval. The Findings Documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint program. Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact prepared for the coastal nonpoint programs submitted by Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands were made available for public comment in the **Federal Register.** Public comments were received and responses prepared on the programs submitted by Mississippi, New Hampshire, New Jersey, New York, and Florida. No public comments were received on the programs submitted by Puerto Rico and the U.S. Virgin Islands.

In accordance with the National Environmental Policy Act (NEPA), NOAA has also prepared a Record of Decision on each program. The requirements of 40 CFR Parts 1500–1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of a Record of Decision. Specifically, 40 CFR section 1505.2 requires an agency to prepare a concise public record of decision at the time of its decision on the action proposed in an environmental impact statement. The Record of Decision shall: (1) state what the decision was; (2) identify all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of state and territory coastal nonpoint programs. The PEIS forms the basis for the environmental assessments NOAA has prepared for each state and territorial coastal nonpoint program submitted to NOAA and EPA for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a ''framework for decision'' on individual state and territorial coastal nonpoint programs, and no actual decision was made following its publication, NOAA has prepared a EPA Record of Decision on each individual state and territorial program submitted for review.

Copies of the Findings Documents, Responses to Comments, and Records of Decision may be obtained upon request from: Joseph A. Uravitch, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155, x195.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 1, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

[FR Doc. 97–31835 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Settlement Agreement on the R/V Columbus Iselin Grounding Between the United States on Behalf of the National Oceanic and Atmospheric Administration (NOAA) and the University of Miami

AGENCY: The U.S. Department of Justice of behalf of NOAA, Department of Commerce.

ACTION: Notice of settlement between the United States, on behalf of NOAA acting as the natural resource trustee, and the University of Miami.

SUMMARY: The United States, on behalf of NOAA, and the University of Miami (collectively referred to as the ''Parties'') enter into this Settlement Agreement (''Agreement'') to settle civil claims for damages for injury to Sanctuary resources, civil penalties, response costs, and forfeiture arising from the August 10 to 12, 1994, grounding of the R/V COLUMBUS ISELIN (''ISELIN'') in the Looe Key National Marine Sanctuary, now part of the Florida Keys National Marine Sanctuary. This settlement is entered into by the Parties pursuant to section 312 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 *et seq.*

Proposed Action

Notice is hereby given that on November 22, 1997 a settlement has been entered into between the Parties to resolve claims against the University of Miami and the R/V COLUMBUS ISELIN for destruction or loss of, or injury to, Sanctuary resources pursuant to section 312 of the NMSA, as amended, as a result of the August 10 to 12, 1994, grounding of the R/V COLUMBUS ISELIN in the Looe Key National Marine Sanctuary. The Agreement provides for cash payments to NOAA for implementation of structural and biological restoration of the grounding site, compensatory restoration, and long term monitoring, and to reimburse NOAA for damage assessment costs and emergency response costs incurred by NOAA.

A. Cash Payments

(1) The University of Miami shall pay to NOAA, two million and nine hundred thousand dollars ($2,900,000.00). This sum will pay for the implementation of restoration, monitoring, damage assessment costs, compensatory restoration for interim losses of sanctuary resources, permitting and environmental compliance costs, as a result of the ISELIN grounding. (2) The amount identified in A. (1) above is in addition to payment already received by NOAA from the University of Miami in the amounts of: (a) Two hundred thousand dollars ($200,000) in civil penalties; (b) one hundred and forty six thousand, forty seven dollars and sixty cents ($146,047.60); and one hundred and fourteen thousand, ninety nine dollars and seventy-seven cents ($114,099.77) for response and damage assessment costs; and (c) six hundred thousand dollars ($600,000.00) for restoration planning.

B. Use of Funds

(1) Restoration of Natural Resources. Funds received by NOAA identified in A.(1) above will be used for (a) structural and biological restoration of coral reef injured at the grounding site, (b) biological monitoring, (c) off-site compensatory restoration, and (d) project management and oversight. Restoration activities at the grounding site will include: (i) Stabilizing the underlying physical structure of the coral reef habitat; (ii) re-creating the physical structure of the coral reef habitat; and, (iii) enhancing the rate of recovery of the biological community through the transplantation of coral, sponges, and sea fans. Biological monitoring will be used to evaluate the effectiveness of the restoration at the site and design any mid-course corrections to those restoration measures. Off-site compensatory restoration projects will be designed to enhance the long-term health of the coral reefs. The projects will include field and lab-based methods for enhancing the recovery rates of coral and other benthic invertebrates through the transplantation and culture of corals and benethic invertebrates. Projects also will be designed to minimize the risk of future major vessel groundings in the vicinity of coral reef habitats.

(2) Restoration of Cultural Resources. Artifacts which were dislodged by the vessel during the grounding and subsequent rubble and ship debris removal activities have been conserved by NOAA. The parties agree that NOAA shall be the permanent custodian and conservator of the cultural resources. Funds received from the University will reimburse NOAA for costs incurred to conserve the artifacts as well as to ensure long-term curation.

(3) Reimbursement of Costs Incurred by the Government. Funds identified in A.(2) above will be used to reimburse NOAA for costs incurred for emergency response activities during the grounding, rubble and ship debris removal, and damage assessment costs.

Public Comment

NOAA will receive comments from the public on the settlement agreement for a period of thirty (30) days from the date of this publication. Comments on the settlement agreement should be addressed to Sharon Shutler, Office of General Counsel for Natural Resources, NOAA, 1315 East-West Highway, SSMC#3, Silver Spring, MD 20910–3282.

Effective Date of the Agreement.

The effective of the settlement agreement will be upon completion of the public comment period, notification to the University from NOAA that it has accepted the settlement agreement, and payment by the University to NOAA of $2.9 million. Payment from the University will be made within 15 days of receipt of such notice.

For Further Information Contact: Copies of the settlement agreement may be obtained from Harriet Sopher, Sanctuaries and Reserves Division, National Ocean Service, NOAA, SSMC#4, 11th floor, 1305 East-West Highway, Silver Spring, MD 20910; or Billy Causey, Marathon office of the Florida Keys National Marine Sanctuary, P.O. Box 500368, 5550 Overseas Highway, Main House, Marathon, FL 33050.

Dated: November 22, 1997.

Monica Medina,

General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

[FR Doc. 97–31854 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 434, 435 and 443 have been reduced for carryforward applied in 1997.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

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 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 1998 extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
433	20,400 dozen.
434	9,575 dozen.
435	25,638 dozen.
443	157,987 numbers.
448	61,200 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated September 11, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[Doc.97–31885 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed the Philippines of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

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 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,778,722 dozen.
331/631	5,760,064 dozen pairs.
333/334	278,639 dozen of which not more than 40,002 dozen shall be in Category 333.
335	181,366 dozen.
336	660,007 dozen.
338/339	2,205,492 dozen.
340/640	979,367 dozen.
341/641	883,755 dozen.
342/642	570,873 dozen.
345	170,005 dozen.
347/348	2,000,023 dozen.
350	150,499 dozen.
351/651	622,650 dozen.
352/652	2,445,309 dozen.
359–C/659–C [1]	845,963 kilograms.
431	170,585 dozen pairs.
433	3,359 dozen.
443	40,616 numbers.
445/446	27,742 dozen.
447	7,713 dozen.
633	36,784 dozen.
634	456,391 dozen.
635	347,263 dozen
636	1,720,018 dozen.
638/639	2,265,641 dozen.
643	878,616 numbers.
645/646	754,665 dozen.
647/648	1,206,794 dozen.
649	7,616,022 dozen.
650	107,717 dozen.
659–H [2]	1,417,273 kilograms.
847	940,051 dozen.
Group II	
200–227, 300–326, 332, 359–O [3], 360, 361, 362, 363, 369–S [4], 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–611, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	189,927,480 square meters equivalent.
Sublevel in Group II	
361	1,901,046 numbers.
369–S	430,919 kilograms.
604	2,015,470 kilograms.
611	5,705,190 square meters.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 29, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed the Philippines of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31884 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and carryforward. In a previous notice, Category 369–S was reduced for swing to Categories 352/652. That reduction to Category 369–S is being cancelled and, instead, the limit for Category 840 is being reduced to account for the swing to Categories 352/652. As a result, the 1997 adjusted limit for Categories 352/652 remains unchanged.

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 61 FR 66263, published on December 17, 1996). Also see 61 FR 68246, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 8, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
314	5,198,149 square meters.
363	10,648,762 numbers.
369–D [2]	523,786 kilograms.
369–S [3]	889,698 kilograms.
840	148,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.
[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31882 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Progam.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Quitman Manufacturing Company (Quitman) has violated the requirements for participation in the Special Access Program, and has suspended Quitman from participation in the Program for the period December 1, 1997 through February 28, 1998.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Quitman during the period December 1, 1997 through February 28, 1998, and to prohibit entry by or on behalf of Quitman under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended the Quitman Manufacturing Company (Quitman) from participation in the Special Access Program for the period December 1, 1997 throgh February 28, 1998. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman during the period December 1, 1997 through February 28, 1998. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman manufactured from fabric exported from the United States during the period December 1, 1997 through February 28, 1998.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31883 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The system is identified as DHA 08, Health Affairs Survey Data Base.

DATES: This proposed action will be effective without further notice on January 5, 1998 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Washington Headquarters Services, Correspondence and Directives Directorate, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 21, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: November , 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 08

SYSTEM NAME:

Health Affairs Survey Data Base.

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Fort Detrick, MD 21702–5020.

Secondary locations: Survey distribution and response tracking files are located at the contractor facilities.

Survey result data files are located at the Office of the Assistant Secretary of Defense (Health Affairs), the Commanders and Intermediate Commanders of the Services Medical Treatment Facilities, the Surgeons General of the Military Services and Regional Managers of TRICARE facilities. The addresses for the secondary locations may be obtained from the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Annual Beneficiary Survey: Individuals eligible for health care under Title 10 (including active duty personnel, reserve personnel and their family members (dependents); retired Armed Forces personnel and their family members; surviving dependents of deceased active duty and retired personnel; and certain others including individuals and their dependents affiliated with the U.S. Coast Guard, U.S. Public Health Service and the National Oceanic and Atmospheric Administration.

Customer Satisfaction Survey: Active duty members of the Armed Forces, civilian personnel, and contract personnel serving as health care providers for individuals eligible for health care under Title 10 in military medical and dental treatment facilities and other treatment settings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Annual Beneficiary Survey: Name, rank, age, gender, race, address, sponsor Social Security Number and family member prefix code of individuals who will be surveyed; verification that a survey has been completed and returned by the individual; and response data from the completed surveys.

Customer Satisfaction Survey: Medical and dental care provider name, provider type, specialty and rank; medical treatment facility, and clinic where care was provided; and response data from the completed surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 138, Assistant Secretaries of Defense; 10 U.S.C. 1071 (NOTE); 10 U.S.C. Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

Annual Beneficiary Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about their individual health and health care (including access to care, health status, use of care, familiarity with programs and services available, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/ or forecast future health care needs or to implement plans in response to new health care requirements. Retaining beneficiary specifics allows for individual follow-up to improve response rates; scientific analysis of the data; and to validate survey responses by comparing responses to independent sources of data.

Customer Satisfaction Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about health care provided during specific visits (including access to care, quality of care, satisfaction with how care was delivered, satisfaction with the specific care provider, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/ or forecast future health care needs or to implement plans in response to new health care requirements. Specific care provider information is analyzed in order to alert medical authorities to potential problem areas where additional educational and corrective measures may be required in order to improve customer satisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records stored on magnetic and/or optical media.

RETRIEVABILITY:

Annual Beneficiary Survey:

1. Beneficiary Records: Records of beneficiaries who have or have not responded to the survey may be retrieved by patient identifiers such as name, address, sponsor Social Security Number, family member prefix code, and demographic categories such as age, sex, military rank group (officer/enlisted/civilian).

2. Response Records: Survey data is normally retrieved using demographic or other non-personalized elements.

3. The beneficiary and response records contain a randomly generated code which permits the identification of the survey respondent.

Customer Satisfaction Survey:

1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address, but the beneficiary identifying personal data is deleted 20 days after the mailing of the survey when follow-up correspondence (a reminder) is sent to all individuals being surveyed.

2. Response Records: Records of care providers who furnished care at a specific facility/clinic may be retrieved only by the facility/clinic commander by name, rank (if military), provider type (e.g., physician, clinical nurse, etc.) and specialty (e.g., pediatrician.

SAFEGUARDS:

Media at the primary location are stored in a locked cage in a controlled access area when not in use; when maintained at the contract location, media are stored in cabinets or storage areas when not being used and are placed in a locked container or space within a building that is secured after hours. Result data that includes patient or provider identification is maintained in locked storage cabinets or locked areas in buildings that are secured after hours. Only authorized personnel who have received Privacy Act training are permitted access to information in the system.

Specific instructions are provided MTF commanders on the safeguards required in handling and maintaining Customer Satisfaction Survey information.

RETENTION AND DISPOSAL:

Hard copy surveys are destroyed after the information contained in survey responses is entered into a computer system.

Annual Beneficiary Survey: Data files with beneficiary specifics and results will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

Customer Satisfaction Survey: Data files with results and provider specifics will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs)/Program Review and Evaluation, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records and for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources include Services medical and dental treatment facilities and facilities contracted by DoD to perform medical care for Military members, former members and dependents. Survey information is provided by the individual patient or a parent or guardian of the individual patient. Demographic information that may be related to the patient is provided by the Defense Enrollment Eligibility Reporting System (DEERS), the Ambulatory Data System (ADS), and the Composite Health Care System (CHCS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–31866 Filed 12–4–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed Rio Salado Environmental Restoration, Salt River and Indian Bend Wash, Cities of Phoenix and Tempe, Maricopa County, AZ

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers has prepared a Draft Environmental Impact Statement and a Feasibility Report for the Proposed Rio Salado Environmental Restoration which will restore native type habitat along a five mile stretch of the Salt River in downtown Phoenix, and along lower Indian Bend Wash, and along the Salt River upstream and downstream of Tempe Town Lake in the City of Tempe.

The proposed project will restore 550 acres in the Phoenix reach and 150 acres in Tempe. In the Phoenix Reach, a 200 foot wide incised low flow channel will be constructed in the river bottom to carry storm flows of less than the ten year event. The low flow channel will contain four pools connected by a perennial stream which will stretch for 2.5 miles, as well as 51 acres of aquatic strand habitat. In addition to the low flow channel the project calls for the establishment of 58 acres of wetland marsh, 99 acres of cottonwood/willow riparian habitat, and 130 of mesquite upland on the benches, banks and overbanks of the river channel. Irrigation water for the habitat will be supplied from the shallow aquifer through six wells located on both banks of the river. The proposed project would

also include the construction of maintenance roads along the river channel, which would also serve as recreational trails. Three park areas are planned for construction on the overbanks of the channel to serve as public gateways to the river.

In the Tempe Reach the proposal is to supply water, from an existing well, to Indian Bend Wash at McKellips Road, allow the water to flow downstream to a point just above the confluence with the Salt River, where it will be piped by gravity flow to a location just above the upstream dam to Tempe Town Lake. The water will pond across the Salt River, and will be pumped out on the south bank, and piped downstream past the Town Lake, where it will be reintroduced to the Salt River. The habitat to be established in the Tempe reach consists of 50 acres of aquatic strand, 16 acres of wetland marsh, 20 acres of cottonwood/willow, and 30 acres of mesquite upland.

The proposed project is expected to have significant beneficial environmental impacts. Restoring native riparian and wetland vegetation to the Salt River is expected to benefit several native wildlife species and threatened and endangered species. No long-term adverse ecological or environmental health effects are expected due to the proposed environmental restoration. No significant impacts are expected to occur.

FOR FURTHER INFORMATION CONTACT: For further information on the Draft Feasability Report contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix AZ 85012–1936 at (602) 640–2003, and for information on the DEIS contact Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles CA 90053 at (213) 452–3860.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers has prepared a DEIS to assess the environmental effects associated with the proposed Rio Salado environmental restoration. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping: The Army Corps of Engineers conducted two scoping meetings prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. These meetings were held in the City of Tempe on June 10, 1996, and in the City of Phoenix on June 11, 1996.

Two public hearings to receive comments on the DEIS will be held in conjunction with the public meetings to present the feasibility report. The public hearings are to be held in the City of Tempe on January 7, 1998 from 7 to 9 p.m. at the City of Tempe Police Auditorium, 120 E. 5th Street, Tempe, AZ 85281, and in the City of Phoenix on January 8, 1998 from 7 to 9 p.m. at the Phoenix City Council Chambers, 200 W. Jefferson Street, Phoenix, AZ 85003. The location, date, and time of the public hearings will be announced in the local news media, and separate notice will also be sent to all parties on the project mailing list.

Individuals and agencies may present oral or written comments relevant to the DEIS by attending either of the two public hearings, or by mailing the information to Mr. Alex Watt at the address below prior to January 20, 1998. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft DEIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles CA 90053.

Availability of the Draft EIS: Copies of the DEIS are available for review at the following locations:

City of Phoenix, Planning Department, 200 W. Washington Street, 6th Floor, Phoenix, AZ.
City of Tempe, Rio Salado Project Office, 31 E. 5th Street, 2nd Floor, Tempe, AZ.
Phoenix Central Library, 1221 N. Central Ave., Phoenix, AZ.
Ocotillo Branch Library, 102 W. Southern, Phoenix, AZ.
Harmon Branch Library, 411 W. Yavapai St., Phoenix, AZ.
Arizona State University, Hayden, Library, Reference Department, Tempe, AZ.
University of Arizona, Main Library, Main Reference Department, 1510 E. University, Tucson, AZ.
Flood Control District of Maricopa County, 2801 West Durango, Phoenix, AZ.
U.S. Army Corps of Engineers, Planning Section C, 3636 N. Central Avenue, Suite 740, Phoenix, AZ.
U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 911 Wilshire Boulevard, 14th Floor, Los Angeles, CA.

For a copy of the DEIS or for further information, please contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix, AZ 85012–1936 at (602) 640–2003. Written comments on the DEIS can be sent to Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053 or Faxed to him at (213) 452–4204.

Dated: November 25, 1997.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–31942 Filed 12–4–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of Army

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Bolsa Chica Wetlands Restoration Project, Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of Intent.

SUMMARY: The Corps, the U.S. Fish and Wildlife Service (Service), and the California State Lands Commission (CSLC) propose to restore the Bolsa Chica Wetlands by dredging approximately 1.5 million cubic yards of material from the interior, and creating full and managed tidal areas through the construction of a new ocean inlet at the southeastern corner of the project site and interior culvert placement.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Ms. Ruth Bajza Villalobos, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

On behalf of a Federal/State Interagency Steering Committee, the Corps, the Service and the CSLC are proposing to restore the Bolsa Chica wetlands to enable the restoration of habitats offsetting the biological impacts of future port development and expansion at both the Ports of Los Angeles and Long Beach. The proposed project will restore wetland and aquatic functions at Bolsa Chica as oil extraction is phased out and contamination is removed. The Bolsa Chica Wetlands have been acquired through the use of funds provided by the Ports of Los Angeles and Long Beach, and title to the property is held by the California State Lands

Commission. The project goal is to retain existing fish and wildlife resources and, to the extent feasible, the enhancement thereof. Further, the ecosystem resulting from implementation of the plan should be naturalistic, biologically diverse, productive, and estuarine in nature. That is, it shall be predominately salt water influenced, but incorporate biologically beneficial freshwater influences. In addition, the acreage of waters and wetlands in the lowland should not be diminished. The proposed Concept Plan for restoration would consists of: (1) Acquisition of approximately 880 acres in the Bolsa Chica lowlands; (2) restoration of wetlands and habitat areas in Bolsa Chica Lowlands, including approximately 384 acres of full tidal and 220 acres of managed tidal; (3) monitoring activities to determine the condition of the restored habitats on a regular basis and the necessary operation, maintenance and management of the project feature and its associated physical features, both during and after construction of those physical features, and (4) necessary maintenance/management of the restored wetland. The Concept Plan involves the dredging of approximately 1.5 million cubic yards of material from the interior of the wetland, the construction of a new stabilized tidal inlet through the existing beach, and associated bridges as required to maintain traffic flows through the area.

2. Alternatives

A series of informal public workshops were held to solicit public input into the development of preliminary project alternatives. These preliminary alternatives conceptually include the ''No Action'' Scenario; water management measures; the Concept Plan, as described above; alternate scenarios for routing floodwaters from the existing Garden Grove-Wintersburg flood control channel through the project area; alternate locations for a new tidal inlet; and alternate ways to restore tidal influence to the wetland (such as culverts or a non-jettied inlet). These preliminary project alternatives, along with the proposed action and the No Action scenarios, will be screened down into a series of final alternatives. These final alternatives will be carried forward into detailed analyses pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, as amended) and the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, Sections 21000–21177).

3. Scoping Process

The Corps, Service and CSLC, on behalf of all 8 Project Steering Committee agencies, are preparing a joint Environmental Impact Statement/Report (EIS/R) to address potential impacts associated with implementing their respective discretionary actions associated with the proposed project. The Corps and the Service are the Lead Federal Agencies for compliance with NEPA for the project, and the CSLC is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft EIS/R (DEIS/R) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/R will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/R (FEIS/R) will address the comments received on the DEIS/R during public review, and will be furnished to all who commented on the DEIS/R, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps and the Service from among the alternatives presented in the FEIS/R. The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment on the proposed action and alternatives will be held on December 11, 1997 at 7:00 P.M., in the Huntington Beach City Council Chambers, Huntington Beach, California.

Dated: November 26, 1997.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–31941 Filed 12–4–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy

ACTION: Notice of a System of Records

SUMMARY: An administrative oversight occurred when a listed change to a system of records notice published on November 20, 1997, at 62 FR 62020 was not incorporated into the notice, as amended. Therefore, the notice is being republished in its entirety.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

An administrative oversight occurred when a listed change to a system of records notice published on November 20, 1997, at 62 FR 62020 was not incorporated into the notice, as amended. Therefore, the notice is being republished in its entirety.

Dated: November 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01752–1

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims/offenders not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Family Advocacy Case Files:

(a) Victim's file consists of risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes about offender; risk focused assessment report DOMAIN III (alleged offender characteristics); Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files:

(a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); and E.O. 9397 (SSN).

PURPOSE(S):

To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries: To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

NOTE: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in 42 U.S.C. 290dd-2, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.

RETENTION AND DISPOSAL:

Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132–5100, where they are retained for 50 years and then destroyed.

Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters. U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120.

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves in the case files should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to access information from the Navy Central Registry about themselves shall address written inquiries for the Navy Central Registry to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120;

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Request should contain the full name and Social Security Number of the individual.

Individuals seeking to access records about themselves contained in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–31865 Filed 12–4–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, 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) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 1, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Research on Charter Schools and Student with Disabilities.

Frequency: On occasion.

Affected Public: Individuals or households; State, local or Tribal Gov't SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 832.

Burden Hours: 1,632.

Abstract: The success to date of the charter schools movement has resulted from the opportunities the schools provide for site-based management free of many regulations, and for instructional and other innovations, parent choice, specialized services to specific populations, and public accountability. This data collection will allow the Department of Education to assemble information on the reasons parents are enrolling students with disabilities in charter schools, the services provided by the schools, the schools' outcome goals, the student outcome measures the schools employ, and the students' success in the schools. Subjects will include educators, parents, and students.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: A Study of Charter Schools.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 4,611.

Burden Hours: 2,365.

Abstract: This four-year study of charter schools will examine the impact of charter schools on student achievement, on education reform, and on an array of other issues. The study includes an annual survey of the universe of charter schools and intensive site visits at a sample of charter schools.

[FR Doc. 97–31848 Filed 12–4–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–610–000]

Northern States Power Company (Minnesota Company); Notice of Filing

December 1, 1997.

Take notice that on November 10, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Continental Energy Services, L.L.C.

NSP requests that the Commission accept both the agreements effective October 15, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 10, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31853 Filed 12–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4680–000]

Starghill Alternative Energy Corporation; Notice of Issuance of Order

December 2, 1997.

Starghill Alternative Energy Corporation (Starghill) submitted for filing a rate schedule under which Starghill will engage in wholesale electric power and energy transactions as a marketer. Starghill also requested waiver of various Commission regulations. In particular, Starghill requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Starghill.

On November 24, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Starghill should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Starghill is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interest will be adversely affected by continued approval of Starghill's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 24, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31897 Filed 12–4–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00514; FRL–5758–6]

Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to the FIFRA, dated October 25, 1988. Public comment on the nominations is invited, as these comments will be used to assist the agency in selecting nominees to the Panel.

DATES: Comments should be postmarked no later than January 5, 1998.

ADDRESSES: By mail, submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305–5805.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 5.1/ 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, ''OPP–00514.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305-5369/7351; e-mail: dorsey.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Amendments to the FIFRA enacted November 28, 1975, include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by agency scientists.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued (dated October 2, 1996) in accordance with the requirements of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. appI). The qualifications of members as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No persons shall be ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy Administrator, before being formally appointed, is required to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications. The Agency is required to publish in the **Federal Register** the name, address, and professional affiliations of each nominee and to seek public comment on the nominees.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in March 1997, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill three vacancies occurring on the Panel. The Agency requested nomination of experts in the fields of pediatric medicine, environmental fate and transport, and human health risk assessment methods. In addition, nominees should have a general background in planning, conducting, or evaluating environmental toxicology, exposure, or epidemiology studies in animals and/or in humans (particularly children and infants). NIH responded by letter dated April 18, 1997, enclosing a list of 20 nominees; NSF responded by letter dated May 7, 1997, with a list of 8 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill three vacancies occurring during the calendar year, 1998.

Nominees for the Field of Pediatric Medicine

1. Cynthia Bearer, Assistant Professor, Department of Pediatrics, Rainbow Babies and Childrens Hospital, Case Western Reserve University, Cleveland, Ohio.

Expertise: Neonatology, biochemistry, pediatric environmental health.

Education: B.A. (Mathematics), Smith College, Northampton, MA, 1972; Ph.D. (Biochemistry), Case Western Reserve University, Cleveland, OH, 1977; M.D. (Pediatrics), Johns Hopkins University, Baltimore, MD, (1982).

Professional experience: Assistant in Pediatrics, Children's Hospital, Barnes Hospital, and Jewish Hospital, St. Louis, Missouri, 1987-1989; Director, Division of Pediatric Environmental Health, Children's Hospital Oakland Research Institute, Oakland, CA; Director, Divisions of Neonatology and Pediatric Environmental Health, Tod Children's Hospital, Youngstown, Ohio, 1992-1994; Assistant Professor, Department of Pediatrics, Division of Neonatology, Rainbow Babies and Childrens Hospital, Cleveland, Ohio, 1994 to present.

Concurrent positions: Assistant Professor, Department of Neurosciences, Case Western Reserve University, 1994 to present.

Research: Pulmonary hypertension and maternal smoking, fetal alcohol syndrome, apoptosis and NCAM expression in reaggregating cultures.

2. Archie Bleyer, Head, Division of Pediatrics, M.D. Anderson Cancer Center, Houston, Texas.

Expertise: Pediatric medicine.

Education: B.S. (Life Sciences) Massachusetts Institute of Technology, Cambridge, MA, 1965; M.D., University of Rochester, Rochester, NY, 1969; Postgraduate training in Pediatrics, University of Washington and Children's Hospital, Seattle, 1971; Pediatric Oncology, National Cancer Institute, Bethesda, MD, 1974; Hematology/ Oncology, University of

Washington and Children's Hospital, Seattle, 1975.

Professional experience: Staff Physician, Children's Hospital and Medical Center, Seattle, WA, 1975-1990; University of Texas, M.D. Anderson Cancer Center, Houston, TX, 1990 to present.

Concurrent positions: Professor of Pediatrics and Head, Division of Hematology/Oncology, University of Texas School of Medicine at Houston, 1990 to present.

Research: Pediatric oncology.

3. Phillip Landrigan, M.D., Chair, Department of Community Medicine and Director of Environmental and Occupational Medicine, Mount Sinai Medical Center, New York, New York.

Expertise: Toxicology, Epidemiology, Pediatrics.

Education: B.A., Boston College, Chestnut Hill, MA, 1959; M.D., Harvard, Cambridge, MA, 1967; M.S. (Occupational Medicine), University of London, England, 1977.

Professional experience: Instructor, Pediatrics, Harvard Medical School, Cambridge, MA, 1969-1970; Chief, Environmental Hazards Activity, Centers for Disease Control, Atlanta, GA, 1970-1979; Visiting Fellow, London School of Hygiene and Tropical Medicine, London, England, 1976-1977; Assistant Clinical Professor of Environmental Health, University of Cincinnati, Cincinnati, OH, 1981-1986; Mount Sinai School of Medicine, New York, NY, 1985 to present.

Research: Heavy metal poisoning, pesticide intoxication, solvent neuropathy, chronic lung disease, chemically induced renal disease, and occupational carcinogenesis.

4. Gary Meyers, Professor of Neurology and Pediatrics, University of Rochester School of Medicine and Dentistry, Rochester, NY.

Expertise: Pediatrics, neurology, toxicology.

Education: M.D., University of Kansas School of Medicine, Lawrence, KS 1966.

Professional experience: Professor of Neurology and Pediatrics, University of Alabama School of Medicine and Dentistry, Tuscaloosa, AL, 1978-1990; Professor of Neurology and Pediatrics, University of Rochester School of Medicine and Dentistry, Rochester, NY, 1990 to present.

Research: Health hazards of methylmercury, mental retardation, education of the handicapped.

5. Herbert Needleman, Lead Research Group, Bellefield Towers, University of Pittsburgh, Pittsburgh, PA.

Expertise: Pediatrics, child psychiatry, toxicology.

Education: B.S., Muhlenberg College, Allentown, PA; M.D., University of Pennsylvania, Philadelphia, PA.

Professional experience: Assistant Professor of Psychiatry, Temple University, Philadelphia, PA, 1971-1980; Associate Professor of Psychiatry, Harvard Medical School, Cambridge, MA, 1980-1981, Professor of Child Psychiatry and Pediatrics, University of Pittsburgh School of Medicine, Pittsburgh, PA, 1981 to present.

Research: lead poisoning, effects of lead during pregnancy on infant development, learning disabilities.

6. Leslie Robison, Director, Division of Pediatric Epidemiology and Clinical Research, University of Minnesota, Minneapolis, Minnesota.

Expertise: Epidemiology.

Education: B.S. (Public Health), University of California, Los Angeles, CA, 1976; MPH and Ph.D. (Public Health and Epidemiology), University of Minnesota, Minneapolis, MN, 1979 and 1982, respectively.

Professional experience: Joined Division of Epidemiology, University of Minnesota School of Public Health in 1982; served in a number of teaching and administrative positions through the present.

Research: Investigations relating to cause and development of cancer in children, with a particular interest in childhood leukemia. Also involved in evaluation of childhood cancer survivors to identify treatment-related late effects.

7. Mary S. Wolff, Professor of Community Medicine, Division of Environmental and Occupational Medicine, Mount Sinai Medical Center, New York, New York.

Expertise: Pediatrics.

Education: B.A. (Chemistry), Wellesley College, Wellesley, MA, 1965; M. Phil (Organic Chemistry) and Ph.D. (Organic Chemistry), Yale University, New Haven, CN, 1969 and 1970, respectively.

Professional experience: Involved in numerous studies of persons exposed both occupationally and through the ambient environment to organochlorine pesticides and polychlorinated biphenyls.

Research: Interests center around application of biological markers to determine exposures of humans to chemicals that occur in the environment (air pollutants, lead, polycyclic aromatic hydrocarbons, solvents, pesticides, and halogenated hydrocarbons.) Currently focusing on breast cancer risks associated with environmental exposures and the genetic determinants of these risks, on genetic and environmental influences on reproductive development, and on dietary modulation of environmental exposures.

Nominees for the Field of Environmental Fate and Transport:

1. May Berenbaum, Department of Entomology, University of Illinois, Urbana, IL.

Expertise: Plant biology, entomology.

Education: B.S. (Biology) Yale University, New Haven, CT, 1974; Ph.D. (Ecology and Evolutionary Biology), Cornell University, Ithaca, NY, 1980.

Professional experience: Professor, Departments of Entomology and Plant Biology and Department of Ecology, Ethology, and Evolution, University of Illinois at Urbana-Champaign, IL, 1980 to present.

Research: Phototoxicity of plant secondary metabolites--insect and mammalian perspectives, plant-insect interactions.

2. Louis Guillette, Professor, Department of Zoology, University of Florida, Gainesville, FL.

Expertise: Reproductive biology, endocrinology.

Education: B.S. (Biology) New Mexico Highlands University, Las Vegas, NM, 1976; M.A. and Ph.D. (Biology), University of Colorado, Boulder, CO, 1979 and 1981, respectively.

Professional experience: Teaching positions at University of Northern Colorado, Greely, CO (1980); Wichita State University, Wichita, KS (1981-1985); University of Florida, Gainesville, FL, 1985 to present; Adjunct Professor, University of Otago, Dunedin, New Zealand (1994 to present); Director and Scientific Director of the Biotechnologies for the Ecological, Evolutionary, and Conservation Sciences (BEECS) Program and the BEECS Reproductive Analysis Laboratory, University of Florida (1992-1994).

Research: Evolution of viviparity in the different vertebrate classes; structure, function, and evolution of vertebrate oviduct, extraembryonic membranes and placentae; environmental contaminants as hormones; environmental contaminant influences on reproductive activity and embryonic development; biology of the corpus luteum; hormonal control of birth and gestation length; stress and reproduction; reproductive biology of high elevation vertebrates; comparative reproductive anatomy and physiology; and comparative endocrinology.

3. Ernest Hodgson, Head, Department of Toxicology, North Carolina State University, Raleigh, NC.

Expertise: Toxicology.

Education: B.S. (Zoology and Physiology), University of Durham, England, 1955; Ph.D. (Entomology and Biochemistry), Oregon State University, Corvallis, OR, 1960.

Professional experience: Assistant, Salmon migration studies, Ministry of Agriculture and Fisheries, England, 1954-1955; teaching and administrative positions, North Carolina State University, Raleigh, NC, 1961 to present.

Research: Biochemical toxicology, particularly the mammalian FAD-containing microsomal monooxygenase, the cytochrome P450 dependent monooxygenase system, resistance to toxicants, and comparative aspects of xenobiotic metabolism.

4. Fumio Matsumura, Chair, Department of Environmental Toxicology, University of California, Davis, CA.

Expertise: Toxicology.

Education: B.A. (Toxicology), University of Tokyo, Japan, 1957; M.S. (Toxicology), University of Alberta, Edmonton, Canada, 1959; Ph.D. (Toxicology of Pesticides and Related Chemicals), University of Western Ontario, London, Canada, 1961.

Professional experience: Professor, Entomology, University of Wisconsin, Madison, WI, 1964-1977; Professor of Entomology, Director of Pesticide Research Center, and Coordinator of Laboratory for Pesticide Biotechnology, Michigan State University, East Lansing, MI, 1977-1987; Professor, Departments of Entomology and Environmental Toxicology, Associate Director of Toxic Substances Program and Center for Ecological Health Research (EPA Supported), and Director of Center for Environmental Health Sciences (NIEHS supported), University of California, Davis, CA, 1987 to present.

Research: Biochemical toxicology of chlorinated organic pollutants.

5. Beth Mileson, Senior Scientist, International Life Sciences Institute, Washington, DC.

Expertise: Toxicology, air quality.

Education: B.A. (Biology), George Washington University, Washington, DC, 1981; M.S. (Biology/Zoology), George Washington University, 1984; Ph.D. (Toxicology), University of North Carolina, Chapel Hill, NC, 1989.

Professional experience: Research Associate, Duke University Medical Center for the Study of the Aging, Durham, NC, 1989-1991; Toxicologist, North Carolina Division of Air Quality, 1992-1996; Senior Scientist, ILSI Risk Science Institute, Washington, DC, 1996 to present.

Research: Common mechanisms of toxicity, methods for evaluation of peripheral nervous system acetylcholinesterase activity.

6. Arnold Schecter, Professor of Preventive Medicine, State University of New York Health Science Center, Syracuse, NY, and College of Medicine, Binghampton, NY. Also Visiting Scientist at National Institutes of Environmental Health Sciences, Research Triangle Park, NC.

Expertise: Chlorinated dioxins and related chemicals in human breast milk, environmental health.

Education: B.S. (Physiology/Neurophysiology), University of Chicago, Chicago, IL, 1957; M.D., Howard University Medical School, Washington, DC, 1962; MPH, Columbia University School of Public Health, New York, NY, 1976.

Professional experience: Clinical Associate Professor, New Jersey Medical School, 1975-1979; Commissioner of Health, Broome County, Binghampton, New York, 1979-1981; Professor, State University of New York, Health Science Center, Syracuse, and College of Medicine, Binghampton, New York, 1979 to present.

Research: Dioxins, Agent Orange, drug and alcohol dependence.

7. John J. Stegeman, Senior Scientist, Woods Hole Oceanographic Institution, Woods Hole, M.A. (background material unavailable).

8. Frederick vom Saal, Professor of Biology, University of Missouri, Columbia, MO.

Expertise: Neurobiology, sociobiology, biology of reproduction, behavioral ecology, pharmacology, endocrinology.

Education: B.A. (Psychobiology) New York University, Washington Square College, New York; M.S. and Ph.D. (Neurobiology), Rutgers University, New Brunswick, NJ, 1974 and 1976, respectively.

Professional experience: Biology teacher, Peace Corps, Somalia and Kenya, 1969-1970; Biology Teacher, Marymount International School, Paris, France, 1970-1972; Researcher, Institute of Reproductive Biology, University of Texas, Austin, TX, 1976-1979; Visiting Professor, Center for Human Reproduction, College of Physicians and Surgeons, Columbia University, New York, NY, 1990-1991; Professor, Biological Sciences, University of Missouri, Columbia, MO, 1979 to present.

Research: Long-term consequences of exposure during embryonic life of the brain and reproductive organs to natural hormones and man-made endocrine-disrupting chemicals.

9. Christopher Wilkinson, Technology Services Group, Inc., Washington, DC.

Expertise: Toxicology.

Education: B.S., University of Reading, England, 1961; Ph.D. (Entomology), University of California, Riverside, CA, 1961.

Professional experience: Associate Professor, Pest Infestation Lab, Agricultural Research Council, England, 1965-1966; Professor of Insect Toxicology, Cornell University, Ithaca, NY, 1978-1984; Managing Toxicologist, Versar, Inc., Springfield, VA, 1985-1992; Toxicologist, Technology Services Group, Inc., Washington. DC, 1993 to present.

Research: Structure-activity relationships and mode of action of synergists; biochemistry, comparative biochemistry of microsomal drug metabolism.

Nominees for the Field of Human Health Risk Assessment Methods

1. Ronald Atlas, Department of Biology, University of Louisville, Louisville, KY.

Expertise: Microbiology, genetics.

Education: B.S. (Biology), State University of New York at Stony Brook, 1968; M.S. (Microbiology) and Ph.D. (Microbiology), Rutgers the State University, New Brunswick, NJ, 1970 and 1972, respectively.

Professional experience: Research/Teaching Assistant and Fellow, Rutgers, New Brunswick, NJ, 1968-1972; Resident Research Associate, Jet Propulsion Laboratory, Pasadena, CA, 1972-1973; Professor of Biology, Associate Dean, and Acting Chairman, Department of Microbiology and Immunology, University of Louisville, Louisville, KY, 1973 to present.

Research: Oil pollution, interactions of petroleum and microorganisms.

2. Michael Bowers, Professor and Director, Blandy Experimental Farm, Orland E. White Arboretum, University of Virginia, Boyce, VA.

Expertise: Ecology, habitat/population modeling.

Education: B.S. (Zoology and Botany) and M.S. (Zoology), Brigham Young University, Provo, UT, 1978 and 1979, respectively; Ph.D. (Ecology and Evolutionary Biology), University of Arizona, Tuscon, AZ, 1984.

Professional experience: Research Professor, Division of Environmental Biology, University of California, Los Angeles,CA, 1984-1985; Professor and Researcher, Department of Environmental Sciences and Blandy Experimental Farm, University of Virginia, 1985 to present.

Research: Conservation ecology, environmental risk management.

3. Edward J. Calabrese, Professor of Toxicology and Director of Northeast

Regional Environmental Public Health Center, Amherst, MA.

Expertise: Human Health Risk Assessment Methods.

Education: B.A. and M.A. (Biology), State College, Bridgewater, MA, 1968 and 1972, respectively; Ph.D. (Physiology/Toxicology) and EdD (Science Education), University of Massachusetts, Amherst, MA, 1973 and 1974, respectively.

Professional experience: Environmental Research Director, Massachusetts Public Interest Group, 1973-1974; Assistant Professor, Department of Occupational and Environmental Medicine, and Assistant Director, Environmental Health Resource Center, University of Illinois, Urbana-Champaign, IL 1974-1976; Professor, Environmental Toxicology, and Director of Northeast Regional Environmental Public Health Center, Amherst, MA, 1976 to present.

Research: Air, soil, and water pollution.

4. Damstra Terri, International Programme on Chemical Safety, World Health Organization, Research Triangle Park, NC.

Expertise: Women's Health, Environmental Chemicals and Nervous System Toxicology.

Education: B.A. (Biology), Calvin College, Grand Rapids, MI, 1964; Ph.D. (Biology), University of Chicago, Chicago, IL, 1969.

Professional experience: Associate Professor in Biochemistry, University of North Carolina, Chapel Hill, NC, 1976-1996; Special Assistant to the Director, Center for Bioenvironmental Research, Tulane/Xavier Universities, New Orleans, LA, 1996-1997; Associate Director for International Programs, Associate Director for Science Coordination, Acting Deputy Director, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, 1981 to present.

Research: Pollutants in breast milk, hazardous wastes, environmental mutagens and carcinogens, and sustainable development.

5. Elaine Faustman, Department of Environmental Health, University of Washington, Seattle, WA.

Expertise: Animal Toxicology.

Education: B.A., Hope College, Holland MI, 1976; Ph.D. (Pharmacology/Toxicology), Michigan State University, Lansing, MI, 1981; Postdoctoral (Toxicology), University of Washington, Seattle, WA, 1981-1983.

Professional experience: Professor of Environmental Health, University of Washington, Seattle, WA, 1983 to present.

Research: Developmental toxicity of direct acting alkylating agents in rodent embryos, short-term tests for teratogens.

6. Tyrone Hayes, Assistant Professor, Department of Integrative Biology, University of California, Berkeley, CA.

Expertise: Reproductive Biology, Endocrinology.

Education: B.A. and M.A. (Biology), Harvard University, Cambridge, MA, 1988 and 1989, respectively; Ph.D. (Integrative Biology), University of California, Berkeley, CA, 1993.

Professional experience: Consultant, Biosystems, Tiburon, CA, 1990 to present; Adjunct Postdoctoral Fellow, National Institutes of Health, Bethesda, M.D., 1994; research and teaching positions, University of California Berkeley, CA, 1994 to present.

Research: The role of steroids in growth and development of amphibians.

7. Michael Gallo, Environmental and Occupational Health Science Institute, Piscataway, NJ.

Expertise: Human Health Risk Assessment Methods (additional background material unavailable).

8. Carol Litchfield, Associate Professor, Department of Biology, George Mason University, Fairfax, VA.

Expertise: Microbiology, bioremediation.

Education: B.S. and M.S. (Biology), University of Cincinnati, Cincinnati, OH, 1958 and 1960, respectively.

Professional experience: Professor, Rutgers - The State University of New Jersey, Marine Microbial Ecology Research Program and Center for Coastal and Environmental Studies, New Brunswick, NJ, 1971-1979; Supervisory Research Microbiologist, Aquatic Toxicology, Microbiological Fouling and Control, E.I. duPont de Nemours Co., Haskell Laboratory, Newark, DE, 1981-1986; Supervisory Research Microbiologist and Senior Scientific Consultant, environmental remediation consulting firms, 1986-1993, Associate Professor, George Mason University, Fairfax, VA, 1993 to present.

Research: Biodegradation, hazardous wastes.

9. Christopher Portier, Head, Toxicokinetics Faculty, National Institute of Environmental Health Sciences, Research Triangle Park, NC; Adjunct Professor of Biostatistics, University of North Carolina School of Public Health, Chapel Hill, NC.

Expertise: Human health risk assessment methods

Education: B.S. (Mathematics), Nicholls State University, Thibodaux, LA, 1977; M.S. and Ph.D. (Biostatistics), University of North Carolina, Chapel Hill, NC, 1979 and 1981, respectively.

Professional experience: Head, Risk Methodology Section, Division of Biometry and Risk Assessment, and Head, Toxicokinetics Faculty, National Institute of Environmental Health Sciences, Research Triangle Park, NC, 1979 to present.

Research: Risk assessment methodology.

10. Gary Sayler, Director, Center for Environmental Biotechnology, University of Tennessee, Knoxville, TN.

Expertise: Microbiology, bioremediation, molecular biology.

Education: B.S. (Bacteriology), North Dakota State University, Fargo, ND, 1971; Ph.D. (Bacteriology/Biochemistry), University of Idaho, Moscow, ID, 1974.

Professional experience: Researcher, National Institute of Environmental Health Sciences, Research Triangle Park, NC, 1980-1985; Research and teaching positions, University of Tennessee, Knoxville, TN, 1988 to present.

Research: Managing biodegradative microbial communities, molecular environmental diagnostic applications in hazardous waste bioremediation.

11. Ana Soto, Associate Professor, Anatomy and Cell Biology, Tufts University of Medicine, Boston, MA.

Expertise: Endocrinology.

Education: B.S. (Biology) Colegio Elizalde, Buenos Aires, Argentina, 1967; M.D., University of Buenos Aires, Argentina, 1970.

Professional experience: Instructor, Departments of Physiology and Biological Chemistry, University of Buenos Aires School of Sciences, Argentina, 1971-1973; Research Associate, Tufts Cancer Center, Boston, MA, 1973-1976; Fellow, Foundation de L'Industrie Farmaceutique, Hospital Debrousse, Lyon, France; Professor, Department of Anatomy and Cell Biology, Tufts University of Medicine, Boston, MA, 1977 to present.

Research: Breast cancer, effects of pesticides on human estrogen-sensitive cells.

12. Thomas Webster, Boston University School of Public Health, Department of Environmental Health, Boston, MA.

Expertise: Human health risk assessment. (Additional background material unavailable.)

List of Subjects

Environmental protection.

Dated: November 25, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 97–31919 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 17, 1997 Through November 21, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–L65292–ID Rating EO2, Caribou National Forest, Implementation, Federal Phosphate Leasing Proposal for the Manning Creek and Dairy Syncline Tracts, Caribou County, ID.

Summary: EPA expressed environmental objections about project impacts on water quality, including 303(d) listed waters. Specific mitigation measures need to be included in the Final EIS.

Final EISs

ERP No. F–AFS–L60103–AK, Swan Lake-Lake Tyee Intertie Project, Electrical Transmission Line and Associated Facilities Construction and Operation, Northwestern Portion of Revillagigedo Island from Upper Carroll Inlet to Behm Canal and the Northeastern Portion of Cleveland Peninsula from Spacious Bay to Bradfield Canal, Special-Use-Permit Issuance, Tongass.

Summary: EPA expressed environmental concerns with the methodologies used and conclusions drawn about cumulative effects within the project corridor.

Dated: December 2, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31916 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 24, 1997 Through November 28, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970457, Final EIS, FHW, NC, US–17/Wilmington Bypass Transportation Improvement Program, Updated Information, TIP R–2633C, Construction from I–40 to US 421, Funding, NPDES and US Coast Guard and COE Section 10 and 404 Permits, New Hanover County, NC, Due: January 5, 1998, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

EIS No. 970458, Final EIS, IBR, CA, American River Water Resources Investigation, Implementation, Placer, Suter, EL Dorado, Sacramento and San Joaquin Counties, CA, Due: January 5, 1998, Contact: Al Candlish (916) 978–5187.

EIS No. 970459, Draft EIS, FHW, CA, CA–58, Transportation Corridor, Route Adoption and Purchases Right-of-Way Acquisition Project, between CA–99 in the Bakersfield Metropolitan Area and Interstate 5 in Kern County, Funding and COE Section 404 Permit, Kern County, CA, Due: January 25, 1998, Contact: John R. Schultz (916) 498–5041.

EIS No. 970460, Final EIS, COE, CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA, Due: January 5, 1998, Contact: Peter Straub (415) 977–8443.

EIS No. 970461, Draft EIS, AFS, CA, Ansel Adams, John Muir, Dinkey Lakes and Monarch Wildernesses, Proposed New Management Direction, Amending the Land and Resource Management Plans for the Inyo, Sierra and Sequoia National Forests, Implementation, Inyo, Madera, Mono and Fresno Counties, CA, Due: March 6, 1998, Contact: Robert Hawkins (619) 873–2400.

EIS No. 970462, Final EIS, NOA, GA, State of Georgia Coastal Management Program, Comprehensive Coastal Land and Water Use Activities, Approval and Implementation, GA, Due: January 5, 1998, Contact: Joshua Lott (301) 713–3117.

EIS No. 970463, Draft EIS, BLM, AK, Northeast National Petroleum Reserve-Alaska (NPR–A), Integrate Activity Plan, Multiple-Use Management, for Land within the North Slope Borough, AK, Due: February 10, 1998, Contact: Gene Terland (907) 271–3369.

Dated: December 2, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31917 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5932–4]

Notice of Proposed NPDES General Permits for Discharges From Hydrostatic Testing of New and Existing Natural Gas Pipelines in Texas (TXG670000), Oklahoma (OKG670000) and New Mexico (NMG670000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permits.

SUMMARY: EPA Region 6 is proposing to issue general NPDES permits authorizing discharges resulting from the hydrostatic testing of new and existing natural gas pipelines in Texas, Oklahoma and New Mexico. These permits cover discharges resulting from the hydrostatic testing, as required by Department of Transportation regulations 49 CFR Part 192, Subpart J, or equivalent State rules, of new as well as existing pipelines for natural gas. As proposed, the permits have the following requirements for hydrostatic test water discharges from new natural gas pipelines: Limits on oil and grease, total suspended solids and pH, and a limit of no acute toxicity if the hydrostatic test fill water is obtained from a source other than the receiving water to which the hydrostatic test water is discharged. For hydrostatic test water discharges from existing natural gas pipelines, the permits have the same limits as for new pipelines (limits on oil and grease, total suspended solids, pH and, in some cases, no acute toxicity) as well as a limit on benzene.

DATES: Comments on these proposed permits must be submitted by February 3, 1998.

ADDRESSES: Comments on these proposed permits should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665-7516. Copies of the complete fact sheet and proposed permits may be obtained from Ms. Turner. The fact sheet and proposed permits can also be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Turner 24 hours advanced notice.

SUPPLEMENTARY INFORMATION:

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of facilities discharging waste waters resulting from the hydrostatic testing of new and existing natural gas pipelines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of these permits. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341).

Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) Meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permits proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, TSS and fecal coliform, CWA section 301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2) (A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

National guidelines establishing BPT, BCT and BAT standards have not been promulgated for discharges from the hydrostatic testing of pipelines. The BCT and BAT requirements for these discharges have, therefore, been established using best professional judgement, as required by CWA section 402(a)(1). The following limits are proposed:

Texas (TXG670000)	Daily maximum
Benzene[1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.0–9.0 Std. Units.	90 mg/l
Oklahoma (OKG670000)	**Daily maximum**
Benzene[1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.5–9.0 Std. Units.	45 mg/l
New Mexico (NMG67000)	**Daily maximum**
Benzene[1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.0–9.0 Std. Units.	90 mg/l

[1] Benzene limit applies to discharges from existing natural gas pipelines.

Requirements applicable for TXG670000, OKG670000 and NMG670000:

There shall be No Acute Toxicity as determined by requiring greater than 50% survival in 100% effluent using a 24 hour acute test. Sampling for the toxicity test shall be made on the fill water prior to being used in the hydrostatic test. This toxicity limit applies only to fill water taken from a source different from the receiving water to which it is discharged. This toxicity limit does not, however, apply to fill water whose source is a municipal drinking water supply.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permits contain limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the Railroad Commission of Texas for TXG670000, the Oklahoma Corporation Commission for OKG670000 and the New Mexico Environment Department for NMG670000.

B. Endangered Species Act

The proposed limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. Compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

Dated: November 25, 1997.

Oscar Ramirez, Jr.,

Deputy Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 97–31913 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 28, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0785.

Title: Changes to the Board of Directors of the National Exchange Carrier Association (NECA) and the Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

Form No.: FCC Form 457.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 5,000 respondents, 20,000 responses.

Estimated Time Per Response: 5 hours (avg).

Frequency of Response: Reporting requirements—on occasion, quarterly, semi-annually, and monthly.

Cost to Respondents: $7,580,500.

Total Annual Burden: 86,250 hours.

Needs and Uses: The Universal Service Worksheet, FCC Form 457, will be submitted by contributors to universal service. Contributors are asked to submit semi-annually information regarding their end-user telecommunications revenues. The FCC Form 457 will be used by the Administrator of the Universal Service Support Mechanisms to calculate individual contributions. Contributors will also be required to submit quarterly contributions to universal service. Contributors may also submit information in order to get credits against their contributions. Additionally, contributors may submit monthly credit information, but this provision has been adopted to ensure timely acknowledgement of services rendered.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31888 Filed 12–4–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 97–2527]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: December 1, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments on or before January 5, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–41.

Applicant: Louisiana Relay Administration Board, State of Louisiana.

File No: TRS–97–51.

Applicant: Rhode Island Division of Public Utilities and Carriers, State of Rhode Island.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31887 Filed 12–4–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday December 9, 1997, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Proposed Rule Amending Part 309—E–FOIA.

DISCUSSION AGENDA:

Memorandum and resolution re: The Corporation's 1998 Annual Budget.

Memorandum and resolution re: Proposed Amendments to Part 325 (Market Risk Capital Rules).

Memorandum re: 1997 Alternative Dispute Resolution Annual Report to the Board.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 2, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–32017 Filed 12–3–97; 10:50 am]

BILLING CODE 6714–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation for Labor-Management Committees FY 1998

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1998 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit and an optional video tape may be found in

Section H. A copy of the Labor Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1998, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under the other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area of company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 15, 1998, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee:

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identifications of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) an assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) an assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

The total FY 1998 appropriation for this program is $1.5 million, of which at least $750,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category. A maximum of $400,000 of the $1.5 million appropriation has been reserved for the limited continuation of FY96-funded grantees.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication that have been solicited by the Director of the Service.

FMCS reserves the right to retain up to an additional five percent of the FY98 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be extended or continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be extended or continued for a limited time at a 40 percent cash match ratio. The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing company/plant or single department public sector applicants;
—Up to $50,000 over 18 months for new company/plant committee or single department public sector applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and multi-departmental public sector committee applicants;
—Up to $100,000 per 18-month period for new area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY98 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 2, 1998. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Customer Grant Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Labor-Management Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY98 grant applicants will be notified of results and all grant awards will be made before September 15, 1998. Applications submitted after the May 2 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street NW., Washington, DC 20427; or calling 202-606-8181.

John Calhoun Wells,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 97–31859 Filed 12–4–97; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Harold Gary Morse, Oxford, Florida, Mark Morse Irrevocable Trust, Lady Lake, Florida, Jennifer Boone Irrevocable Trust, Lady Lake, Florida, and Tracy Mathews Irrevocable Trust, Lady Lake, Florida; to acquire additional voting shares of Villages Bancorporation, Inc., Lady Lake, Florida, and thereby indirectly acquire First Bank of the Villages, Lady Lake, Florida.

Board of Governors of the Federal Reserve System, December 1, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31838 Filed 12–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Keystone Heritage Group, Inc., Lebanon, Pennsylvania, and thereby indirectly acquire Lebanon Valley National Bank, Lebanon, Pennsylvania.

Board of Governors of the Federal Reserve System, December 1, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31834 Filed 12–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 10, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Cost of Federal Reserve Bank notes in 1998.

Discussion Agenda:

2. Proposed 1998 Federal Reserve Bank budgets.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32014 Filed 12–3–97; 10:50 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, December 10, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32015 Filed 12–3–97; 10:50 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS)

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by GSA's Order PBS P 1095.4B to dispose of excess federal property known as Governors Island in New York, New York.

The EIS will evaluate the proposed project, the no-action alternative, and any other reasonable alternatives identified through the scoping process. Scoping will be accomplished through direct mail correspondence with interested persons, parties, and organizations and through Public Scoping Meetings to be held in Manhattan and Brooklyn. GSA will publish a Public Notice of these meetings and all subsequent meetings in local newspapers approximately seven to ten days prior to each event.

WRITTEN COMMENTS/FURTHER INFORMATION: As part of the Public Scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Peter A. Sneed, Senior Program Analyst, Portfolio Management Division, General Services Administration, 26 Federal Plaza, Room 1609, New York, NY 10278. Written comments should be received no later than January 2, 1998. Requests for further information may also be forwarded to this address.

SUPPLEMENTARY INFORMATION: The GSA is anticipating the preparation of an Environmental Impact Statement on a proposal to dispose of excess federal property in New York, New York. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines.

GSA invites interested individuals, organizations, and Federal, State, and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS, and in identifying any significant social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse significant impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and the merit of the proposal rather than indicating preferences. There will be an opportunity to comment on preferences upon completion of the Draft Environmental Impact Statement (DEIS).

Mailing List: If you wish to be placed on the project mailing list to receive future or further information as the EIS develops, contact Peter A. Sneed at the address noted above.

Project Purpose, Historical Background, and Project: On October 16, 1995, the United States Coast Guard (USCG) announced it would close Governors Island by the end of summer 1997. The decision to close Governors Island was made in response to the Presidential mandate to meet the goals of the National Performance Review and the Government Performance and Results Act. The present organization of Governors Island will transition to a 60-person Caretaker Detachment that will provide security, fire protection and facility maintenance. Disposal of the Island is the responsibility of the General Services Administration. On August 5, 1997, President Clinton signed into law, legislation for the sale of Governors Island. This special legislation incorporated as part of the Balanced Budget Act of 1997 directs the Administrator of General Services Administration to sell Governors Island at fair market value. The State and City of New York have right of first offer to purchase all or part of the Island at fair market value.

Alternatives: The EIS will examine the short and long term impacts on the natural and built environment. Potential impact assessment will include but not be limited to changes in land use and zoning, changes to air and water quality, changes to traffic patterns, and impacts to historic and cultural resources.

The EIS will also examine measures to mitigate significant unavoidable adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the Natural Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The EIS would consider a no-action alternative and an action alternative which would identify several reuse options. The no-action alternative (no-sale) would keep Governors Island in Federal ownership. The preferred action alternative is the sale of Governors Island.

Procedures: The Draft EIS will be prepared at the completion of and based upon a scoping report. The Draft EIS will then be made available for public and agency review and comment with a public hearing being held during this comment period. A Final EIS would be prepared following conclusion of the comment period to address issues raised on the Draft EIS.

Dated: November 28, 1997.

Robert Martin,

Acting Regional Administrator (2A).

[FR Doc. 97–31858 Filed 12–4–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Interim Tribal TANF Data Report.

OMB No.: New Collection.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of desegregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	18	4	451	32,472
Estimated Total Annual Burden Hours: 32,472				

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including though the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 25, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31855 Filed 12–4–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0480]

Zenith Goldline Pharmaceuticals; Withdrawal of Approval of 11 Abbreviated Antibiotic Applications and 105 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 abbreviated antibiotic applications (AADA's) and 105 abbreviated new drug applications (ANDA's). Zenith Goldline Pharmaceuticals notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: January 5, 1998.

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

SUPPLEMENTARY INFORMATION: Zenith Goldline Pharmaceuticals, 140 Legrand Ave., Northvale, NJ 07647, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. Zenith Goldline Pharmaceuticals has also, by its request, waived its opportunity for a hearing.

Application No.	Drug
AADA 60–072	Penicillin G Potassium Powder, 100,000 units/5 milliliters (mL), 200,000 units/5 mL, 250,000 units/5 mL, 400,000 units/5 mL, 500,000 units/5 mL
AADA 60–073	Penicillin G Potassium Tablets USP, 100,000 units/Tab, 200,000 units/Tab, 250,000 units/Tab, 400,000 units/Tab, 500,000 units/Tab
AADA 60–104	Chlortetracycline Hydrochloride (HCl) Capsules USP, 250 milligrams (mg)
AADA 60–518	Penicillin V Potassium Tablets USP, 125 mg, 250 mg, 500 mg
AADA 60–519	Penicillin V Potassium Powder, 125 mg/5 mL, 250 mg/5 mL
AADA 60–692	Ampicillin Capsules USP (Trihydrate), 250 mg, 500 mg
AADA 60–765	Ampicillin Capsules USP (Trihydrate), 250 mg, 500 mg
AADA 61–183	Ampicillin for Oral Suspension USP, 125 mg/5 mL, 250 mg/5 mL
AADA 61–468	Tetracycline Syrup, 125 mg/5 mL
AADA 62–237	Erythromycin Estolate Capsules USP, 250 mg
AADA 62–762	Cephradine Capsules USP, 250 mg, 500 mg
ANDA 70–360	Diazepam Tablets USP, 2 mg
ANDA 70–361	Diazepam Tablets USP, 5 mg
ANDA 70–362	Diazepam Tablets USP, 10 mg
ANDA 70–935	Perphenazine and Amitriptyline HCl Tablets USP, 2 mg/10 mg
ANDA 70–936	Perphenazine and Amitriptyline HCl Tablets USP, 2 mg/25 mg
ANDA 70–937	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/10 mg
ANDA 70–938	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/25 mg
ANDA 70–939	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/50 mg
ANDA 71–154	Ibuprofen Tablets USP, 200 mg (Round)
ANDA 71–458	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg
ANDA 71–459	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg
ANDA 71–460	Methyldopa and Hydrochlorothiazide Tablets USP, 500 mg/30 mg
ANDA 71–461	Methyldopa and Hydrochlorothiazide Tablets USP, 500 mg/50 mg
ANDA 71–552	Propranolol HCl and Hydrochlorothiazide Tablets USP, 40 mg/25 mg
ANDA 71–553	Propranolol HCl and Hydrochlorothiazide Tablets USP, 80 mg/25 mg
ANDA 72–040	Ibuprofen Tablets USP, 200 mg (Caplet)
ANDA 72–063	Propranolol HCl Tablets USP, 10 mg
ANDA 72–066	Propranolol HCl Tablets USP, 20 mg
ANDA 72–067	Propranolol HCl Tablets USP, 40 mg
ANDA 72–068	Propranolol HCl Tablets USP, 60 mg
ANDA 72–069	Propranolol HCl Tablets USP, 80 mg
ANDA 80–078	Nitrofurantoin Tablets (Microcrystalline) 50 mg, 100 mg
ANDA 80–143	Trisulfapyrimidines Tablets USP
ANDA 80–215	Propylthiouracil Tablets USP, 50 mg
ANDA 80–270	Isoniazid Tablets USP, 100 mg
ANDA 80–283	Prednisone Tablets USP, 5 mg
ANDA 80–378	Prednisolone Tablets USP, 5 mg
ANDA 80–630	Cortisone Acetate Tablets USP, 25 mg
ANDA 80–735	Dimenhydrinate Tablets USP, 50 mg
ANDA 80–762	Diphenhydramine HCl Capsules USP, 25 mg, 50 mg
ANDA 80–779	Chlorphenirarnine Maleate Tablets USP, 4 mg
ANDA 83–035	Vitamin A Capsules USP, 50,000 units
ANDA 83–077	Propoxyphene Compound Capsules

Application No.	Drug
ANDA 83–180	Niacin Tablets USP, 500 mg
ANDA 83–190	Vitamin A Palmitate Capsules, 50,000 units
ANDA 83–416	Dexamethasone Tablets USP, 0.75 mg
ANDA 83–461	Pentobarbital Sodium Capsules USP, 50 mg, 100 mg
ANDA 83–484	Butabarbital Sodium Tablets USP, 15 mg
ANDA 83–536	Cortisone Acetate Tablets USP, 25 mg
ANDA 83–549	Chlorpromazine HCl Tablets USP, 10 mg, 25 mg, 50 mg
ANDA 83–568	Reserpine and Hydrochlorothiazide Tablets USP, 0.1 mg/50 mg
ANDA 83–570	Chlordiazepoxide HCl Capsules USP, 25 mg
ANDA 83–571	Reserpine and Hydrochlorothiazide Tablets USP, 0.125 mg/25 mg
ANDA 83–572	Reserpine and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg
ANDA 83–573	Reserpine and Hydrochlorothiazide Tablets USP, 0.125 mg/50 mg
ANDA 83–574	Chlorpromazine HCl Tablets USP, 100 mg
ANDA 83–575	Chlorpromazine HCl Tablets USP, 200 mg
ANDA 83–597	Propoxyphene HCl Capsules USP, 32 mg
ANDA 83–603	Promethazine HCl Tablets USP, 25 mg
ANDA 83–604	Promethazine HCl Tablets USP, 12.5 mg
ANDA 83–610	Isoniazid Tablets USP, 300 mg
ANDA 83–613	Promethazine HCl Tablets USP, 50 mg
ANDA 83–741	Chlordiazepoxide HCl Capsules USP, 5 mg
ANDA 83–742	Chlordiazepoxide HCl Capsules USP, 10 mg
ANDA 83–750	Triamcinolone Tablets USP, 4 mg
ANDA 83–784	Meclizine HCl Tablets USP, 12.5 mg
ANDA 83–876	Hydralazine HCl and Hydrochlorothiazide Tablets, 25 mg/15 mg
ANDA 83–877	Reserpine, Hydralazine HCl, and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg/15 mg
ANDA 84–040	Butabarbital Sodium Tablets USP, 30 mg
ANDA 84–133	Prednisone Tablets USP, 10 mg
ANDA 84–134	Prednisone Tablets USP, 20 mg
ANDA 84–181	Meprobamate Tablets USP, 600 mg
ANDA 84–291	Reserpine, Hydralazine HCl and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg/15 mg
ANDA 84–351	Brompheniramine Maleate Tablets USP, 4 mg
ANDA 84–437	Hydralazine HCl Tablets USP, 25 mg
ANDA 84–443	Hydralazine HCl Tablets USP, 10 mg
ANDA 84–469	Hydralazine HCl Tablets USP, 50 mg
ANDA 84–473	Isosorbide Dinitrate Sublingual Tablets USP, 2.5 mg
ANDA 84–474	Isosorbide Dinitrate Sublingual Tablets USP, 5 mg
ANDA 84–549	Quinidine Sulfate Tablets USP, 200 mg
ANDA 84–581	Hydralazine HCl Tablets USP, 100 mg
ANDA 84–648	Methocarbamol Tablets USP, 500 mg
ANDA 84–649	Methocarbamol Tablets USP, 750 mg
ANDA 84–658	Hydrochlorothiazide Tablets USP, 50 mg
ANDA 84–689	Bethanechol Chloride Tablets USP, 25 mg
ANDA 84–976	Meclizine HCl Tablets USP, 25 mg
ANDA 85–273	Triprolidine and Pseudoephedrine Hydrochlorides Tablets USP, 2.5 mg/60 mg
ANDA 85–441	Butalbital Compound Tablets USP, 50 mg/325 mg
ANDA 85–553	Phenterimine HCl Tablets, 8 mg
ANDA 85–611	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–612	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–682	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–869	Secobarbital Sodium Capsules USP, 100 mg
ANDA 86–035	Isosorbide Dinitrate Tablets USP, 10 mg
ANDA 86–329	Phentermine HCl Capsules USP, 30 mg
ANDA 87–004	Spironolactone and Hydrochlorothiazide Tablets USP, 25 mg/25 mg
ANDA 87–008	Dipyridamole Tablets USP, 25 mg
ANDA 87–108	Spironolactone Tablets USP, 25 mg
ANDA 87–186	Ergoloid Mesylates Tablets USP (Sublingual), 0.5 mg
ANDA 87–216	Hydroxyzine HCl Tablets USP, 10 mg
ANDA 87–316	Dipyridamole Tablets USP, 50 mg
ANDA 87–320	Dipyridamole Tablets USP, 75 mg
ANDA 87–353	Chlorpropamide Tablets USP, 250 mg
ANDA 87–410	Hydroxyzine HCl Tablets USP, 25 mg
ANDA 87–411	Hydroxyzine HCl Tablets USP, 50 mg
ANDA 87–555	Chlorthalidone Tablets USP, 25 mg
ANDA 87–769	Sulfinpyrazone Tablets USP, 100 mg
ANDA 87–786	Methyclothiazine Tablets USP, 5 mg
ANDA 87–947	Chlorthalidone Tablets USP, 50 mg
ANDA 88–218	Phenylbutazone Capsules USP, 100 mg
ANDA 88–356	Hydralazine HCl and Hydrochlorothiazide Capsules, 25 mg/25 mg
ANDA 88–357	Hydralazine HCl and Hydrochlorothiazide Capsules, 50 mg/50 mg
ANDA 88–358	Hydralazine HCl and Hydrochlorothiazide Capsules, 100 mg/50 mg
ANDA 88–840	Chlorpropamide Tablets USP, 100 mg

Application No.	Drug
ANDA 88–932	Reserpine and Hydroflumethiazide Tablets, 0.125 mg/50 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective January 5, 1998.

Dated: November 17, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–31879 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 18, 1997, 8:30 a.m. to 5:05 p.m., and December 19, 1997, 8 a.m. to 4:35 p.m.

Location: Holiday Inn, Versailles Ballrooms I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jannette O'Neill-Gonzalez, or Robinette Taylor, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 18, 1997, the committee will discuss: (1) New drug application (NDA) supplement 16–295/S–029, Droxia® (hydroxyurea capsules, USP), for the treatment of sickle cell anemia in adult patients to prevent painful crises and to reduce the need for blood transfusions; and (2) NDA 20–798, Depocyt® (cytarabine lipid-particle injection), for the intrathecal treatment of neoplastic meningitis of patients with solid tumors, lymphoma, or leukemia. On December 19, 1997, the committee will discuss: (1) Biologics licensing application (BLA) supplement 97–0501, Proleukin/Aldesleukin (recombinant human interlukin-2), for the treatment of adult patients with metastatic melanoma; and (2) NDA 20–806, Neomark® (broxuridine for injection), for use as a cell proliferation marker to determine the labeling index in breast cancer.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 10, 1997. Oral presentations from the public will be scheduled between approximately 8:35 a.m. and 9:05 a.m. on December 18, 1997, and between approximately 8:05 a.m. and 8:35 a.m. on December 19, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 10, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the December 18, 1997, Oncologic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Oncologic Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 26, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–31808 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0442]

Memoranda of Understanding Between the Food and Drug Administration and the United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) have revised three memoranda of understanding (MOU's) with regard to control of aflatoxin in peanuts, in-shell Brazil nuts, and in-shell pistachio nuts. The purpose of the MOU's is to set forth the responsibility for aflatoxin testing of domestic and imported raw peanuts, imported in-shell Brazil nuts, and imported in-shell pistachio nuts.

DATES: The MOU's became effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's signed by FDA and other departments, agencies, and organizations shall be published in the **Federal Register**, the agency is publishing three revised MOU's between FDA and USDA that set forth the responsibility for aflatoxin testing of domestic and imported raw peanuts, imported in-shell Brazil nuts, and imported in-shell pistachio nuts.

Dated: November 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

The text of the three MOU's follows: Agreement No.

225–96–2001

Revision 1

12–25–MU–335

Revision 1

Memorandum of Understanding Between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration, Department of Health and Human Services

PROJECT	Aflatoxin testing of domestic and imported peanuts
LEADERS	Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)
LOCATIONS	Albany, Ashburn, Blakely, Camilla, and Dawson, Georgia, Dothan, Alabama, Aulander, North Carolina, Madill, Oklahoma, and Suffolk, Virginia
HEADQUARTERS	Washington, DC
EFFECTIVE DATE	October 1, 1997
LEGAL AUTHORITY	The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended
REVISION	This is a revision of and shall supersede Memorandum of Understanding, FDA-225–96–2001, effective October 1, 1995, between FDA and AMS.
ORGANIZATION	The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.
BACKGROUND	Aflatoxins are toxic metabolites produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. If present in sufficient amounts, they may cause acute toxicity and are known to be carcinogens for some animals. Peanuts, tree nuts, corn, and other small grains are susceptible to aflatoxin contamination. The Peanut Administrative Committee (PAC) administers Marketing Agreement 146 with USDA oversight to control the aflatoxin problem in peanuts and ensure the wholesomeness of peanuts moving into channels for human consumption. The Peanut Marketing Agreement requirement for domestic edible peanuts is 15 parts per billion (ppb) total aflatoxins or less. Imported peanuts must meet the same requirement as domestic peanuts, and importers of peanuts must offer each lot of the product to USDA or a PAC-approved laboratory for inspection before introducing that lot into United States commerce.

RESPONSIBILITIES:

AMS intends to:

1. Continue to provide oversight to the PAC in the administration of the Marketing Agreement for peanuts to control the incidence and levels of total aflatoxins in domestically produced peanuts.
2. Monitor and inspect imported raw peanuts upon effective date of peanut import regulations.
3. Perform all aflatoxin assays using the official methods in the current ''Instruction Manual for Aflatoxin Testing'', United States Department of Agriculture, Agricultural Marketing Service, Science and Technology Division, Technical Services Branch.
4. Issue aflatoxin certificates as (1) ''negative'' if the level is not over 15 ppb; (2) number if the level is over 15 ppb.
5. Provide FDA with a copy of the certificate of total aflatoxins analysis and the name of the applicant on each lot, both domestic and imported, found to exceed 15 ppb total aflatoxins and the analysis certificate on any lot on request.

FDA Intends to:

1. Maintain its administrative guideline at 20 ppb on objective samples recognizing that good manufacturing practices remove significant quantities of unfit peanuts and that levels of total aflatoxins are reduced by heating.
2. Not object to the offering of lots of peanuts to processors where certificates show levels of total aflatoxins above 25 ppb but to examine routinely finished products from such lots. Such lots of raw peanuts may be subject to action in cases where there is not a reasonable assurance that the finished product will contain no more than 20 ppb total aflatoxins.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.) Office of Plant and Dairy Foods and Beverages Center for Food Safety and Applied Nutrition, 200 C. Street S.W., Washington, D.C. 20204, Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.

Done at Washington, D.C. on October 1, 1997,
Barbara A. Chaffey,
Deputy Administrator, Marketing Programs Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:
Done at Washington, D.C. on October 1, 1997,
Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.

Agreement No.
225–96–2002
Revision 1
12–25–MU–334
Revision 1

Memorandum of Understanding Between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration, Department of Health and Human Service

PROJECT .... Voluntary aflatoxin testing of imported in-shell Brazil nuts

LEADERS .... Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)

LOCATIONS .... Blakely, Georgia, and Dothan, Alabama

HEADQUARTERS .... Washington, DC

EFFECTIVE DATE .... October 1, 1997

LEGAL AUTHORITY .... The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended

REVISION .... This is a revision of and shall supersede Memorandum of Understanding, FDA–225–96–2002, effective October 1, 1995, between FDA and AMS.

ORGANIZATION .... The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.

BACKGROUND .... Aflatoxins have been shown to cause cancer in certain laboratory animals. Aflatoxins are produced by the mold *Aspergillus flavus* and may contaminate various kinds of foods, including Brazil nuts. FDA and AMS have cooperated with United States importers in a program for sampling and aflatoxin testing of imported Brazil nuts. Neither AMS nor FDA has a formal agreement with the Brazil nut importers. Under this voluntary program, importers of Brazil nuts offer each lot of the product to USDA for inspection prior to its introduction into United States commerce. USDA is responsible for sampling and testing each lot for total aflatoxins in accordance with procedures prescribed by FDA and for issuing an analysis certificate for each lot tested.

RESPONSIBILITIES:

AMS intends to:

1. Draw samples in accordance with the following schedule:

TABLE I.—LOTS PACKED IN CONTAINERS WEIGHING 50 LBS. OR LESS

Number of bags in lot	Number of bags sampled	Total pounds in sample	Approximate no. of nuts
500 or less	60	20	1,000
501–1,800	120	40	2,000
1,801–4,500	180	60	3,000

TABLE II.—LOTS PACKED IN CONTAINERS WEIGHING 51 TO 120 LBS.

Number of bags in lot	Number of bags sampled	Total pounds in sample	Approximate no. of nuts
200 or less	20	20	1,000
201–800	40	40	2,000
801–2,000	60	60	3,000

2. Perform aflatoxin assay.

(a) Shell and Kernel Analysis.

The entire sample of shells and kernels will be ground in a vertical cutter mixer. A well-mixed portion of the ground composite will be assayed chemically for total aflatoxins, using the BF method as described in the book of Official Methods of Analysis of AOAC International, 16th ed., Vol. II, Sec. 49.2.09. The total aflatoxins level will be calculated on the basis of the nut kernel, assuming the kernel constitutes half the weight of the total in-shell nut.

(b) Kernel Analysis

The entire sample is individually shelled. Those kernels that have an obviously inedible appearance will be discarded. The remaining kernels will be composited and ground with the addition of an inert grinding aid. A well-mixed portion of the ground composite will be assayed as described in paragraph (a) above.

3. Report Results

(a) A separate analysis certificate will be issued for each lot. Appropriate identification marks will be shown on each certificate so that the report can be related to the specific lot sampled.

(b) Provide appropriate FDA District Office the results of aflatoxin analysis for lots that may be subject to action under the Food, Drug, and Cosmetic Act and analysis certificate on any lot upon request.

FDA intends to:

1. Notify AMS of the criteria FDA will use concerning total aflatoxins levels in lots to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.
2. Review results of aflatoxin analysis for lots provided by AMS to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.), Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, 200 C. Street S.W. Washington, D.C. 20204, Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.

Done at Washington, D.C. on October 1, 1997,

Barbara A. Chaffey,

Deputy Administrator, Marketing Programs Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:

Done at Washington, D.C. on October 1, 1997,

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

Agreement No.
225–96–2003
Revision 1
12–25–MU–336
Revision 1

Memorandum of Understanding between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration Department of Health and Human Services

PROJECT .... Voluntary aflatoxin testing of imported in-shell pistachio nuts

LEADERS .... Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)

LOCATIONS .... Blakely, Georgia, and Dothan, Alabama

HEADQUARTERS .... Washington, DC

EFFECTIVE DATE .... October 1, 1997

LEGAL AUTHORITY .... The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended

REVISION .... This is a revision of and shall supersede Memorandum of Understanding, FDA 225–96–2003, effective October 1, 1995, between FDA and AMS.

ORGANIZATION .... The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.

BACKGROUND .... Aflatoxins have been shown to cause cancer in certain laboratory animals. Aflatoxins are produced by the mold Aspergillus flavus and may contaminate various kinds of foods, including pistachio nuts. FDA and AMS have cooperated with United States importers in a program for sampling and aflatoxin testing of imported pistachio nuts. Neither AMS nor FDA has a formal agreement with the pistachio nut importers. The program is conducted on a voluntary basis whereby importers of pistachio nuts offer each lot of the product to USDA for inspection before introducing that lot into United States commerce. USDA is responsible for sampling and testing each lot for total aflatoxins in accordance with procedures prescribed by FDA and for issuing an analysis certificate for each lot tested.

RESPONSIBILITIES:

AMS intends to:

1. Draw samples in accordance with the following schedule:

TABLE I.

Total weight of lot	Percent of containers sampled	Total sample weight
75,000 lb or less	Minimum of 20%	Shelled–25 lb In-shell–50 lb
More than 75,000 lb to 150,000 lb	Minimum of 20%	Shelled–50 lb In-shell–100lb

For lots with total weight greater than 150,000 pounds, a sample will be selected from 20 percent of the containers in the lot and consist of 25 lb of shelled nuts or 50 lb of in-shell nuts for each multiple of 75,000 lb (e.g., 150,000 to 225,000 lb requires a 3-fold sample of 75 lb shelled or 150 lb of in-shell nuts).

2. Perform aflatoxin assay.

(a) In-Shell Lots.

The entire sample of shells and kernels will be ground in a vertical cutter mixer. A well-mixed portion of the ground composite will be assayed chemically for total aflatoxins, using either of the two methods for aflatoxin assay in pistachios described in the book of Official Methods of Analysis of AOAC International, 16th ed., Vol. II, Sec. 49.2.23. The aflatoxin level will be calculated on a kernel weight basis.

(b) Shelled Lots

The entire sample shall be ground, including those kernels which have an obvious inedible appearance. A well-mixed portion of the ground composite will be assayed as in paragraph 2.(a) above.

3. Report Results

(a) A separate analysis certificate will be issued for each lot. Appropriate identification marks will be shown on each certificate so that the report can be related to the specific lot sampled.

(b) Provide appropriate FDA District Office the results of aflatoxin analysis for lots that may be subject to action under the Food, Drug, and Cosmetic Act and analysis certificate on any lot upon request.

FDA intends to:

1. Notify AMS of the criteria FDA will use concerning total aflatoxins levels in lots to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.
2. Review results of aflatoxin analysis for lots provided by AMS to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.) Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition 200 C. Street S.W. Washington, D.C. 20204 Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.

Done at Washington, D.C. on October 1, 1997,

Barbara A. Chaffey,

Deputy Administrator, Marketing Programs Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:

Done at Washington, D.C. on October 1, 1997,

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 97–31809 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0496]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reporting and Recordkeeping Requirements for Manufacturers and Distributors of Electronic Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1997 (62 FR 45665), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0025. The approval expires on October 31, 2000.

Dated: November 27, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31943 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Coronary Stent Angioplasty: Factors Affecting Restenosis (Telephone Conference Call).

Date: January 6, 1998.

Time: 9:00 a.m.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, Maryland 20892.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Specialized Centers of Research in Acute Lung Injury.

Date: January 7–8, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Anne P. Clark, Ph.D., Two Rockledge Center, Room 7186, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Specialized Centers of Research in Neurobiology of Sleep and Sleep Apnea.

Date: January 8, 1998.
Time: 8:30 a.m.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.
Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31832 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of SEP: National Institute on Aging Special Emphasis Panel, Nutritional Probe of Aging, (Teleconference).
Date of Meeting: December 18, 1997.
Time of Meeting: 2:00 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review a revised program project grant application.
Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31831 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date of Meeting: December 5, 1997.
Time: 8:00 A.M. to adjournment.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–2861.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health.)

Dated: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31833 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological.
Date: December 10, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5110 (Telephone Conference).
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31829 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 4, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Microbiological and Immunological.

Date: December 11, 1997.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 5112, Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Chemistry and Related Sciences.

Date: December 2, 1997.

Time: 11:30 a.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31830 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515 / 800–526–6339
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1518 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.).
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital Toxicology Laboratory, P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
St. Lawrence Hospital & Healthcare System, Toxicology Laboratory, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–31945 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of January 10, 1998 Application Receipt Date.

SUMMARY: SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the January 10, 1998, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)

CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele: 1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org.

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP:

Ms. Luisa del Carmen Pollard, Division of Prevention Application and Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–0377, E-mail address: lpollard@samhsa.gov

CSAT:

Mr. George Kanuck, Office of Policy Coordination and Planning, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–5050, E-mail address: gkanuck@samhsa.gov

Dated: December 2, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–31886 Filed 12–4–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–32]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 25, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–31492 Filed 12–4–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ACTION: Notice of availability.

SUMMARY: The Peregrine Fund (J. Peter Jenny; applicant) has applied for an amendment to its incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) issued by the U.S. Fish and Wildlife Service (Service) on December 16, 1996, under permit number PRT–814839. The amendment requests that Jim Wells County, Texas (556,332 acres) be added to the 14 county area in Texas where The Peregrine Fund already has a permit for incidental take in association with their aplomado falcon (*Falco femoralis septentrionalis*) reintroduction program.

DATES: Written comments on the amendment application should be received on or before January 5, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103. In addition, the amendment application will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the Service's Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Written comments concerning the application should be submitted to the Field Supervisor, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Please refer to the amendment to PRT–814839 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Edith A. Erfling, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058; (281) 286–8282.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Aplomado falcon. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: This amendment to permit PRT–814839 would authorize incidental take on an additional 556,332 acres of Jim Wells County, Texas, again, only on land that is enrolled in the ''safe harbor'' program for that purpose.

To facilitate the reintroduction of the aplomado falcon, The Peregrine Fund is currently authorized to take aplomado falcons, incidental to lawful land-use activities, on specific lands enrolled in

The Peregrine Fund's ''Safe Harbor'' program.

Renne Lohoefener,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–31892 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal to Develop the ''FGDC Standard for a Geologic Data Model'' as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''FGDC Standard for a Geologic Data Model.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies collecting geologic data directly or indirectly, through grants, partnerships, or contracts.

In its assigned Federal leadership in the development of the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before December 19, 1997.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Proposals/geomod.html

Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-geomod@www.gdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 x 3.5 diskette in WordPrefect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''FGDC Standard for a Geologic Data Model''.

Project Title: FGDC Standard for Geologic Data Model.

Date of Proposal: April 18, 1997, revised: July 14, 1997.

Type of Standard Proposed: Logical Data Model.

Submitting Organization: FGDC Geologic Data Subcommittee.

Point of Contact: David R. Soller, USGS.

Objectives: The objective of this standard is to create a logical data model that will describe the various critical entities of a geologic map and the relations among them.

Scope: This standard will describe how geologic map information will be configured in digital format, and will not proscribe methods by which geologic maps will be made. Geologic maps are very diverse in the type of information contained. The developers of the geologic map data model recognize this diversity, but will focus on the elements of geologic maps that are common to all or at least most geologic maps. In recognition of the diversity of information in geologic maps, the data model is being designed to allow for development of extensions to the standard. The intent is to develop and propose a standard that is widely accepted by map producers using a wide variety of computer and software systems.

Justification/Benefits: Geologic maps are produced by various State and Federal agencies, according to various locally-developed guidelines for content and form. A geologic data model is needed by the geoscience community to provide consistency to the map data that are archived and served to the public and to promote the exchange of digital map data. The model will aid in the development of systematic mapping coverage for the Nation, and will facilitate production of a variety of derivative map products from a geologic map database, as mandated by the Geologic Mapping Act of 1992.

Development Approach: A Geologic Data Model working map group has been formed through an agreement between the Association of American State Geologists (AAQSG) Digital Geologic Mapping Committee and the USGS National Geologic Map Database project. The working group is staffed by technical experts from the USGS, the State geological surveys, and the Geological Survey of Canada. The following steps will be taken:

- Define the general framework of the model (done—the working group has defined an entity-relationship model)
- Develop the model through presentation and discussion at public forums, and prepare it for general public review (in progress)
- Provide to the public a document describing the model and an implementation of the model (e.g., a set of ArcView software tools) for informal evaluation among the USGS, AASG, Geological Survey of Canada, the Geologic Data Subcommittee, and other interested parties (Summer, 1997)
- Revise the document according to comments received (late 1997)
- Prepare a formal document containing the revised model and implementation for consideration by the Geologic Data Subcommittee (Spring, 1998)
- After final Subcommittee comment, submit to the FGDC (Spring, 1998)

Related Standards: Geological Survey of Canada logical data model used for FieldLog software; British Geological Survey Logical Data Model (Technical Report WO/93/20R).

Development and Completion Schedule: see Development Approach.

Resources Required: The USGS, AASG, and Geological Survey of Canada are providing the resources to develop the model. The GDS will require resources to develop a draft for public review.

Potential Participants: The USGS, the AASG, the Geological Survey of Canada, and professional societies.

Other Targeted Authorization Bodies: None. However, the GDS will consider whether to propose the standard to other standards organizations such as ASTM.

Dated: November 25, 1997.

John Fischer,

Acting Chief, National Mapping Division.

[FR Doc. 97–31812 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop the ''FGDC Standard for Geologic Map Symbolization'' as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''FGDC Standard for Geologic Map Symbolization.'' If the proposal is

approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies portraying geologic data in map form directly or indirectly (through grants, partnerships, or contracts).

In its assigned Federal leadership in the development of the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before December 19, 1997.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Proposals/geosym.html.

Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-geosym@www.fgdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 x 3.5 diskette in Word Perfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''FGDC Standard for Geologic Map Symbolization.''

Project Title: FGDC Standard for Geologic Map Symbolization.

Date of Proposal: April 18, 1997, revised: July 14, 1997.

Type of Standard Proposed: Data Symbology.

Submitting Organization: FGDC Geologic Data Subcommittee.

Point of Contact: David R. Soller, USGS.

Objectives: The objective is to provide a national standard for geologic map symbols, colors, and patterns in order to provide geologic map products that have a standard appearance.

Scope: The scope of this project covers cartographic symbols and patterns that are on geologic maps. The scope includes colors that are used to convey areas of particular formation, age, or lithology.

Justification/Benefits: Geologic maps are produced by various State and Federal agencies, according to various locally-developed guidelines for content and form. National or regional standards for symbolizing geologic map elements do not exist. Locally developed standards or guidelines used by a geologic mapping agency have not been widely adopted. A national standard is needed to provide a standard cartographic product to the end-user. Because most new maps are produced from digital files, this standard must be robust enough to be implemented in digital form on a variety of hardcopy output devices.

Development Approach: This standard will be based on symbolization contained in USGS Open-file Report 95–525 ''(draft) Cartographic and digital standard for geologic map information.'' The approach will be as follows:

- Conduct a review of USGS OFR95–525 to determine elements of the document that should be further developed as a FGDC draft standard (this review was released as USGS Open-file Report 96–725 and is available on-line at http://ncgmp.usgs.gov/ngmdbproject/standards/carto/OFR95–525review.html).
- The review concluded that the symbols, colors, and patterns in the document should be converted to digital form for consideration as a FGDC standard and for general use within the USGS. This conversion is underway within the USGS.
- The digital symbols will form the basis of a draft standards document to be prepared by the Geologic Data Subcommittee late in 1997.
- The document will then be submitted to FGDC for review.

Related Standards: The proposed standard will be based on symbolization contained in USGS Open-file Report 95–525 ''(draft) Cartographic and digital standard for geologic map information.'' Potential relation to ISO Standard 710, 1974, Parts 1–7 will be evaluated.

Development and Completion Schedule:

- In late summer, 1997, the USGS will finish a first draft of the digital symbols to be contained in the standard.
- The Geologic Data Subcommittee will evaluate those symbols, and in late 1997, the Geologic Data Subcommittee will begin compiling the digital symbols into a draft FGDC standards document.
- In the first quarter of 1998, the document will be submitted to FGDC for review.

Resources Required: The USGS is supporting development of the standards document and the implementation.

Potential Participants: The USGS, the Association of American State Geologists, the Geologic Data Subcommittee, professional societies, and private companies.

Other Targeted Authorization Bodies: None.

Dated: November 25, 1997.

John Fischer,

Acting Chief, National Mapping Division.

[FR Doc. 97–31811 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on September 3, 1997.

DATES: This action is effective December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas H. Hartman, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: November 21, 1997.

Michael J. Anderson,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 97–31918 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1990–00]

Carbon Basin Area; Potential Federal Coal Planning Decisions; Carbon Co., WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of an Environmental Assessment for a Planning Review of the Carbon Basin Area, Carbon County, Wyoming, and Potential Federal Coal Planning Decisions for the area.

SUMMARY: The Carbon Basin planning review area is located approximately 40 miles east of the town of Rawlins and 12 miles southeast of the town of Hanna, all located in Carbon County, Wyoming. The planning review is being conducted because an application to lease Federal coal in the Carbon Basin area has been submitted and Federal coal planning decisions were not made for the area during development of the Great Divide Resource Management Plan (RMP).

DATES: The 45 day comment/review period for the environmental assessment will begin the day following the publication of this notice.

ADDRESSES: Comments should be addressed in writing to the Great Divide Resource Area, Bureau of Land Management, Attn: Karla Swanson, Area Manager, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Interested parties may direct questions or concerns to obtain further information from Brenda Vosika-Neuman or John Spehar, who can be visited at the above address or reached by telephone: 307–328–4200.

SUPPLEMENTARY INFORMATION: Ark Land Company, St. Louis, Missouri, has filed an application with the Bureau of Land Management (BLM) to obtain a coal lease on approximately 4,145 acres of Federal coal lands located in the Carbon Basin area. Ark Land Company, through its affiliate, Arch of Wyoming, Inc., (Arch) has conducted coal mining operations in the Hanna Basin Region of Carbon County since 1972. The depletion of recoverable coal reserves in the Hanna Basin has led Arch to identify additional (local) coal resources in the Carbon Basin area that could utilize the existing infrastructure and meet existing contracts and/or long-term commitments. The Carbon Basin area is in close proximity to the Hanna Basin coal fields and provides a logical continuation of the Hanna Basin mining operations.

In 1982, a Federal coal lease was issued for approximately 60 percent of the Federal coal lands located in the Carbon Basin. Because this lease was still in effect at the time the current BLM land use plan (the Great Divide Resource Management Plan RMP–1990) covering the Carbon Basin area was prepared, it was exempt from the coal screening/planning requirements. However, development of this lease was never pursued and the lease expired in 1992. Also, at the time the Great Divide RMP was prepared, there was no other interest expressed by industry in obtaining Federal coal leases in the area. As a result of these two factors, the coal screening/planning process was not conducted on the area and there were no coal planning decisions for any of the Federal coal lands in the Carbon Basin area included in the Great Divide RMP.

The Federal Coal Leasing Amendments Act of 1976 requires that Federal coal lands must first be identified in a comprehensive land use plan before they can be considered for leasing. Because no coal planning decisions were made for the Carbon Basin coal area in the Great Divide RMP, a planning review, which includes conducting the coal screening/planning process and an environmental analysis, must be completed and documented before the BLM can consider leasing Federal coal in the Carbon Basin. The Ark Land Company coal lease application, or any future applications to lease coal in the Carbon Basin, cannot be given consideration until a planning review is conducted on the Federal coal lands involved and a determination is made that some or all of the lands are open to consideration for coal leasing and development.

Dated: November 26, 1997.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 97–31909 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday, January 9, 1998, in Glenwood Springs, Colorado.

DATE: Friday, January 9, 1998.

ADDRESSES: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; telephone (970) 244–3037.

SUPPLEMENTARY INFORMATION: The meeting will be held at the Garfield County Courthouse, 109 8th Street, Room 301, Glenwood Springs, Colorado. Agenda items include subcommittee reports and status of the roadless inventory review.

All resource advisory council meetings are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meetings. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: November 24, 1997.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 97–31851 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–08–3110–00–H040, GP8–0049]

Notice of Direct Sale of Public Lands in Klamath County, Oregon—Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the Notice of Direct Sale of Public Lands in Klamath County, Oregon beginning on page 53019 in the issue of Friday, October 10, 1997 Volume 62, Number 197 make the following correction:

On page 53019 in the third column, the first sentence in paragraph one of the Summary lists the appraised fair market value as $645,000.00. The appraised fair market value should be changed to $625,400.00.

Dated: November 25, 1997.

A. Barron Bail,

Area Manager, Klamath Falls Resource Area.

[FR Doc. 97–31850 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land management

[ID–957–1020–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 25, 1997.

The plat representing the dependent resurvey of portions of the Sixth Auxiliary Meridian East (east boundary) and subdivisional lines, the subdivisional lines, the subdivision of section 25, and a metes-and-bounds survey in section 25, T. 7 N., R. 24 E., Boise Meridian, Idaho, Group 974, was accepted November 25, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 30, and metes-and-bounds surveys in section 30, T. 7 N., R. 25 E., Boise Meridian, Idaho, Group 974, was accepted November 25, 1997.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: November 25, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–31907 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–00–4442] ES–048576, Group 158, Minnesota

Notice of Filing of Plat of Survey; Minnesota, Stay Lifted

On Thursday, March 20, 1997, there was published in the **Federal Register**, Volume 62, Number 54, on page 13393, a notice entitled, ''Notice of Filing of Plat of Survey; Minnesota, Stayed.'' Said notice referenced the stay of the plat of the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and the subdivision of sections 6, 7, 8, 9, 16 and 33, Township 145 North, Range 38 West, Fifth Principal Meridian, Minnesota, accepted January 23, 1997.

The protest against the survey was withdrawn on September 3, 1997, and the plat of survey accepted January 23, 1997, was officially filed in Eastern States Office, Springfield, Virginia, at 7:30 a.m., on September 4, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: November 25, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–31852 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Marine Transportation of Federal Outer Continental Shelf (OCS) Crude Oil Produced Offshore California

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed Notice to Lessees and Operators (NTL).

SUMMARY: MMS proposes to issue an NTL concerning information requirements on marine transportation of OCS crude oil produced offshore California. MMS recognizes that the State of California and its localities have concerns about potential impacts on the environment from the transportation of such oil. The proposed NTL would assist Federal lessees and operators and State and local governments in meeting their responsibilities and addressing their concerns in this area.

DATES: MMS will consider all comments received by February 3, 1997.

ADDRESSES: Mail or hand-carry comments to MMS Pacific Region; 770 Paseo Camarillo; Camarillo, CA 93010; Attention: E. Aronson. E-mail comments to transportation.ntl@mms.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Aronson at 805–389–7511 or e-mail to transportation.ntl@mms.gov.

SUPPLEMENTARY INFORMATION: On June 17, 1996, Deputy Secretary of the Interior John Garamendi issued a Policy Directive to MMS, which provides in pertinent part that:

The policies of the State of California and the county of Santa Barbara prefer that oil and gas production, including offshore resources, be transported by onshore pipeline, rather than by offshore tanker, whenever pipelines are economically and technically feasible.

The Minerals Management Service (MMS) regulates activities which occur within OCS lease boundaries, and generally up to the point of landfall.

The MMS policies should particularly attempt to ensure that new and, where appropriate, amended Development and Production Plans adequately reflect the principle that transportation of OCS crude be consistent with State and local policies.

Statutory Authority

The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, provides the Secretary of the Interior with broad authority relating to the development and production of mineral resources of the OCS. The Secretary is required to provide for the suspension or temporary prohibition of activities if a threat of serious, irreparable, or immediate harm or damage to the marine, coastal, or human environment exists. The Secretary may also take action to cancel a lease if continued activity under it would probably cause serious harm to such environments and the threat of such harm will not decrease to an acceptable level in a reasonable period of time. 43 U.S.C. 1334(a). The Secretary may also disapprove or require modification of a new Development and Production Plan (DPP) if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the marine, coastal or human environment. 43 U.S.C. 1351(h)(1). To carry out these responsibilities, MMS must monitor those activities proximately related to the development and production of oil and gas resources on the OCS and safeguard against activities that may threaten the environment.

Through the OCSLA, the Congress has also recognized the OCS activities may have significant impacts on the States. The OCSLA emphasizes that State and local governments whose interests are affected by activities on the OCS are entitled to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals located in the OCS. 43 U.S.C. 1332(4)(C). Furthermore, the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized. 43 U.S.C. 1332(5).

MMS performs its statutory responsibilities with respect to development activities principally through the approval and periodic review of DPP's. 43 U.S.C. 1351; 30 CFR 250.34. The lessee or operator must provide a wide range of information that enables the MMS Regional Supervisor to take action on the plan. This includes assessing the effects on the environment expected as a result of implementing the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts.[1]

States that have coastal management programs approved by the Secretary of Commerce under the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, as well as their local governments, play a critical role in the review of both new and revised DPP's, primarily through the Federal consistency section of the CZMA. 16 U.S.C. 1456. The part of the consistency section dealing with OCS exploration plans and DPP's specifies the authorities and responsibilities of Federal lessees, the Secretary of the Interior, and the coastal States affected by OCS operations. 16 U.S.C. 1456(c)(3)(B).

This OCS-specific provision of the CZMA requires that any person who submits a DPP to the Secretary of the Interior under the OCSLA shall attach to the plan a certification that each activity described in the plan which affects the land, water, or natural resources of the State's coastal zone complies with the enforceable policies of the State's management program, and will be carried out in a manner consistent with that program. Generally, under this provision and under section 25(d) of the OCSLA (43 U.S.C. 1351(d)), the Secretary of the Interior may not grant a license or permit for any such activity unless the State concurs with the consistency certification attached to the DPP. Further, under section 25(h)(1)(B) of the OCSLA (43 U.S.C. 1351(h)(1)(B)), the Secretary shall disapprove the entire DPP if the State does not concur with the certification. Section 25(h)(1) of the OCSLA also provides that any modification to a DPP required by the Secretary, involving activities for which a Federal license or permit is required and that affect coastal zone resources, must receive concurrence of the certification by the affected State.[2]

Conclusion

MMS strongly supports the right of California to exercise its Federal consistency authorities under the CZMA and believes that consistency is an important tool for the State and its local governments to address, among other factors, the marine transportation component of DDP's. MMS encourages California to review the enforceable marine transportation policies in its coastal management program. The State should determine whether such policies: (1) Meet the definition of ''enforceable policy'' in section 304(6a) of the CZMA; (2) are of sufficient clarity and specificity to make consistency determinations understandable; and (3) incorporate, to the extent consistent with State law and the CZMA, the marine transportation policies of local governments.

The MMS Pacific OCS Region recognizes that the marine transportation of OCS crude oil may cause significant impacts on the marine, coastal, and human environments and contribute to the cumulative environmental risks of an OCS development project. To respond to the level of concern regarding marine transportation of OCS crude in California, to reaffirm the agency's commitment to strong coastal State and local involvement in OCS decisions, and to implement Deputy Secretary Garamendi's Policy Directive regarding Federal support of State and local policies with respect to the transportation of Pacific OCS crude oil, the MMS Pacific OCS Region adopts the following procedures for addressing new DPP's and proposed changes in the marine transportation component of existing DPP's for leases offshore California.

COMMENTS INVITED: The proposed NTL is designed to assist Federal lessees and operators and State and local governments in meeting their responsibilities and concerns regarding marine transportation of Federal OCS crude oil produced offshore California. Comments on the proposed NTL are invited.

Dated: December 1, 1997.

J. Lisle Reed,

Regional Director, Pacific OCS Region, Minerals Management Service.

United States Department of the Interior, Minerals Management Service, Pacific OCS Region

Proposed Notice to Lessees and Operators of Federal Oil and Gas Leases, Pacific OCS Region

NTL 97– ____________________

Effective Date: ____________________

Lessee Responsibilities for Information on the marine Transportation of Federal Outer Continental Shelf (OCS) Crude Oil Produced Offshore California

In General: The Marine transportation of OCS minerals is an activity that the Secretary of the Interior has determined must be described in detail in a Development and Production Plan (DPP). As such, it is an activity that requires the approval of the Secretary and the concurrence of the State with the certification of federal consistency. Proposed changes in the marine transportation component of a DPP may require a revision to an approved DPP, and such revision is also subject to Secretarial approval (delegated to the Regional Supervisor). This revision would need the concurrence of the State with the required certification of Federal consistency unless it is overridden on appeal to the Secretary of Commerce as authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act (CZMA).

New DPP's: To address the concerns of California State and local governments about potential significant effects of oil spills, particularly those from tankering activity, in the State's sensitive marine ecosystem, lessees or operators preparing new DPP's should pay special attention to the marine transportation component of their plans. Such lessees and operators are advised to develop plans to transport the OCS minerals in a manner that is consistent with the enforceable marine transportation policies of the State's CZM program.

Specifically, the procedures of 30 CFR 250.34 shall be followed in the preparation and submission of a new DPP, including the requirement for certification of coastal zone consistency as provided in 15 CFR part 930. Concurrence by California with the certification is a necessary condition for approval of the new DPP by the Regional Supervisor unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the CZMA.

Revised DPP's: The conditions and procedures under which revisions to existing DPP's are required are generally provided for in sections 25(h)(3) and 25(i) of the OCSLA and implemented in MMS' regulations at 30 CFR 250.34(q). Based on those authorities, the Regional Supervisor will conduct periodic reviews of existing DPP's based on changes in information and onshore or offshore conditions affecting or affected by the DPP activities. The Regional Supervisor will pay particular attention to any change in the marine transportation component of the DPP and, specifically, to tankering activity. If a lessee or operator acting under an approved DPP anticipates any change in the mode, manner, or degree of marine transportation of OCS crude activity described in the plan, the lessee or operator shall provide information related to such changes to the Regional Supervisor.

Based on the Regional Supervisor's periodic review or the lessee or operator's notification, the Regional Supervisor will notify appropriate State and local officials about such changes and provide to the State and local officials copies of the information submitted by the lessee or operator. If the Regional Supervisor determines that the proposed change in activity requires a revision to the DPP, the Regional Supervisor will order a revision to the DPP. If the Regional Supervisor determines that a proposed revision either ordered by the

[1] 30 CFR 250.34(b)(11).

[2] Procedures to implement the CZMA consistency certification section are set forth generally in 15 CFR part 930. The OCS-specific provisions regarding new or amended DPP's are processed in accordance with Subpart E of those regulations (15 CFR 930.70 *et seq.*).

Regional Supervisor or initiated by the operator could result in significant change to previously identified and evaluated impacts or to one not previously identified or evaluated, the proposed revision shall be subject to all of the procedures contained in 30 CFR 250.34, including the requirement, under 250.34(b)(13), that a certification of coastal zone consistency be submitted with the revision. The Regional Supervisor may not approve the revision unless the State concurs with the certification, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The Regional Supervisor shall prepare the appropriate environmental documentation under the National Environmental Policy Act for the decision to approve, require further modifications to, or disapprove revisions to DPP's.

This notice is provided to assist lessees and operators in planning the development of the Pacific OCS leases. Questions concerning this information should be directed to the Regional Supervisor for Development, Operations, and Safety at (805) 389–7560.

The collection of information referred to in this notice provides clarification, description, or interpretation of requirements contained in 30 CFR Part 250, Subpart B. The Office of Management and Budget has approved the collection of information required by these regulations and assigned OMB Control Number 1010–0049. This notice does not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.

Regional Supervisor, Office of Development, Operations, and Safety, Pacific OCS Region, Minerals Management Service.

Date

[FR Doc. 97–31944 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention to Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and 376 Units of the National Park System.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1998 to conduct customer service studies at all 376 parks in the National Park System to establish baseline data for the customer satisfaction measurement program that NPS is instituting in response to the requirements of the Government Performance and Results Act of 1993. NPS proposes further to conduct similar customer satisfaction surveys in each year following 1998 at some to all of the parks in the National Park System, with the total number of parks surveyed each year determined following an analysis of the results of the 1998 survey.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed customer service studies listed above. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys annually is to obtain visitor's opinions about the existing quality of services and facilities provided in units of the National Park System. Results of all surveys will be used by NPS managers to improve visitor services and facilities in the parks. In addition, results of the 1998 surveys will be used to establish baseline information about the quality of services and facilities provided to the visitors. The baseline established in 1998 will permit NPS to analyze whether future annual customer satisfaction surveys could be conducted on a rotating sample of parks, thereby reducing the total burden on visitors while ensuring efficient and accurate collection of visitor satisfaction information. This approach will permit NPS to respond positively and efficiently to the Government Performance and Results act while better serving the visitors to the parks.

DATES: Public comments will be accepted on or before February 3, 1998.

SEND COMMENTS TO: Dr. Gary Machlis, NPS Visiting Chief Social Scientist, Cooperative Park Studies Unit, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho 83844–1133, phone: 208–885–7054.

FOR FURTHER INFORMATION CONTACT: Sandy Watson. Voice: 208–885–7054; Fax: 208–885–4261, Email: <swatson@uidaho.edu>.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys in the National Park System.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information concerning visitor opinions about the services and facilities that the National Park Service provides in each unit of the National Park System. The proposed information to be collected from visitors in these parks is not available from existing records, sources, or observations either regularly or comprehensively.

Automated data collection: At the present time, the proposed data collection process will use machine readable, pre-addressed, postage paid customer survey cards to increase the speed with which respondents are able to answer the survey instrument and provide their responses to the NPS. Beyond this method to accelerate the response time, there is no automated way to gather this information, since gathering it requires asking visitors to evaluate the services and facilities that they used during their individuals and unique park visits.

Description of Respondents: A sample of visitors to each park.

Estimated average number of respondents: The number depends on the size of the park being surveyed and is estimated to average about 200 respondents per park.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 0.033 hours (2 minutes).

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: An average of 6.6 hours per park and a total in 1998 for all parks of 2507 hours. If a sample of parks is taken in each of 1999 and 2000, rather than a total survey of all parks in each year, the total burden in each of those years would be significantly less than 2507 hours per year.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 97–31891 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Request for Comments on the National Park Service Franchise Fee Determination Guideline

SUMMARY: The National Park Service (NPS) is considering revising that portion of its concession management guideline (NPS–48) that concerns the franchise fees to be charged NPS concessioners. This portion of NPS–48 (Chapter 24, Section D) was adopted on December 31, 1986, after receipt and consideration of public comment solicited by an August 7, 1985 **Federal Register** notice. It was amended on July 20, 1995, after consideration of public comment received in response to a January 17, 1995, **Federal Register** notice. It was clarified on August 11, 1997, after consideration of public comment received in response to a May 28, 1997, **Federal Register** notice.

NPS invites further public comment on Section D, Chapter 24, or NPS–48 in order to assist it in considering possible revisions to the document. Comments may suggest, among other matters, specific proposed changes to Section D as it now exists or alternative methods, in concept or in detail, for dealing with concession contract franchise fees. All written comments received will be duly considered by NPS.

COMMENT DATE: Comments on this notice must be received no later than January 5, 1998 to be assured of consideration.

SUPPLEMENTARY INFORMATION: NPS notes that NPS–48 is an agency staff manual and as such is not required to be published in the **Federal Register** pursuant to 5 U.S.C. 552 nor promulgated as a rule after public notice and comment pursuant to 5 U.S.C. 553. In addition, NPS notes that the rulemaking requirements of 5 U.S.C. 553, even if otherwise applicable to an agency staff manual such as NPS–48, are expressly not applicable to matters relating to agency management or personnel or to public property, loans, grants, benefits or contracts. NPS–48, as a matter concerning the administration of public property and contracts, falls within this exemption to the extent it may be considered a rule or regulation within the meaning of 5 U.S.C. 553. Nonetheless, NPS, as a matter of policy, seeks further public comment on Section D of Chapter 24, NPS–48, for the reasons stated above.

Dated: November 14, 1997.

Robert K. Yearout,

Concession Program Manager.

[FR Doc. 97–31890 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–387]

North American Free Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Mexico, Round Two

AGENCY: United States International Trade Commission.

ACTION: Amendment to scope of the investigation.

EFFECTIVE DATE: December 1, 1997.

SUMMARY: Following receipt on November 25, 1997, of a request from the Office of the United States Trade Representative (USTR), the Commission amended the scope of its investigation No. 332–387, North American Free Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles from Mexico, Round Two, to add three subheadings of the Harmonized Tariff Schedule of the United States (HTS), 2918.90.05, 2918.90.43, and 2918.90.47, to the list of articles for which the USTR is seeking the Commission's advice. The purpose of the investigation, conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), is to provide the President, with respect to specified articles, of the Commission's judgment as to the probable economic effect of the immediate elimination of the U.S. tariff under the North American Free Trade Agreement (NAFTA) on domestic industries producing like or directly competitive articles and on consumers.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from the project leader, Carl Seastrum (202–205–3493), Minerals, Metals, Machinery, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the products listed in this expanded scope notice, contact Elizabeth Howlett (202–205–3365) of the Energy, Chemicals, and Textiles Division of the Office of Industries. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Commission's notice of institution of the investigation and the scheduling of a public hearing was published in the **Federal Register** of November 6, 1997 (62 FR 60100). As stated by the USTR in her letter of October 20, 1997, requesting the investigation, the Governments of the United States, Mexico, and Canada have agreed to enter into consultations to consider accelerated elimination of the import duty on certain articles. The accelerated elimination of tariffs in this second round of negotiations between the United States and Mexico will be pursued on a reciprocal basis in response to petitions submitted to the Governments of Canada, Mexico, and the United States. The USTR included with its original request a list of products to be considered for immediate reciprocal elimination of tariffs. The Commission will submit its report no later than February 17, 1998. USTR has indicated that it may classify all or part of the Commission's report as Confidential.

Public Hearing

A public hearing will be held on January 7, 1998, and continuing, if necessary on January 8, 1998, as announced in the notice published on November 6, 1997. Persons wishing to appear at the public hearing to offer testimony concerning the probable economic effect of the immediate elimination of the U.S. tariffs on HTS subheadings 2918.90.05, 2918.90.43, and 2918.90.47 should file a request to testify with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, not later than 5:15 p.m., December 18, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., December 19, 1997. For all other articles subject to this investigation, all the dates announced in the notice published on November 6, 1997, will remain the same.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the investigation. Written statements should be submitted by the close of business on January 14, 1998. Commercial or financial information that a submitter desires the

Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by the public. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: December 2, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31924 Filed 12–4–97; 8:45 am]

BILLING CODE 7020–04–P

INTERNATIONAL TRADE COMMISSION

Temporary Closure of the Law Library

AGENCY: United States International Trade Commission.

ACTION: Temporary closure to the public of the Commission's Law Library.

SUMMARY: Because of office relocations during painting and recarpeting, the Commission's Law Library will be closed to the public beginning Monday, December 15, 1997, and will be reopened to the public on Monday, January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Steven J. Kover or Maureen E. Bryant, Law Librarians, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3287.

Issued: December 2, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31923 Filed 12–4–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be practical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY970043 (Feb. 14, 1997)

Volume II

Maryland
MD970001 (Feb. 14, 1997)
MD970002 (Feb. 14, 1997)
MD970015 (Feb. 14, 1997)
MD970023 (Feb. 14, 1997)
MD970026 (Feb. 14, 1997)
MD970031 (Feb. 14, 1997)
MD970037 (Feb. 14, 1997)
MD970046 (Feb. 14, 1997)
MD970055 (Feb. 14, 1997)
MD970056 (Feb. 14, 1997)
MD970058 (Feb. 14, 1997)
Pennsylvania
PA970007 (Feb. 14, 1997)
PA970008 (Feb. 14, 1997)
PA970021 (Feb. 14, 1997)
PA970023 (Feb. 14, 1997)
PA970024 (Feb. 14, 1997)
PA970040 (Feb. 14, 1997)
PA970052 (Feb. 14, 1997)
PA970054 (Feb. 14, 1997)
PA970063 (Feb. 14, 1997)

Volume III

Kentucky
KY970001 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970025 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV

Minnesota
MN970008 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)

Volume V

Iowa
IA970005 (Feb. 14, 1997)
IA970032 (Feb. 14, 1997)
Louisiana
LA970001 (Feb. 14, 1997)
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970012 (Feb. 14, 1997)
LA970014 (Feb. 14, 1997)
LA970015 (Feb. 14, 1997)
LA970017 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)
LA970045 (Feb. 14, 1997)
LA970055 (Feb. 14, 1997)
New Mexico
NM970001 (Feb. 14, 1997)

Volume VI

Colorado
CO970001 (Feb. 14, 1997)
CO970011 (Feb. 14, 1997)
CO970016 (Feb. 14, 1997)
CO970025 (Feb. 14, 1997)
Wyoming
WY970004 (Feb. 14, 1997)

Volume VII

Hawaii
HI970001 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 26th day of November, 1997.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–31539 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services, Submission for OMB Review; 1998 Indian Library Services Application and Guidelines, 1998 Native Hawaiians Library Services Application and Guidelines; Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION Notice.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(a)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Institute of Museum and Library Services is soliciting comment concerning two new collections entitled, 1998 Indian Library Services Application and Guidelines and 1998 Native Hawaiians Library Services Application and Guidelines.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

The agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the address section below on or before February 3, 1998.

ADDRESSES: Submit written comments or requests for additional information to: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506. Comments may also be submitted by e-mail to imlsinfo@imls.fed.us.

Background

Pub. L. 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act, a reauthorization and refocusing of federal library programs. This legislation calls upon the Director of the Institute of Museum and Library Services to award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912) to enable such tribes and organizations to carry out activities to:

- Establish or enhance electronic linkages among or between libraries electronically link libraries with educational, social or information services; assist libraries in accessing information through electronic networks;
- Encourage libraries in different areas, and encourage different types of libraries, to establish consortia and share resources; or
- Pay costs for libraries to acquire or share computer systems and telecommunications technologies; and

• Target library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families and incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) applicable to family size involved.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: 1998 Indian Library Services Application and Guidelines.

OMB Number: N/A.

Affected Publics: Indian Tribes.

Total Respondents: 225.

Frequency: annually.

Total Responses: 250.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: 1998 Native Hawaiians Library Services Application and Guidelines.

OMB Number: N/A.

Affected Publics: organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

Total Respondents: 1.

Frequency: annually.

Total Responses: 1.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: November 26, 1997.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 97–31889 Filed 12–4–97; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendments would replace the current Technical Specifications (TS) with a set of TS based on NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants,'' Revision 1, dated April 1995. The adoption of NUREG–1430 is part of an initiative to standardize and improve the TS for Babcock and Wilcox nuclear power plants.

The changes in the current TS can be grouped into five categories: administrative changes, more restrictive technical changes, less restrictive technical changes, relocation of details to other licensee controlled documents, and relocation of specifications to other licensee controlled documents. Administrative changes to the current TS are changes that result in no increase or decrease in restrictions or flexibility. These changes are intended to make the TS easier to use. More restrictive technical changes are either more conservative than the corresponding requirements in the current TS, or are additional restrictions that are not contained in the current TS. Less restrictive technical changes reduce either the scope or magnitude of requirements or add flexibility and are usually made as a result of operating experience. In most cases, these relaxations to the TS have been previously granted by the NRC to other plants. Relocation of details involves removal from the current TS and relocation to other licensee controlled documents. Typically, these details are of system design or function, or procedural details on surveillances. And finally, relocation of specifications involves requirements that are in the current TS but do not meet the criteria set forth in the Commission's Policy Statement on Technical Specification Improvement. Once these items have been relocated, the licensee generally would be able to revise them under the provisions of 10 CFR 50.59 without a license amendment.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 5, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 28, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 1st day of December 1997.

For the Nuclear Regulatory Commission.

Herbert Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31873 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

In the Matter of Entergy Gulf States, Inc., Cajun Electric Power Cooperative, Inc. (River Bend Station, Unit No. 1); Order Approving Transfer of License for River Bend Station, Unit No. 1

I

Entergy Gulf States, Inc. (EGSI) owns 70-percent of River Bend Station, Unit No. 1 (RBS), a single-unit nuclear power plant. Cajun Electric Power Cooperative, Inc. (Cajun) owns the remaining 30-percent interest in the facility. EGSI and Cajun are governed by Facility Operating License No. NPF–47 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR part 50) on November 20, 1985. Under this license, EGSI has the authority to possess the facility and act as agent for Cajun. Entergy Operations, Inc., has the authority under the license to act as agent for EGSI and possess the facility, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility. Both EGSI and Entergy Operations, Inc. are subsidiaries of Entergy Corporation (Entergy). The RBS facility is located in West Feliciana Parish, Louisiana.

II

In 1994, Cajun filed for protection under Chapter 11 of the Bankruptcy Code. Cajun is represented by Mr. Ralph R. Mabey, Chapter 11 Trustee. In an application dated October 15, 1997, the Trustee requested NRC's consent to a proposed transfer of the 30-percent share of RBS currently owned by Cajun to EGSI. EGSI and Entergy Operations, Inc. endorsed and consented to the request by Cajun. Upon completion of the transfer, EGSI will become the sole owner of RBS and Entergy Operations, Inc. will remain the plant operator. On October 24, 1997, a Notice of Consideration of Approval of Transfer of License and Issuance of Conforming Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was published in the **Federal Register** (62 FR 55432). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on November 19, 1997 (62 FR 61835).

The transfer to EGSI of the license for RBS to the extent it is held by Cajun is subject to the license transfer provisions of 10 CFR 50.80. Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application dated October 15, 1997, and other information before the Commission, the NRC staff has determined that EGSI is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated November 28, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, the Commission consents to the proposed transfer of license described herein from Cajun to EGSI, subject to the following: (1) The issuance of approved amendments fully reflecting the transfer approved by this Order at the time such transfer is effected, and (2) should the transfer not be completed by June 30, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

For further details with respect to this action, see Cajun's submittals requesting approval of the transfer of the license and a conforming license amendment dated October 15, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 28th day of November 1997.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31872 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

New York State Electric & Gas Corporation; Nine Mile Point Nuclear Station, Unit No. 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding an indirect transfer of the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), to the extent held by New York State Electric & Gas Corporation (NYSEG). The transfer would be to a holding company, not yet named, to be created over NYSEG in accordance with an executed ''Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation'' forwarded by letters dated October 20 and 27, 1997. NYSEG is licensed by the Commission to own and possess an 18 percent interest in NMP2.

By application dated September 18, 1997, NYSEG informed the Commission of a proposed corporate restructing under which NYSEG would become a subsidiary of a newly formed holding company. The outstanding shares of NYSEG's common stock (other than shares for which appraisal rights are properly exercised would be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of NYSEG. Under this restructuring, NYSEG would divest its interest in coal-fired power plants, but would continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution and, in the case of NMP2 and hydroelectric facilities, the generation of electricity. NYSEG would retain its ownership interest in NMP2 and continue to be a licensee of NMP2. No direct transfer of the operating license or ownership interests in NMP2 will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation, which is responsible for operating and maintaining NMP2.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the NYSEG application dated September 8, 1997, as supplemented October 20 and 27, 1997. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room located at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland this 26th day of November 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31869 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its May 5, 1997, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

The proposed amendment to Technical Specifications 3.9.1.2 and 3.9.1.3 and their Bases would have allowed the crediting of soluble boron for maintaining k-effective at less than or equal to 0.95 within the spent fuel pool rack matrix following a seismic event of a magnitude greater than or equal to an operating basis earthquake.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 16, 1997 (62 FR 38135). However, by letter dated November 11, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 5, 1997, and the licensee's letter dated November 11, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at 2 the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 14th day of November 1997.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31870 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Availability

The Nuclear Regulatory Commission has updated the Regulatory Guide List to advise of the wide range of regulatory guides that are available and to list all published versions of each guide. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Single copies of the Regulatory Guide List may be obtained free of charge by writing the Information Management Division, Attention: Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301) 415–5272. Single copies of regulatory guides, both final and draft guides, may also be obtained free of charge at this address.

Regulatory guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and the list of guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–31871 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes To Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed change to a system of records.

SUMMARY: The purpose of this document is to give notice of a proposed routine use in one system of records and an addition to the categories of records in the same system.

DATES: The amendment to the categories of records shall become effective as proposed without further notice in 40 calendar days from the date of this publication unless OMB approves the RRB request for waiver of the 40-day advanced notice requirement for new or altered system reports, in which case the altered system, with the exception of the proposed routine use, will become effective as of the date the waiver is granted. The routine use will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION: Since 1938, the Railroad Retirement Board (RRB) has provided current railroad workers with a yearly statement of their commulative service and compensation. (This information is contained in Privacy Act System of Records RRB–5, Master File of Employees Creditable Compensation.) For many years, the statements were mailed to the railroad employers for distribution to their workers. Beginning in 1985 railroad employers were given the option of furnishing the RRB with address information for their employees, in which case, the RRB would mail the statements to the employees. In time, all of the Class I (large) railroads, which account for over 80% of railroad workers, plus many of the medium-size railroads elected this option, so that today the RRB mails over 96 percent of the service and compensation statements directly to the rail employees.

Originally, address information furnished by the railroad employer was kept in computerized tape format for 1 year until the following year's submissions from railroad employers. Beginning in 1994, the RRB began to retain the address information in an on-line environment, so that it could be accessed by computer terminal along with various service and compensation data about a particular employee.

The proposed routine use (''q'' for RRB–5) would authorize the RRB to disclose to a Member of Congress the name and address of a Member's railroad worker constituent in order that the Member could communicate with him or her about legislation affecting the railroad retirement or unemployment/sickness insurance system.

The Railroad Retirement Board has determined that this proposed routine use meets the compatibility requirement because it is a necessary and proper use. The RRB previously published routine uses allowing disclosure of name and address information of retirement annuitants and unemployment and sickness claimants to Members of Congress (RRB–21, ''x''; RRB–22, ''ff''). Thus, publication of this proposed routine use would bring this system of records into conformity with the other two main systems of records containing name and address information with respect to disclosure to Members of Congress for the same purpose.

On November 17, 1997, the Railroad Retirement Board filed an altered system report for this system with the chairmen of the designated Senate and House committees and with the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–5

System name:

Master File of Railroad Employees' Creditable Compensation—RRB

* * * * *

This section is revised to read as follows:

Categories of records in the system:

Individual name, social security number, claim number, date of birth, sex, race, last employer identification number, amount of daily pay rate if under $100, ICC occupation code, creditable service and compensation from 1937 to date, and home address.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

A new paragraph ''q'' is added to read as follows:

q. The name and address of a railroad worker may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the worker about legislation which affects the railroad retirement or railroad unemployment and sickness insurance program.

[FR Doc. 97–31906 Filed 12–4–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Form BD/Rule 15b1–1, SEC File No. 270–0019, OMB Control No. 3235–0012.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information described below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Form BD/Rule 15b1–1, Application for Registration as Broker or Dealer

Sections 15(b) (1) and (2) of the Securities Exchange Act of 1934 authorizes the Commission to prescribe by rule an application form for registration that contains such information about broker-dealers that is necessary or appropriate in the public interest or for the protection of investors. Similarly, Section 15B(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of municipal securities dealers, and Section 15C(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of government securities broker-dealers. Section 15C(a)(1)(B) further provides that registered broker-dealers engaging in government securities activities use provide the Commission with notice of such activities, in such form as the Commission may prescribe. To implement the foregoing statutory provisions of the Exchange Act, the Commission has promulgated, pursuant to Rule 15b1–1, 17 CFR 240.15b1–1, Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. Form BD requires the applicant or registrant filing the form to provide the Commission with certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business. Form BD also is used to register as broker-dealers with certain self-regulatory organizations (''SROs'') and all of the states.

For fiscal year 1996, the Commission received approximately 840 full form BDs for an initial or successor applications for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rule 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, Commission staff estimates that the average time necessary to complete the full form is approximately 2.75 hours. Thus, the total burden hours for the filing of a full form BD is 2,310 hours (2.75×840).

In addition to full form BDs, applicants are required to file amendments to Form BD when information originally reported changes or becomes inaccurate. For fiscal year 1996, the Commission received approximately 15,000 amendments. The staff estimates that the average time necessary to complete an amendment is approximately 0.33 hours. Thus, the total burden hours for the filing of a form BD amendments is 4,950 hours ($0.33 \times 15{,}000$). In sum, the total annual burden for Form BD and Form BD amendments is 7,260 hours (2,310 + 4,950).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the equality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Considerations will be given to comments and suggestions submitted in writing on or before February 3, 1998.

Please direct your comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Dated: November 25, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31845 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22919; 812–10880]

Federated Index Trust, et al.; Notice of Application

December 1, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without shareholder approval, of a new sub-advisory agreement (''New Agreement'') for a period of up to 120 days following the date of a change in control of ANB Investment Management and Trust Company (the ''Subadviser'') (but in no event later than May 30, 1998) (the ''Interim Period''). The order also would permit the Subadviser to receive all fees earned under the New Agreement following shareholder approval.

Applicants: Subadviser and Federated Index Trust (the ''Trust'').

Filing Date: The application was filed on November 25, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 24, 1997, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Trust, c/o John W. McGonigle, Esq., Federated Investors Funds, 5800 Corporate Drive, Pittsburgh, Pennsylvania 15237–7000. Subadviser, One North LaSalle St., Chicago, Illinois 60690.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust currently offers three series: Federated Max-Cap Fund, Federated Mid-Cap Fund and Federated Mini-Cap Fund (each a "Portfolio"). The assets of the Trust are managed by Federated Management (the "Adviser") pursuant to an investment management agreement between the Adviser and the Trust on behalf of each Portfolio. The Subadviser provides sub-advisory services to each Portfolio under an existing sub-advisory agreement ("Existing Agreement") between the Adviser and the Subadviser. The Subadviser is an investment adviser registered under the Investment Advisers Act of 1940.

2. Under an agreement dated October 3, 1997, between Northern Trust Corporation ("Northern Trust") and First Chicago Investment Management Company ("First Chicago"), Northern Trust has agreed to purchase the Subadviser for cash (the "Transaction"). As a result of the Transaction, the Subadviser will become a wholly-owned subsidiary of Northern Trust. Applicants expect consummation of the Transaction on December 31, 1997.

3. Applicants believe that the Transaction will result in an assignment of the Existing Agreement. Applicants request an exemption to permit: (i) The implementation, during the Interim Period, prior to obtaining shareholder approval, of the New Agreement, and (ii) the Subadviser to receive from each Portfolio all fees earned under the New Agreement if, and to the extent, the New Agreement is approved by the shareholders of each Portfolio. The requested exemption will cover the Interim Period beginning on the date the Transaction is consummated and continuing through the date on which the New Agreement is approved or disapproved by the shareholders of each Portfolio, but in no event later than May 30, 1998. Applicants state that the New Agreement will be identical in substance to the Existing Agreement.

4. On November 20, 1997, the Trust's board of trustees (the "Board") held in-person meetings for the purpose of considering and approving the New Agreement to evaluate whether the terms of the New Agreement are in the best interests of the Portfolios and their shareholders. At the meeting, the Board, including a majority of members who are not "interested persons" of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees"), voted unanimously in accordance with section 15(c) of the Act to approve the New Agreement and to submit the New Agreement to shareholders of each of the Portfolios at meetings expected to be held on or about February 13, 1998 (the "Meetings"). Applicants expect that proxy materials for the Meetings will be mailed on or about December 30, 1997.

5. The Subadviser believes that the requested relief is necessary to permit continuity of investment management for each Portfolio during the Interim Period so that services to the Portfolios would not be disrupted.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Subadviser during the Interim Period under the New Agreement will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) to the Subadviser only upon approval of the New Agreement by the shareholders of the Portfolios; or (b) to the relevant Portfolio if the Interim Period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Trust will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, control of the Subadviser will transfer to Northern Trust. Applicants believe, therefore, that the Transaction will result in an "assignment" of the Existing Agreement and that the Existing Agreement will terminate according to its terms.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) the new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to First Chicago, the Subadviser's parent, arising from the Transaction, applicants may not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Transaction was determined by First Chicago and Northern Trust and arose primarily out of business considerations unrelated to the Trust, including the time needed to obtain federal banking approvals for the Transaction. Applicants believe that allowing the Subadviser to continue to provide investment advisory services to the Portfolios during the Interim Period is in the best interests of the Portfolios and their shareholders to avoid any interruption in services to the Portfolios and is in keeping with the spirit of the provisions of rule 15a–4 and with the purpose of section 15 of the Act.

6. Applicants submit that the scope and quality of services provided to each Portfolio during the Interim Period will not be diminished. During the Interim

Period, each Portfolio would operate under the New Agreement, which is anticipated to be identical in substance to the Existing Agreement, except for its effective date. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, each Portfolio should receive, during the Interim Period, the same investment advisory services, provided in the same manner at the same fee levels, and by substantially the same personnel as before the closing of the Transaction.

7. Applicants contend that the best interests of shareholders of the Portfolios would be served if the Subadviser receives fees for its services during the Interim Period. Applicants state that the fees are a substantial part of the Subadviser's total revenues and, thus, are essential to maintaining its ability to provide services to the Portfolios. In addition, the fees to be paid during the Interim Period are at the same rate as the fees paid under the Existing Agreement, which has been approved by the shareholders of each respective Portfolio.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement will have substantially the same terms and conditions as the Existing Agreement, except for its effective date.

2. Fees earned by the Subadviser in respect of the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Subadviser in accordance with the New Agreement, after the shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of such approval with respect to such Portfolio.

3. The Trust will hold meetings of shareholders to vote on approval of the New Agreement on or before the 120th day following the termination of the Existing Agreement (but in no event later than May 30, 1998).

4. Either the Subadviser or the Adviser will bear the costs of preparing and filing the application, and costs relating to the solicitation of shareholder approval of the Portfolios necessitated by the Transaction.

5. The Subadviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Portfolios during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Subadviser will apprise and consult with the Board to assure that the Trustees, including a majority of the Independent Trustees of the Trust, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31875 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22918; 812–10688]

Strong Advantage Fund, Inc., et al.; Notice of Application

November 28, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1.

Summary of the Application: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances in joint accounts to be used to enter into short-term investments.

Applicants: Strong Advantage Fund, Inc., Strong Asia Pacific Fund, Inc., Strong Asset Allocation Fund, Inc., Strong Common Stock Fund, Inc., Strong Conservative Equity Funds, Inc., Strong Corporate Bond Fund, Inc., Strong Discovery Fund, Inc., Strong Equity Funds, Inc., Strong Government Securities Fund, Inc., Strong Heritage Reserve Series, Inc., Strong High-Yield Municipal Bond Funds, Inc., Strong Income Funds, Inc., Strong Institutional Funds, Inc., Strong International Bond Fund, Inc., Strong International Stock Fund, Inc., Strong Money Market Fund, Inc., Strong Municipal Funds, Inc., Strong Municipal Bond Fund, Inc., Strong Short-Term Bond Fund, Inc., Strong Short-Term Global Bond Fund, Inc., Strong Short-Term Municipal Bond Fund, Inc., Strong Special Fund II, Inc., Strong Total Return Fund, Inc., Strong Variable Insurance Funds, Inc. ("Funds"), Strong Capital Management, Inc. (the "Adviser") and Strong Funds Distributors, Inc. (the "Distributor").

Filing Dates: The application was filed on June 2, 1997 and amended on October 6, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1997, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Hundred Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is incorporated under the laws of the State of Wisconsin and registered under the Act as an open-end management investment company. All of the Funds are series companies that may issue one or more classes of shares.

2. The Adviser, incorporated under the laws of the State of Wisconsin, is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser acts as each Fund's investment manager, provides the Funds with various administrative services, and acts as transfer and dividend disbursing agent for the Funds. The Distributor, incorporated under the laws of the State of Wisconsin, is a broker-dealer registered under the Securities Exchange Act of 1934. The Distributor is an indirect subsidiary of the Adviser

and acts as principal underwriter of each of the Funds.

3. Applicants request that any relief granted pursuant to the application also apply to all other registered investment companies and series thereof that are part of the same group of investment companies (as defined in rule 11a–3 under the Act) and: (a) for which the Adviser, or a person controlling, controlled by, or under common control with the Adviser may in the future act as investment adviser; or (b) for which the Distributor, or a person controlling, controlled by, or under common control with the Distributor may in the future act as principal underwriter. The Funds that intend to rely on the requested order are named as applicants. Funds for which the Adviser or Distributor acts as investment adviser and/or principal underwriter in the future will not rely on the requested relief except upon the terms and conditions contained in the application.

4. All of the Funds are authorized by their investment policies to invest at least a portion of their uninvested cash balances in short-term liquid assets, including repurchase agreements, high-grade commercial paper, U.S. Government securities and other short-term debt obligations (''Short-Term Investments'').

5. The assets of the Funds are held by Firstar Trust Company and/or Brown Brothers Harriman & Co. as custodians (collectively, the ''Custodian''), neither of which controls, is controlled by or is under common control with, any of the Funds or the Adviser. At the end of each trading day, some or all of the funds may have uninvested cash balances in accounts at their respective Custodian that would not otherwise be invested in portfolio securities by the Adviser. Generally, such cash balances of the Funds are, or would be, invested in short-term liquid assets, such as commercial paper, U.S. Treasury bills, shares of certain Funds that value their net assets in reliance on rule 2a–7 under the Act,[1] and repurchase agreements.

6. Applicants propose that the Funds deposit uninvested cash balances that remain at the end of the trading day into one or more joint accounts (the ''Joint Accounts'') and that the daily balances of the Joint Accounts be invested in Short-Term Investments. Each Fund would invest through a Joint Account only to the extent that the Fund intends to invest in Short-Term Investments consistent with its respective investment objectives, policies and restrictions. The decision to employ a Joint Account for each fund will be based on the same factors as the decision to make any other investment in Short-Term Investments for the Fund.

7. Currently, the Adviser must enter into repurchase agreements and purchase other money market instruments separately on behalf of each Fund. This requires the Adviser to monitor multiple sources of cash availability, to allocate opportunities among the Funds, to execute multiple trades in similar securities on any given day and to settle the trades in a number of separate accounts. The sole purpose of the Joint Accounts will be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Funds necessary to manage their respective daily account balances.

8. The Adviser will not charge any additional or separate fees for operating or advising the Joint Accounts and will have no monetary participation in the Joint Accounts, but would continue to receive from each Fund its asset-based advisory fee with respect to each Fund's assets. The Adviser will be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, and ensuring fair treatment of the Funds. All purchases through a Joint Account will be subject to the same systems and standards for acquiring investments for individual Funds.

9. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that the repurchase agreement transactions entered into through a Joint Account will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to other Short-Term Investments, all such investments made through any Joint Account will comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1 prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Funds, by participating in the Joint Accounts, and the Adviser, by managing the Joint Accounts, could be deemed to be ''joint participants * * * in a transaction'' within the meaning of section 17(d) of the Act. In addition, the Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act.

3. Rule 17d–1 provides, in part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company is a participant, and which is entered into, adopted or modified subsequent to the effective date of the rule, unless an application regarding such joint enterprise, arrangement of profit-sharing plan has been filed with the SEC and has been granted by an order.

4. The Funds may earn a higher rate of return on investments effected through the Joint Accounts relative to the returns the Funds could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Accounts also may increase the number of dealers and issuers willing to enter into Short-Term Investments with the Funds and may reduce the possibility that the Funds' cash balances remain uninvested.

5. The Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Custodian, and the Adviser's accounting and trading departments.

6. Applicants assert that no Fund will be in a less favorable position as a result of the Joint Accounts. Applicants believe that each Fund's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other Fund. Each Fund's liability on any Short-Term Investment will be limited to its interest in such investment; no Fund will be jointly liable for the investments of any other Fund.

[1] Applicants have obtained an exemptive order from the SEC that permits certain Funds to purchase shares of affiliated Funds that are money market funds, in excess of the limitations prescribed in section 12(d)(1) of the Act, for cash management purposes. *See Strong Advantage Fund, Inc.*, Investment Company Act Release Nos. 22308 (Oct. 31, 1996) (notice) and 22356 (Nov. 26, 1996) (order).

7. Although the Adviser will realize some benefits through administrative convenience and some possible reduction in clerical costs, the Funds will be the primary benefactors of the Joint Accounts because the Joint Accounts may result in higher returns and will be a more efficient means of administering daily cash investments.

8. Applicants submit that the proposed operation of the Joint Accounts, as described in the application, is consistent with the provisions, policies and purposes of the Act, and that no Fund will participate in the Joint Accounts on a basis different from or less advantageous than that of any other Fund.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial cash account will be established with the Custodian for each Joint Account into which each Fund will be permitted to have deposited daily some or all of its uninvested net cash balances. A Fund may transfer a portion of its daily cash balances to more than one Joint Account. The Joint Accounts will not be distinguishable from any other accounts maintained by the Funds at the Custodian, except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have any indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient means of aggregating individual transactions in Short-Term Investments which would otherwise require daily management by the Adviser of each Fund's uninvested cash balances.

2. Cash in the Joint Accounts, as directed by the Adviser, will be invested in one or more of the following: (a) repurchase agreements which are ''collateralized fully'' as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act). The repurchase agreements entered into through the Joint Accounts will have remaining maturities of 60 days or less, and any other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. No Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in such Joint Account will comply with the investment policies and guidelines of that Fund.

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Fund that values its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Fund has an interest (determined on a dollar weighted basis), for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to ensure that there will be no opportunity for any Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the Joint Accounts will be solely at its option, and no Fund will be obligated to invest in the Joint Accounts or to maintain any minimum balance in the Joint Accounts. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Adviser will administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under the existing or any future advisory agreements it has with the Funds and will not collect any additional or separate fees for advising the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The boards of directors of the Funds (each a ''Board'' and collectively, the ''Boards'') will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each of the Boards will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with such procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Each Fund's participation in a Joint Account (i.e., its proportionate share of the Short-Term Investments effected through the Joint Accounts) will be documented daily on its books and on the books of the Custodian. Each Fund will maintain records (in conformity with section 31 of the Act and the rules thereunder) documenting, for any given day, its aggregate investment through each Joint Account and its *pro rata* share of each Short-Term Investment transaction made through such Joint Account.

10. Each investment made through a Joint Account will satisfy the investment criteria of each Fund participating in the joint investment.

11. Not every Fund participating in a Joint Account necessarily will have its cash invested in every Short-Term Investment entered into through the Joint Account. However, to the extent that a Fund's cash is applied to a particular investment made through a Joint Account, the Fund will participate in and own a proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

12. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity, except if: (a) the Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Funds owning a *pro rata* share of the investment, because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Funds prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Funds and the transactions will not adversely affect other Funds participating in the Joint Account. In no case would an early termination by less than all Funds be permitted if it would reduce the principal amount or yield received by other Funds in the Joint Accounts or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Fund that is an

open-end investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities and any similar restrictions set forth in the Fund's investment restrictions and policies, if the Adviser cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31847 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39370; File No. SR–CTA/ CQ–97–3]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Third Charges Amendment to the Second Restatement of the Consolidated Tap Association Plan and Second Charges Amendment to the Restated Consolidated Quotation Plan

November 26, 1997.

Pursuant to rule 11Aa3–2 of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 25, 1997, the Consolidated Tap Association (''CTA'') and the Consolidated Quotation (''CQ'') Plan Participants (''Participants'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') amendments to the Restated CTA Plan and CQ Plan. The amendments remove from the Plans' rate schedules the Network A ''one-cent-per-quote packet'' fees for the interrogation services that vendors offer on a pay-for-use basis and recreate the former Network A Class G program classification charge for automated voice response services. The Participants recently established these charges pursuant to the second charges amendment to the Second Restatement of the CTA Plan and the first charges amendment to the Restated CQ Plan.

Pursuant to Rule 11Aa3–2(c)(3)(i), the CTA and CQ Participants have designated the amendments as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants, which renders the amendments effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Purpose of the Amendments

A. Rule 11Aa3–2

The Participants under the Plans that make Network A last sale information and quotation information available (the ''Network A Participants'') recently established a pricing alternative for vendors of, and subscribers to, certain Network A market data interrogation services.[2] That alternative consists of a fee of one cent for each real-time ''quote packet'' that vendors disseminate to subscribers on a pay-for-use basis during the hours that the Network A Participants are open for trading (a ''per-quote charge'').

At the same time, the Network A Participants also classified their Class G program classification charge as a display device fee, based upon device equivalents. That fee is set for any month at the device fee that would apply for a number of devices equal to the maximum number of inquiries to which a vendor's automated voice response system responds simultaneously during that month. As we stated in the September Plan Amendments, the reclassification left the amount and calculation of the charges unchanged. It did not affect the amounts payable by any vendor.

The amendments remove the per-quote charge from the CTA and CQ Plan rate schedules and re-establish the Class G program classification charge in a manner identical to its form prior to the September Plan Amendments. The reason for these amendments is to comply with a request of the staff of the Commission's Division of Market Regulation which received an unfavorable comment letter.[3]

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Network A Participants are submitting this proposed plan amendment pursuant to Rule 11Aa3–2(c)(3)(i) under the Act. In doing so, the Participants are putting the revisions to the CTA and CQ Plan rate schedules into effect upon the filing of the amendments with the Commission. As a result, the removal of the per-quote charge from the CTA and CQ Plan schedules, and the re-instatement of the Class G program classification charge, will take effect upon submission of the plan amendments with the Commission. After filing the amendments with the Commission, the Network A Participants will notify affected vendors of the rate schedule changes as necessary.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The Participants believe the proposed amendments will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Under Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants must execute a written amendment to the Plan before an amendment to that Plan can become effective.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A).

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (Solely in Its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

---

[1] 15 U.S.C. 78k–1.

[2] *See* Securities Exchange Act Release No. 39235 (October 14, 1997); 62 FR 54886 (October 22, 1997) (''September Plan Amendments'').

[3] *See* letter from Sam Scott Miller, Vice President and Associate Counsel, Orrick, Herrington & Sutcliff LLP, to Jonathan G. Katz, Secretary, SEC, dated October 28, 1997.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated this proposal as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants which under Section 11Aa3–2(c)(3)(i) of the Act renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendments within sixty days of its filing and require refiling and approval of the amendments by Commission order pursuant to 11Aa3–2(c)(3)(iii), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31878 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

4 17 CFR 200,30-3(a)(27)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39372; File No. SR–GSCC–97–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Election of Directors

November 28, 1997

On July 23, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and on August 18, 1997, amended the proposed rule change (File No. SR–GSCC–97–07). Notice of the proposal was published in the **Federal Register** on September 22, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies GSCC's Shareholder. Agreement (''Agreement''),[3] By-laws, and Certificate of Incorporation relating to GSCC's procedures for election of directors and to restrictions currently placed on transfers of GSCC's securities. As described more fully below, the proposed rule change amends GSCC's procedures in four major categories: (a) nomination and election process for board members, (b) composition of the board, (c) restrictions on issuance and transfer of shares, and (d) miscellaneous.

A. Nomination and Election Process for Board Members

Similar to the process in place at NSCC and other clearing corporations, GSCC has a nominating committee that will be responsible for nominating candidates for election as participant directors to the board.[4] NSCC will continue to nominate and to elect two directors to the board outside the nominating committee process. The board seat for a management representative and for the GSCC president also will remain outside the nominating committee process.

The nominating committee consists of five individuals, a majority of whom are representatives from active participants. With the exception of the initial nominating committee, an individual cannot serve on the nominating committee if he or she has served on the board or the nominating committee within the past year. The term of a nominating committee member is two years, and the terms of nominating committee members are staggered.[5]

With the exception of the first nominating committee, incoming nominating committee members will be designated by the board after consideration of the recommendations of current nominating committee members. The participant category is irrelevant for purposes of the selection of nominating committee members. However, as a general guideline, the individuals serving on the nominating committee will reflect GSCC's overall membership and potential membership base.

Participants will be provided an opportunity early in the nomination process to suggest one nominee for each open board seat. After consideration of the participants' suggestions, the nominating committee will then select its candidates. The nominating committee will nominate one nominee for each open participant director seat. Participants will then be notified of the nominating committee's slate of candidates for open board seats.

1 15 U.S.C. 78s(b)(1).

2 Securities Exchange Act Release No. 39068 (September 12, 1997), 62 FR 49548.

3 The Agreement was first executed in 1988 before GSCC had a set of rules in place. GSCC currently has forty-six shareholders, each of which is a party to the Agreement. The National Securities Clearing Corporation (''NSCC'') is the largest shareholder, holding approximately eighteen percent of GSCC's shares.

4 The procedures governing the selection of the nominating committee are contained in Section 2.B of the Agreement, and the nomination procedures are contained in Section 2.C of the Agreement. The prior nomination process for participant directors was open to all members with every member being able to nominate any shareholder member, including itself. However, a member was restricted to submitting nominations only for its own correlative participant category (*i.e.*, broker participants nominated broker participant directors, clearing agent bank participants nominated clearing agent bank participant directors, and all other participants nominated dealer participant directors). The election process involved ballots being circulated to every member with such voting being similarly limited to one's own correlative participant category.

5 Initially, one class with two individuals will be designated for a one year term, and another class with three individuals will be designated for a two year term. After these initial terms, both classes will serve two year terms. Therefore, subsequent nominating committees will have two staggered classes of members.

After being notified of the nominating committee's selections, participants can nominate additional nominees with a petition signed by the lesser of seven participants or five percent of GSCC's participants. Each participants may only sign one petition for each open board seat.

If no nominating petitions have been filed by participants, the nominating committee will certify to the shareholders the participant directors selected by the nominating committee. Shareholders will then be bound to cast their votes supporting the nominating committee selections at the annual meeting.

However, if participants have filed one or more formal nominating petitions, GSCC will circulate ballots to all participants and will permit them to cast their votes to fill each open participant director seat in the contested participant category or categories. Active comparison only participants are entitled to one vote per open board seat. Active clearing agent bank participants are entitled to two votes per open seat. Active netting participants are entitled to two votes per open seat. In addition, each netting member will receive another two votes for approximately every ten million dollars of its clearing fund deposit up to an additional ten votes. Affiliated members will be considered one participant for purposes of determining voting entitlements. Cumulative voting rights have been eliminated.

Based upon the recommendation of the outgoing executive committee, the incoming board will designate the chairman of the board.[6] The chairman will be elected for a one year term with no overall term limit other than the six year term limit applicable to all participant directors.

B. Composition of the Board

The proposal removes the specific board composition requirements from the Agreement so that the Agreement outlines only board parameters such as a maximum number of board seats and a minimum required number of categories of directors that will be represented.[7] Pursuant to the By-laws, the board is empowered to make changes within the Agreement's broad parameters, including changing the size or composition requirements of the board in order to reflect membership demographics and other criteria.[8]

The current board composition has been recategorized as one management director, one at-large director, two NSCC directors, six general user participant directors, three broker participant directors, and two clearing agent bank directors.[9] Many of the related definitions of the participant categories have been expanded. The Agreement's definition of ''broker'' is broadened to include any entity regulatory engaged in the business of effecting transactions in any securities eligible for processing by GSCC on behalf of participants.[10] ''Clearing agent bank'' is more broadly defined essentially to mean any commercial bank member of the Federal Reserve System that provides clearing services with respect to GSCC eligible securities on behalf of others for at least ten percent of GSCC's participants and that provides those services using its own Federal Reserve account.[11] The terms ''general user participant'' and ''general user participant director'' are used instead of ''dealer participant'' and ''dealer participant director.[12] The definition of ''general user participant'' is essentially any participant that is not a broker or clearing agent bank, including futures commission merchants and registered investment companies.

Finally, GSCC directors are currently limited to serving two consecutive three year terms on the board. Under the revisions, the current term limits are retained for all but the vice chairman and management director, who will not have term limits. Furthermore, the Agreement specifies that there must be a one year absence from the board before a former director is eligible for a new overall six year term limit. The three staggered classes of directors are retained. The By-laws specify the categories of directors that compose each of the three classes.

C. Restrictions on Issuance and Transfer of GSCC Shares

GSCC is removing the price restrictions on its shares, which currently require that both Class A and Class B shares generally must be issued, sold, or transferred at a price of $500 per share. However, under the revisions GSCC generally will not be able to sell shares at less than current book value.

Pursuant to the revisions, GSCC may issue Class A shares to an existing Class A shareholder, participant, or affiliate of a participant rather than only to participants not already holding Class A shares.[13] GSCC's authority to issue new Class B shares is removed from the Agreement.[14]

Class A shareholders may now sell Class A shares to any existing Class A shareholder, participant, or affiliate of a participant in lots of 300 shares.[15] However, no shareholder other than NSCC may own more than five percent of Class A shares unless such shares are held as a result of acquisition, merger, or a comparable event. Similarly, shareholders may sell Class B shares to any existing shareholder, participant, or affiliate of a participant in lots of 200 shares.

The proposed rule change extends GSCC's right of first refusal to any sale or transfer of shares by any shareholder.[16] GSCC may purchase such shares at the lesser of the agreed price or the current book value. GSCC may resell such securities for a price at least equal to the book value unless the board approves a lower price.

GSCC has the right to repurchase Class A shares from participant shareholders provided that each participant shareholder is required to sell to GSCC the same percentage of Class A shares and NSCC continues to hold twenty percent of GSCC's Class A shares unless NSCC agrees otherwise. Pursuant to the proposal, GSCC may offer to repurchase shares at any price determined by the board or may require that the shares be sold to it at current book value.

---

[6] Prior to the amendment, there was no provision in the Agreement for selecting the chairman of the board.

[7] Section 2.A of the Agreement.

[8] Before changing the number of directors, GSCC must file a proposed rule change with the Commission.

[9] Prior to the amendment, the Agreement provided for twelve participant directors consisting of six dealer participant directors, three broker participant directors, and three clearing agent bank participant directors.

[10] ''Broker'' was previously defined as an entity regularly engaged in the business of effecting transactions specifically in treasury securities and specifically for the account of primary dealers and aspiring primary dealers.

[11] ''Clearing agent bank'' was defined as any clearing bank regularly used by brokers, primary dealers, and aspiring primary dealers for the clearance and settlement of transactions in treasury securities.

[12] ''Dealer participant'' was defined as a primary dealer or an aspiring primary dealer that is a participant. All references to primary and aspiring dealers have been removed from the Agreement.

[13] If GSCC issues additional Class A shares, NSCC has the right to request that enough additional Class A shares be issued to it in order for NSCC to retain its twenty percent holdings in GSCC.

[14] The board recently stated its intention to repurchase the existing Class B shares when GSCC is determined to be adequately capitalized, which is expected to occur by year end 1997.

[15] Previously, the Agreement contained restrictions on transfers of Class A shares by participant shareholders including a requirement that the Class A shareholder must transfer all of its Class A shares and that the transfer must be to a single participant not already holding Class A shares.

[16] Prior to this proposed rule change, GSCC had a right of first refusal only with respect to NSCC's sale of its Class A shares.

The revisions authorize GSCC to issue shares in response to an extraordinary corporate action (*e.g.*, a joint business venture). Pursuant to such an issuance, GSCC may exchange or transfer such shares for cash in any amount or for any noncash consideration.

If a shareholder ceases to be a GSCC participant, GSCC may mandate the sale to itself of shares of such a shareholder at book value.[17] However, the proposal also authorizes GSCC to offer to repurchase shares for any price determined by the board under such circumstances.

D. Miscellaneous Amendments

The proposal deletes loss allocation provisions in the Agreement that are redundant with the loss allocation provisions set forth in GSCC's rules. All timing references and procedures specific to the period between 1988 and 1991 contained in the Agreement are removed. In addition, provisions naming a specific individual to hold one NSCC director seat and another specific individual to act as the management director for purposes of the 1988 annual meeting are removed.

The supermajority voting requirements [18] with respect to future amendments of the Agreement are removed. However, GSCC retains the requirement that an affirmative vote of at least eighty percent of the entire board is required to change its business from that of a registered clearing agency including any change that would put GSCC in the business of being a broker or of performing brokered transactions. Moreover, for the protection of its shareholders and members, any change of business that puts GSCC in competition with clearing agent banks is subject to a veto by a unanimous vote of all the clearing agent bank directors and one other participant director.

II. Discussion

Section 17A(b)(3)(C)[19] of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. In the release announcing standards for the registration of clearing agencies (''Standards Release''), the Division of Market Regulation (''Division'') stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.[20] The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that GSCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in GSCC's election process. The board, which should be responsive to participant concerns, will designate the members of the nominating committee. GSCC participants will have the opportunity both informally and formally to nominate candidates for board seats. If there is a contested election, GSCC participants will have the opportunity to vote for participant directors. Therefore, the Commission believes that GSCC's procedures should provide fair representation to its members.

The Commission also believes that the changes to the composition of the board will provide enhanced fair representation. Several classes of participants that did not fit within the eligible categories of participant directors are now represented by the general user participant category. Thus, the Commission believes that GSCC's proposal is consistent with its obligations to assure the fair representation of participants.

The Commission finds that the removal of certain restrictions on the issuance and transfer of GSCC shares may assist GSCC in operating efficiently as a clearing agency. By exercising its right of first refusal, GSCC will be able to ensure that ownership of GSCC is limited to industry participants. Thus, GSCC's primary focus will continue to be on the clearance and settlement of securities. Also, GSCC may be better able to respond quickly to new business ventures by having the ability to issue shares in connection with new operations.

Finally, the Commission finds that the remaining miscellaneous amendments to the Agreement, such as the deletion of the loss allocation provision, the removal of obsolete references, and the removal of the supermajority voting requirements, provide for a more flexible and efficient operation of GSCC and, therefore, are consistent with the requirements of the Act. For example, by eliminating supermajority voting requirements, GSCC will be able to make necessary changes in its operations on an expedited basis.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31876 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39378; File No. SR–MSRB–97–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Its Arbitration Code

December 1, 1997.

I. Introduction

On May 22, 1997, the Municipal Securities Rulemaking Board, Inc. (''MSRB'' or ''Board'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–35, the Board's Arbitration Code. The proposed rule change would create two new sections: Section 37 would state that the Board will not accept any new arbitration claims filed on or after January 1, 1998; and Section 38 would provide that, as of January 1, 1998, every bank dealer (as defined in Rule D–8) shall be subject to

[17] Previously, GSCC had the discretionary right to repurchase its shares provided that GSCC repurchases all of the shares for $500 per share.

[18] Prior to the proposed rule change, the Agreement set forth a number of supermajority board voting requirements that had to be met in order to make certain changes to the Agreement, including classification of directors, procedures for electing and replacing directors, provisions related to loss allocation, and procedures and requirements for amending the Agreement.

[19] 15 U.S.C. 78q–1(b)(3)(C).

[20] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. (''NASD'') for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. New Section 38 would further provide that each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure as if the bank dealer were a ''member'' of the NASD.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38935 (August 14, 1997), 62 FR 44501 (August 21, 1997). One comment letter was received on the proposal.[3] The Exchange submitted Amendment No. 2 to the proposed rule filing on November 13, 1997.[4] This order approves the proposed rule change, as amended.

II. Description

The Board's arbitration program, which is limited to the resolution of disputes involving municipal securities, has been in effect since December, 1978. The Board has determined that, effective January 1, 1998, it will no longer accept any new claims filed with its arbitration program. The Board will, however, continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue its arbitration program when all such cases have been closed.[5]

Currently, any customer or securities dealer with a claim, dispute, or controversy against a dealer involving its municipal securities activities may submit that claim to the arbitration forum of any SRO of which the dealer is a member, including the NASD. Bank dealers, however, are unique in that they are subject to the Board's rules but are not members of any other SRO. In light of the Board's decision not to accept any new arbitration claims on or after January 1, 1998, the proposed rule change amends Rule G–35 to state this and to provide an alternative forum for claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

Pursuant to the proposed rule change, the bank regulatory agencies (i.e., the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation) would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. Thus, for example, a bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35, since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

In addition, the proposed rule change will amend Rule G–35, Section 31(h), to make publicly available the names of arbitrators on all customer awards rendered through the Board's arbitration program after May 10, 1989.[6]

III. Summary of Comments

The Commission received one comment letter relating to the proposed rule change.[7] The commenter states that his company collects arbitration awards and that they obtain information on these awards through the Public Awards Program of the various arbitration forums, which they can then make available to people who seek information about past arbitration awards. The commenter states that parties and counsel seek the past history of arbitrators that are appointed to hear their cases; therefore, they need to know the names of the arbitrators who decided particular awards. The commenter states that the NASD currently makes arbitrator names for public arbitration awards publicly available (and do so retroactively to May 10, 1989), and that the MSRB is the only SRO that does not make arbitrator names publicly available.

The commenter wants to know whether MSRB cases that will be arbitrated by the NASD will be made public, along with the names of the arbitrators. The commenter requests that the MSRB make publicly available its public arbitration awards, including the arbitrator names, retroactively to May 10, 1989 and prospectively in the future, so that the NASD will be able to continue its practice of making a list of arbitrators' past awards to parties when they appoint arbitrators.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Sections 15B(b)(2) (C) and (D) of the Act, which provide, respectively, that the Board's rules be designed, in general, to protect investors and the public interest, and, if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities because the proposed rule change ensures that there is a fair arbitration forum available for all MSRB arbitration claims.[8]

The Commission believes that it is consistent with the Act to allow the MSRB to send its arbitration cases to the NASD for arbitration, in part because the Board believes its declining caseload makes it difficult to justify the cost of continuing to operate its own arbitration program.[9] The Commission also

[3] *See* letter from Richard P. Ryder, Editor, Securities Arbitration Commentator, to Margaret H. McFarland, Deputy Secretary, Commission, dated September 10, 1997.

[4] Amendment No. 2 was submitted in response to the comment letter received on the proposed rule filing. Amendment No. 2 states that the Board has reviewed the comment letter and has determined to amend its arbitration code to make publicly available the names of arbitrators for all customer awards rendered after May 10, 1989. The Board believes that this amendment will facilitate the NASD's administration of those arbitration claims received after January 1, 1998 involving the municipal securities activities of brokers, dealers and municipal securities dealers where an arbitrator appointed to such a case previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. *See* letter from Jill C. Finder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 12, 1997.

[5] At such time, the Board will submit a filing to the Commission to delete sections 1 through 36 of Rule G–35, as well as new Section 37, and to rescind Rule A–16 on arbitration fees and deposits.

[6] *See* Amendment No. 2, *supra* note 4.

[7] *See supra* note 3.

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] According to the Board, its caseload grew steadily for a time; for example, 21 cases were received in 1980, 82 in 1986, and 115 in 1988. Between 1978 and 1993, the NASD automatically transferred to the Board's arbitration program any claims received involving municipal securities, and until approximately 1993 the majority of the Board's cases were received in this manner. The NASD also transferred cases (other than those involving municipal securities) to other self-regulatory organizations (''SROs''), such as the New York Stock Exchange and the American Stock Exchange, if the particular claim arose out of a transaction in that SRO's market. In 1993, the NASD amended its arbitration code to require a customer's consent before it could transfer a case to another SRO. The practical effect of this amendment has been to virtually halt the transfer of municipal cases to the Board's arbitration program because customers choose to remain at the

believes that procedurally the proposed rule change should adequately ensure that all arbitration cases that would be subject to the MSRB arbitration process will be provided for under the NASD's arbitration program. Those MSRB members who are also NASD members, or members of another SRO with an arbitration forum, will be able to use that SRO's arbitration forum.[10] Those MSRB members who are not also members of another SRO (the bank dealers) will now be deemed ''members'' of the NASD for purposes of arbitrating claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

In addition, the Commission believes that the proposed rule change adequately provides for the enforcement of amended Board Rule G–35 because the enforcement mechanism for bank dealers would not be altered. The bank regulatory agencies [11] would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. A bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35, since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

Finally, the Board provides adequate measures for the transition from the MSRB arbitration forum to the NASD arbitration forum. Even though the Board will no longer accept any new claims filed with its arbitration program after January 1, 1998, it will continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998. The Board will then discontinue its arbitration program when all such cases have been closed.[12]

The Commission notes that the MSRB stated that the Board will cover any costs associated with the NASD arbitrating cases involving the bank dealers that are not covered by the fees bank dealers will pay as parties to an arbitration proceeding, until such time as the NASD receives approval to amend its fees to cover such costs. As members of the NASD for arbitration purposes, bank dealers will pay the same arbitration fees as NASD members. The NASD has also stated that if the number of cases received from the MSRB were to increase substantially, the NASD would want to revisit the fee issue.[13]

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 is responsive to the commenter's request that the Board publicly disclose the names of arbitrators on all customer-related awards rendered after May 10, 1989 by amending Rule G–35 to make those names publicly available. This amendment should help facilitate the NASD's administration of municipal securities arbitration claims, and will allow the public to receive more accurate and complete information on an arbitrator's past arbitration activities, where an arbitrator appointed in a case has previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. Accordingly, the Commission believes that it is consistent with Section 15B of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–97–4 and should be submitted by December 29, 1997.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MSRB–97–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31874 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39357; File No. SR–NASD–97–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer Assisted Execution Service and Intermarket Trading System/Computer Assisted Execution Service Fees

November 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on November 10, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or

---

NASD. Consequently, the Board's caseload has declined dramatically from 115 cases received in 1988 to 10 cases received in 1996. As of the time of the filing of the proposed rule change, the Board had received two cases in 1997.

[10] The Commission notes that if another SRO wanted to eliminate its arbitration program and send its cases to the NASD, it would be required to file a rule filing under Section 19(b) of the Act, and the Commission would independently consider any such filing.

[11] The Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation.

[12] The Commission notes that the Board has stated that at that time it will submit a filing to the Commission to delete sections 1 through 36 of Rule G–35, as well as new Section 37, and to rescind Rule A–16 on arbitration fees and deposits.

[13] The Commission notes that if the NASD were to file a proposed rule change to amend fees that apply to its members, and that also apply to the bank dealers, it would be able to file that change under Section 19(b)(3)(A) of the Act, if it otherwise met the criteria. However, if the NASD were to file a proposed rule change that only affected fees for the bank dealers, that change would have to be filed under Section 19(b)(2) of the Act so that the bank dealers would have adequate notice and time to comment on the proposal.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] § 15 U.S.C. 78s(b)(1).

''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 21, 1997, the Association submitted to the Commission an amendment to the proposed rule changes.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Exchange Act, the NASD, through its wholly-owned subsidiary, Nasdaq, is herewith filing a proposed rule change to amend the Computer Assisted Execution Service (''CAES) and Intermarket Trading System/Computer Assisted Execution Service (''ITS/CAES'') fee structure from a per share fee to per trade fee. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010. System Service

(a)–(c) No change.

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per [share] *trade* transaction charge [applicable to the market-maker side of a transactional] plus equipment related charges.

(1) Service Charges

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges

(A) [$.005 per share] *As of November 1, 1997, $0.50 per execution* shall be paid by [the member which receives an order executed through CAES to buy or sell a Nasdaq Stock Market or listed security] *any CAES market maker that executes a CAES order or any part of a CAES order.*

(B) As of January 1, 1998, $0.50 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part.

[(B)] (*C*) [$.005 per share] *As of November 1, 1997, $1.00 per commitment* shall be paid by [the] *any* member which sends *or receives* a commitment through the ITS/CAES linkage to buy or sell a listed security *that is executed in whole or in part.*

(e)–(n) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the CAES and ITS/CAES fee structure from a per share fee to a per trade fee. Presently, there is a $0.005 per share fee (no maximum) assessed on Consolidated Quote Service (''CQS'') market makers[3] for trades executed through CAES (no charge on order entry firms) and a $0.005 per share fee (no maximum) assessed on CQS market makers for commitments to trade sent through the ITS/CAES linkage. Because CQS market makers are now obligated under the SEC's Limit Order Display Rule to display individual limit orders up to 9,900 shares and aggregate all ''displayable'' limit orders at the same price level, however, Nasdaq believes it is now appropriate to assess CAES and ITS/CAES fees on a per trade basis. Since the order sizes now displayable under the new rule may not represent a market maker's exclusive proprietary interest, Nasdaq believes that a fee structure based on a per share calculation is no longer the fairest or best means to assess CAES and ITS/CAES fees.

Nasdaq notes that other fees applicable to Nasdaq market participants are assessed on a per trade basis, *e.g.,* the present SelectNet fee is $2.50 per side of each transaction,[4] and the fee for the Small Order Execution System (''SOES'') is 50 cents for each order entered by an order entry firm or market maker, and 50 cents for each execution by a market maker. The current CAES and ITS/CAES per share fee structure, however, does not provide for any upper limit on fees.

Presently, the average CAES fee per trade using a per share calculation is $7.97. Nasdaq believes that adoption of the proposed per trade fee structure for CAES and ITS/CAES will result in an overall reduction of fees and establish a more consistent fee structure for all Nasdaq execution and order routing systems.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 15A(b)(5) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

New per trade fees established by paragraphs (A) and (C) of the rule will be effective November 1, 1997. The fees established by paragraph (B) will become effective on January 1, 1998 to allow ITS/CAES users adequate time to prepare for the implementation of these charges as well as allow Nasdaq to establish appropriate billing procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] § *See* Letter from Robert Aber, Vice President and General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq''), to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated November 21, 1997 (''Amendment No. 1''). The amendment adds language to the notice explaining that one of the purposes of the proposed rule is to create a per transaction fee structure that is fairer to market makers who, under the Order Display Rules, are required to display interest that may not be their own. The amendment also clarifies that the proposed rule is imposing a new fee on order entry firms. The filing of an amendment to a proposed rule change filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder results in a resetting of the 60 day period during which the Commission summarily may abrogate the change in the self-regulatory organization's rules. *See* 15 U.S.C. 78s(b)(3)(C).

[3] A *CQS market maker* is a dealer that, with respect to a reported security, holds itself out as being willing to buy and sell such security for its own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size and that is registered as such.

[4] This fee has been temporarily reduced to $1.25 per side through December 31, 1997. *See* Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997).

[5] Through paragraph (B) of the proposed rule imposes a new fee on order entry firms, Nasdaq believes that such a fee is necessary to more equitably distribute transaction costs.

[6] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, in that the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–82 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31843 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1989).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39356; File No. SR–NASD–97–57]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers Inc. Relating to the Electronic Delivery of Information Between Members and Their Customers

November 25, 1997.

I. Introduction

On July 30, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change setting forth the policy of NASD Regulation, Inc. (''NASD Regulation'' of ''NASDR'') regarding electronic delivery of information between members and their customers. A notice of the proposed rule change appeared in the **Federal Register** on September 11, 1997.[4] The Commission received one comment letter addressing the proposed rule change.[5] This order approves the proposed rule change.

II. Description of Proposal

The Association filed with the Commission a Notice of Members (''NTM'') which establishes the NASDR's policy regarding electronic delivery of information between members and their customers. The NASDR policy will allow members to use electronic media to electronically transmit documents that they are required or permitted to furnish to customers under Association rules and to receive electronic communications from customers. The NTM states that use of electronic media is permitted provided members comply with certain guidelines outlined in Commission Release Nos. 34–37182[6] and 33–7233.[7] In these releases, the Commission addresses the procedural aspects of how broker-dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media provided that they comply with certain prescribed requirements.

The NTM summarizes the Commission procedures, which address, among other things, content, notice, access, evidence to show delivery, and communication of personal financial information, and consent. The NTM also lists current Association rules that require or permit communications between members and their customers for which electronic delivery may be used in accordance with the standards contained in the Commission releases. The policy established in the NTM will also apply to a new rule or an amendment to an existing rule that requires or permits communications between members and their customers unless NASDR specifies otherwise at the time of adoption of the rule or amendment.

III. Summary of Comments

The Commission received one comment letter addressing this proposal.[8] While the ICI Letter generally supports the NASDR's NTM, it recommends certain additions to the list of NASD rules contained in the NTM,[9] and responds to a request for comment issued in the notice.[10]

The additional rules that ICI believes should be added to the list of NASD rules contained in the NTM are: Rule 2210 (d) and (f); IM–2210–3; Rule 2830(d); Rule 2830(k)(7); Rule 2830(l)(1)(C); and Rule 3010(g)(2).[11] ICI believes that Rules 2210(d), 2210(f) and IM–2210–3, which outline standards for when members communicate with the public, should be included to confirm that their disclosure and other requirements may be satisfied using electronic media where the communication itself is made through

[1] On August 27, 1997, the NASD amended the exhibit attached to the rule filing. *See* letter from Mary N. Revell, Associate General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated August 26, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 39025 (September 5, 1997); 62 FR 47858.

[5] Letter from Joseph P. Savage, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated October 2, 1997 (''ICI Letter'').

[6] *See*, Securities Exchange Act Release No. 37182, May 9, 1996; 61 FR 24644, May 15, 1996, (Commission's interpretation concerning the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Act and the rules thereunder).

[7] *See*, Securities Act Release No. 7233, Oct. 6, 1995; 60 FR 53458, Oct. 13, 1995, (Commission's interpretation concerning the use of electronic media as a means of delivering information required to be disseminated pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940).

[8] *See supra* note 5.

[9] ICI Letter at pp. 2–3.

[10] *See supra* note 4, at p. 47859, n.6.

[11] ICI Letter, p. 3.

electronic media.[12] Rule 2830 applies to the activities of members in connection with investment company securities.[13] ICI notes that Rules 2830(d), 2830(k)(7), and 2830(l)(1)(C), which apply to sales charges, execution of investment company portfolio transactions, and dealer concessions, respectively, should be included in the NTM to confirm that electronic disclosure meets the requirements in these rules in the case of a prospectus that is delivered electronically.[14] Concerning Rule 3010(g)(2), which defines the term ''branch office,'' ICI believes that the NTM should clarify the requirements of the rule may be satisfied through electronic delivery of sales material.[15]

In its response, the NASDR does not agree that these rules should be added to the NTM.[16] According to the NASDR, ''the rules the ICI suggests adding to the NTM do not specifically address the delivery of information between broker/dealers and customers, but instead concern substantive obligations that arise under NASD rules regardless of whether information is submitted in electronic or non-electronic form.'' [17] Notwithstanding its decision to exclude the rules from the NTM, the NASDR agrees that the disclosure requirements of Rules 2210(d), 2210(f), IM–2210–3, and 3010(g)(2) may be satisfied using electronic media where the communication itself is made electronically.[18] The NASDR also agrees that the disclosure requirements of Rules 2830(d), 2830(d)(4), 2830(k)(7), and 2830(l)(1)(C) may be met if the prospectus is electronically delivered.[19]

In the notice, the Commission requested comment on what types of security measures broker-dealers employ or will employ to reasonably assure themselves that the responses they receive electronically from customers are authentic.[20] According to ICI, while no formal survey of its membership was conducted, one member has indicated that it requires each customer who wishes to communicate electronically regarding his or her securities account, provide his or her social security number, customer account number, and personal identification number before electronic access to the account will be allowed.[21] For certain institutional clients, another member uses a security system which includes encryption technology and a password requirement.[22]

The Commission reiterates its concern that adequate security measures must be implemented by members to protect customers' personal financial information and to prevent unauthorized transactions when ''receiving'' or ''obtaining'' electronic responses from their customers. The Commission recognizes that the security measures instituted will vary depending on the computer's hardware and software capabilities, as well as, on the information being sent or received. However, an effort should be made to secure customers' information, as the two ICI members have done, by developing procedures and improving technology, when feasible.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15A(b)(6) [23] of the Act.[24] Pursuant to Section 15A(b)(6), the proposed rule change benefits the public, because it not only allows customers easy and efficient access to account information, but also requires an evaluation of systems and procedures by members to ensure that the privacy of personal information is maintained. In using the Commission's releases as a guide,[25] the Association has established a uniform policy concerning electronic delivery of information which should allow members and member organizations to satisfy their delivery obligations under the federal securities laws and the Association's rules. This uniform policy should simplify compliance by members and member organizations and aid the Association in monitoring the same.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASD–97–57) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31844 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39361; File No. SR–NASD–97–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Tape Recording of Conversations

November 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 12, 1997, as amended on November 17, 1997,[2] NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed Rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed Rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') Rule 3010 to require tape recording of conversations where members hire more than a specified percentage of registered persons from certain firms that have been expelled or

---

[12] *Id.*

[13] *See* NASD Manual, Conduct Rules, Rule 2830, p. 4621.

[14] ICI Letter, p. 3.

[15] *Id.*

[16] Letter from Mary N. Revell, Associate General Counsel, NASD Regulation, Inc., to Katherine England, Assistant Director, SEC, dated November 13, 1997 (''NASDR Letter''), p. 2.

[17] *Id.* at p. 2.

[18] *Id.*

[19] *Id.* at pp. 2–3.

[20] *See supra* note 10.

[21] ICI Letter at p. 2.

[22] *Id.*

[23] Section 15A(b)(6) requires the Commission to determine that an Association's rules are designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[24] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[25] *See supra* notes 6 and 7.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] On November 17, 1997, NASD Regulation filed Amendment No. 1 with the Commission. In Amendment No. 1, the NASD clarified that firms will be required to establish procedures required by the Rule when either information supplied by NASD Regulation or the firm's actual knowledge indicates that it is the subject of the Rule, and added a new provision defining the term, ''registered person,'' and moving the definition of a ''disciplined firm'' to a different location in the Rule for ease of reference. *See* Letter from Mary N. Revell, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Office of Market Supervision, Division of Market Regulation (November 17, 1997).

that have had their broker/dealer registrations revoked for egregious violations of sales practice Rules. The proposed Rule change also includes a conforming Rule change to Rule 9610. Below is the text of the proposed Rule change. Proposed new language is in italics.

Conduct Rules

Rule 3010. Supervision

(a) No change

(b) Written Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of this Association.

(2) Tape recording of conversations

(i) Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(viii) relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(x), shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered representatives.

(ii) The member must establish the supervisory procedures required by this paragraph within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

(iii) The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered representatives and both existing and potential customers.

(iv) The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of this Association. The procedures must be appropriate for the member's business, size, structure, and customers.

(v) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered representative and date.

(vi) Such procedures shall be maintained for a period of two years from the date that the member establishes the procedures required by the provisions of this paragraph.

(vii) By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered representatives.

(viii) The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered representatives:

** A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been employed by one or more Disciplined Firms within the last two years;*

** A firm with at least ten but fewer then twenty registered persons, where four or more of its registered persons have been employed by one or more Disciplined Firms within the last two years;*

** A firm with at least twenty registered persons, where 20% or more of its registered persons have been employed by one or more Disciplined Firms within the last two years.*

(ix) For purposes of this Rule, the term ''registered person'' means any person registered with the Association as a representative, principal, or assistant representative pursuant to Rule 1020, 1030, 1040, and 1110 Series.

(x) For purposes of this Rule, the term ''disciplined firm'' means a member that, in connection with sales practices involving the officer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or its subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(xi) Pursuant to the Rule 9600 Series, the Association may exempt any member from the requirements of this paragraph unconditionally or on specified terms and conditions upon a satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association.

(3) The member's written supervisory procedures shall set forth the supervisory system established by the member pursuant to Rule 3010(a) above, and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and the rules of this Association. The member shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the member for a period of not less than three years, the first two years in an easily accessible place.

(4) A copy of member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the member. Each member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations including the rules of this Association, and as changes occur in its supervisory system, and each member shall be responsible for communicating amendments through its organization.

(c) through (f) No change

(g) Definitions

(1) through (3) No change

* * * * *

Rule 9600. Procedures for Exemptions

Rule 9610. Application

(a) File With General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, *3010*, 3350, 11870, or 11900, Interpretive Material 2110–1, or Rule G–37 shall file a written application with the Office of General Counsel of NASD Regulation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed Rule change and discussed any comments it received on the proposed Rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Background

At its meeting in July 1996, the NASD Regulation Board of Directors authorized the staff to issue a Notice to Members soliciting comment on proposed changes to NASD supervisory Rule 3010 to require the tape-recording of telephone conversations of registered representatives in certain circumstances. The original Rule was developed both to respond to concerns expressed in the *Joint Regulatory Sales Practice Sweep (''Sweep'') Report* [3] regarding the need for heightened supervision of certain registered representatives with troubled regulatory and compliance records and also to address the particular problems that occur when a firm hires a large number of individuals who formerly worked at a firm that has been expelled or has had its registration revoked in connection with sales practice violations (a ''Disciplined Firm'') where they were inadequately supervised and trained.

The Sweep was an initiative involving the staffs of the NASD, the SEC, the New York Stock Exchange, and representatives of the North American Securities Administrators Association (collectively, the ''Working Group'') to review the sales-practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the brokerage firms employing them in order to identify possible problem registered representatives, review their sales practices, and assess whether adequate hiring, retention, and supervisory mechanisms are in place.[4] The Sweep Report was released on March 18, 1996.

One of the key findings of the Sweep Report was that some firms are willing to employ registered representatives with a history of disciplinary actions or customer complaints. Based on this finding, the Working Group collectively recommended that firms that hire registered representatives with a recent disciplinary history involving sales practice abuse or other customer harm should implement special supervisory procedures tailored to the individual registered representative, which include a heightened level of scrutiny of the registered representative's activities by his or her supervisor, for a period of time.[5] The Sweep Report recommended that, if firms fail to establish such special supervisory procedures, the self-regulatory organizations (''SROs'') should consider revising their rules to specifically require that registered representatives with a recent history of disciplinary actions involving sales practice abuse or other customer harm be placed under special supervision by the firm for a period of time.

The NASD and the NYSE have issued a memorandum discussing the Sweep Report and providing guidance on actions firms could take to provide heightened supervision of problem registered representatives.[6] While the special procedures designed to provide a heightened level of supervision recommended by the Sweep Report and described in the NASD/NYSE memorandum may provide adequate supervision of associated persons in most circumstances, NASD Regulation proposes to adopt specific procedures in certain situations in order to provide the level of supervision required by Rule 3010.

NASD Regulation proposes to amend NASD Rule 3010 to require firms that hire a specified number of individuals from Disciplined Firms to tape-record telephone conversations between their registered representatives and existing and potential customers. The proposed Rule would apply when a firm hires a substantial number of registered persons from a firm or firms that have been expelled or had their registrations revoked for sales practice abuse. The measures described by the rule are designed to prevent a reoccurrence of sales practice abuse or other customer harm that caused the Disciplined Firm to be expelled or have its registration revoked. The proposal is similar to an interpretation adopted by the National Futures Association (''NFA'') in 1993 to combat abusive cold calling.[7] The NFA's interpretation is discussed below.

Notice to Members 96–59 and Original Proposal

Notice to Members 96–59 (''Notice to Members''), containing the original proposed Rule (''original proposal'' or ''original Rule''), was issued in September 1996. The requirements of the original Rule would have been triggered whenever a significant portion of a member's work force was comprised of associated persons who formerly were employed by a Disciplined Firm or firms or when the firm itself was a Disciplined Firm. The original proposal defined a Disciplined Firm, for purposes of the Rule, as one that had been disciplined (*i.e.*, expelled, suspended, or enjoined) by a regulatory entity, an SRO, or a court within the previous five years for telemarketing or sales-practice abuses in connection with the solicitation, offer, or sale of securities.

Under the original proposal as described in the Notice to Members, if more than 20 percent of a member's sales force of associated persons previously were employed by a Disciplined Firm, the member would have been required to adopt special written procedures to supervise the telemarketing activities of its associated persons. Firms that were themselves Disciplined Firms also would have been required to adopt these procedures. The procedures would have required, at a minimum, that the employer member tape record all telephone conversations between all of its associated persons and both existing and potential customers, and maintain these procedures for two years. For each firm that was itself a Disciplined Firm, at the end of the two-year period, the NASD would have conducted an evaluation to determine whether, and for how long, the firm would continue to be subject to the requirements of the Rule. The Rule also would have required firms subject to the taping requirement to review the tapes periodically to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing activities, and to retain and index the tapes.

Comments and Response

Comments on the proposed Rule were requested by October 31, 1996. Of the 42 comments received in response to the Notice to Members, 39 were opposed to the proposal, including those filed by the Securities Industry Association, Lehman Brothers, Merrill Lynch, Morgan Stanley, and Smith Barney.[8]

[3] Staffs of the NASD, New York Stock Exchange, North American Securities Administrators Association, and the Office of Compliance Inspections and Examinations, SEC, *Joint Regulatory Sales Practice Sweep: A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them* (March 1996).

[4] *Id.* at i.

[5] *Id.* at ii, iv.

[6] NASD Notice to Members 97–19 (April 1997); NYSE Information Memo 97–20 (April 15, 1997).

[7] *See* Letter from Lynn K. Gilbert, Deputy Director, Commodity Futures Trading Commission, to Daniel J. Roth, General Counsel, NFA (January 19, 1993).

[8] NASD Regulation received the following comment letters: (1) Letter from Brian C. Underwood, A.G. Edwards & Sons, Inc. (''Edwards''), dated October 31, 1996; (2) Letter from Kevin P. Howe, American Express Financial Advisors (''AEFA''), dated October 31, 1996; (3) Letter from G. Thomas Mitchell, Aurora Insurance and Securities, Inc. (''Aurora''), dated October 10, 1996; (4) Letter from Jerome Snyder, Barington Capital Group, L.P. (''Barington''), dated October 23, 1996; (5) Letter from Leslie D. Smith, Berthel Fisher Company (''Berthel''), dated October 25, 1996; (6) Letter from Walter I. Miller, Capital Growth

Most of the commenters support what they see as NASD Regulation's objective in proposing the taping Rule and agree that something should be done to deter a firm from recruiting groups of registered persons of dubious ethics or training from a Disciplined Firm. They also agree that firms and registered persons who have engaged in sales practice abuses should be disciplined. However, they don't agree with the proposal contained in the Notice to Members and have raised a number of concerns. Many of the commenters object to the concept of taping as a regulatory requirement, and fear that requiring taping in the circumstances described in the proposed Rule is the beginning of a new regulatory regime that may require even more comprehensive taping.

The definition of Disciplined Firm is too broad: Many of the commenters believe the definition of Disciplined Firm in the original Rule was too broad because it did not take into account the nature of the event that led to the disciplinary problem.[9] For example, a firm could be included in the definition because of an injunction resulting from a technical or inadvertent violation of state law or as the result of a consensual injunction involving only a fraction of the firm's employees or business activities. One commenter believes that the definition should be limited to firms that have been permanently barred from the securities industry due to telemarketing or sales practice abuses.[10]

In response, the definition has been revised to include only firms that have been expelled from membership in a securities industry SRO or that have had their registration as a broker/dealer revoked by the SEC in connection with sales practice violations.

The Rule is too broad: Commenters believe the original Rule was too broad in several respects.[11] First, they believe that the Rule would unfairly punish firms and individuals with good disciplinary and compliance records for actions of others of which they have no knowledge and over which they have no control.[12] Second, they believe the Rule should apply only to persons who were employed by a Disciplined Firm at the time of the disciplinary event or within a specified time prior to the event.[13] Finally, commenters believe that the Rule should apply only to personnel who have sales contact with customers (*i.e.*, registered representatives) and that clerical and ministerial employees, who have no opportunity for sales practice abuse, should be excluded from both the 20% calculation and from the taping requirement.[14]

NASD Regulation has responded to these comments in two ways. First, the Rule has been revised to apply only to firms that hire a specified percentage of individuals who were employed at a Disciplined Firm within the last two years. Second, only registered persons, and not other employees, would be counted in determining whether the firm meets the percentage criterion for triggering the taping obligation. Third, only sales personnel would be subject to the taping requirement, since sales activities and contacts with customers or potential customers are the focus of this Rule. Thus, there is no reason to include back office personnel in either the percentage calculation or to require taping of their conversations.

The Rule does not achieve the stated purpose: The Notice to Members soliciting comment on the original proposal states that the purpose of the original proposed Rule is to respond to the Sweep Report recommendation that firms should adopt heightened supervisory procedures tailored to individual registered representatives with troubled regulatory and compliance records. Some of the commenters believe that the original Rule goes beyond the scope of the Sweep Report, and that it will not be effective in achieving the Sweep Report goal difficulties a firm would encounter when attempting to obtain the information that would be required to comply with the Rule.

NASD Regulation believes that the narrower focus of the Rule will result in lower compliance costs, at least for the industry as a whole. First, fewer firms will meet the criteria in the Rule and will be subject to the requirement, and costs, of tape recording conversations. Also, the Rule has been revised to utilize a tiered structure of determining whether a firm must comply with the Rule, with a higher permissible percentage of registered persons from Disciplined Firms being applied to smaller firms; this should result in a more equitable impact on small firms. Finally, with respect to the practical compliance difficulties raised by the Advisory Council, the NASD Regulation staff has spent a significant amount of time since the comment period closed in October responding to this issue and devising methods whereby NASD Regulation can reduce the difficulties and costs of compliance. As a result of

Planning, Inc. ("Capital"), dated September 24, 1996; (7) Letter from Sanford D. Greenberg, Chatfield Dean & Co. ("Chatfield Dean"), dated October 31, 1996; (8) Letter from Neil Lawrence Lane, Citicorp Investment Services ("CIS"), dated October 31, 1996; (9) Letter from David J. Master, Coastal Securities ("Coastal"), dated October 31, 1996; (10) Letter from John Polanin, Jr., Cowen & Company ("Cowen"), dated November 7, 1996; (11) Letter from Richard L. Sandow, Cullum & Sandow Securities, Inc. ("Cullum"), dated October 17, 1996; (12) Letter from Gregg Thaler, Duke & Company, Inc. ("Duke I"), dated October 10, 1996; (13) Letter from William Rotholz, Duke & Company, Inc. ("Duke II"), dated October 29, 1996; (14) Letter from Shannon Braymen, Duncan-Smith Securities, Inc. ("Duncan-Smith"), dated October 22, 1996; (15) Letter from James H. Pyle et al., E.E. Powell & Company, Inc., dated October 21, 1996; (16) Letter from Nancy K. Port, Equity Services, Inc. ("ESI"), dated October 30, 1996; (17) Letter from Rick Fetterman, Fetterman Investments, Inc., dated October 1, 1996; (18) Letter from Herbert O. Sontz, GKN Securities ("GKN"), dated October 31, 1996; (19) Letter from Lawrence E. Wesneski, Hoak Breedlove Wesneski & Co. ("Hoak"), dated October 21, 1996; (20) Letter from Cabell B. Birdsong, Investors Security Company, Inc. ("ISC"), dated October 22, 1996; (21) Letter from David A. Rich, Jefferies & Company, Inc., dated November 8, 1996; (22) Letter from Thomas P. Koutris, John Hancock Distributors, Inc., dated September 23, 1996; (23) Letter from A.E. Monahan, Keystone Capital Corporation ("Keystone"), dated October 7, 1996; (24) Letter from Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop ("Lawrence, Kamin"), dated October 29, 1996; (25) Letter from Kathryn S. Reimann, Lehman Brothers Inc. ("Lehman"), dated October 31, 1996; (26) Letter from Kenneth S. Spirer, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), dated November 14, 1996; (27) Letter from Jack G. Levin, Montgomery Securities ("Montgomery"), dated January 16, 1997; (28) Letter from Frederick W. Bogdan, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), dated October 30, 1996; (29) Letter from Dennis S. Kaminski, Mutual Service Corporation ("MSC"), dated October 29, 1996; (30) Letter from Richard Berenger, Nathan & Lewis Securities, Inc. ("Nathan & Lewis"), dated October 18, 1996; (31) Letter from Douglas L. Dunahay, Neidiger/Tucker/Bruner Inc. ("Neidiger"), dated October 29, 1996; (32) Letter from Edward T. Borer, Philadelphia Corporation ("PC"), dated October 17, 1996; (33) Letter from Michael Flannigan, Protective Group Securities Corporation ("PGSC"), dated September 24, 1996; (34) Letter from Robert A. Fitzner, Jr., RAF Financial Corporation ("RAF"), dated October 29, 1996; (35) Letter from Glen F. Hackmann, Robert W. Baird & Co., Incorporated ("Baird"), dated October 31, 1996; (36) Letter from Douglas F. Schofield, Schofield Investments, Inc., dated September 18, 1996; (37) Letter from Richard O. Scribner, Allen B. Holeman, and C. Evan Stewart, Securities Industry Association ("SIA"), dated November 4, 1996; (38) Letter from Dov S. Schecter, Smith Barney Inc. ("Smith Barney"), dated October 31, 1996; (39) Letter from Patrick G. Haayes, Stratton Oakmont, Inc. ("Stratton"), dated October 30, 1996; (40) Letter from Walter H. Schlobohm, dated February 10, 1997; (41) Letter from John Maceranka, The Windmill Group, Inc., dated September 28, 1996; and (42) Letter from Stanley J. Allen Jr., Yee, Desmond, Schroeder & Allen, Inc. ("Yee"), dated October 28, 1996.

[9] *See, e.g.*, letters from Edwards, Coastal, Cullum, ESI, Keystone, Lehman, Montgomery, Morgan Stanley, and Baird.

[10] *See* letter from Smith, Barney.

[11] *See, e.g.*, letters from Edwards, Aurora, Barington, Chatfield Dean, CIS, Coastal, Cullum, Duke II, ESI, ISC, Lehman, Morgan Stanley, Nathan & Lewis, PC, PGSC, RAF, Baird, Smith Barney, SIA, and Stratton.

[12] *See, e.g.*, letters from Lehman and Morgan Stanley.

[13] *See, e.g.*, letters from Edwards, Morgan Stanley, Nathan & Lewis, PC, SIA, and Stratton.

[14] *See, e.g.*, letters from Edwards, Barington, Chatfield Dean, Cullum, Duke II, ESI, ISC, Morgan Stanley, Baird, and Stratton.

research, NASD Regulation staff believes that it can assist firms by providing them with all the relevant information they require to determine whether they are in compliance with the Rule. However, comment is specifically requested on the cost of compliance with the Rule.

Privacy concerns: Many commenters stated that the Rule would result in an invasion of the privacy of both a firm's customers as well as the firm's associated persons, which would be especially unfair both to firms and associated persons that do not have disciplinary histories. Commenters also believe that the Rule would conflict with federal and state wiretapping laws. Finally, they are concerned that the Rule does not restrict the accessibility and appropriate use of heightened supervision because taping is not an effective means to supervise sales personnel.[15]

In response, NASD Regulation believes that restricting application of the Rule to only the most egregious situations, *i.e.*, employees who formerly were employed at firms that were expelled from the industry, addresses some of these concerns. Also, NASD Regulation believes that the in terrorem effect of tape recording all telephone conversations may be useful in deterring sales practice abuses. In addition, NASD Regulation notes that the Rule is designed to go beyond the problems raised by hiring individual problem registered representatives and is meant to address the concerns raised when a firm hires a large number of individuals who formerly were employed by a Disciplined Firm where they were inadequately trained and supervised.

The costs of the Rule are too great: Some commenters believe that the costs of the original Rule will be too high, particularly considering the limited benefits that will be achieved. The commenters state that the costs for purchasing tape-recording equipment, hiring personnel to review the tapes, and record retention would be enormous.[16] Also, some commenters state that the Rule would have a disproportionate effect on small firms both in terms of the costs and because small firms are more likely to become subject to the 20% threshold.[17] Finally, while not discussed in a formal comment letter, the Advisory Council raised as an issue the practical effect of the tapes.[18]

As stated above, because the Rule has been revised to address only the most egregious situations, the impact on privacy will be minimized. Also, if the Rule is adopted, NASD Regulation will inform NASD members that, in complying with this Rule, they must also comply with federal and state civil and criminal statutes governing the tape recording of conversations. This is the same approach the NFA has taken with respect to this issue.[19]

Each state has a statute governing wiretapping; there also is a federal statute governing wiretapping and electronic surveillance.[20] The federal statute and the majority of the state statutes permit taping of telephone conversations with the consent of one party (''one-party statutes''); a minority of state statutes require the consent of all parties to the conversation (''two-party statutes''). Three issues arise from the proposed Rule: what is necessary to comply with one-party statutes; what is necessary to comply with two-party statutes; and how to comply where a conversation occurs between a person in a one-party state and a person in a two-party state.

In one-party statute states, the only issue is whether the registered representative knows of and consents to the tape recording. Since the recording requirement would run to the firm, and the equipment would be the firm's, it might be argued that the firm, and not the representative, is doing the recording. Therefore, it would be necessary for the firm to insure that the representative has notice and consents to the tape recording of his or her telephone conversations. This could be accomplished through a clause in an employment agreement or employee handbook or other written notice to the representative.

In two-party statute states, it would be necessary to insert on the firm's telephone line a recording stating that all telephone conversations are being taped, similar to customer service lines in other industries. Some states require a system of beeps or buzzers that sound throughout the conversation. Another possibility is to insert a clause into the customer agreement notifying customers that their calls will be tape recorded. Some states also have a ''business use exception'' to the two-party statute consent requirement, but it is worded and applied differently in each state.

The issue of choice of law for conversations between persons in one-party statute and two-party statute states is an open issue that depends on the individual laws of each state and the individual facts. Firms would be required to independently determine that state laws are satisfied. The safest course of action in each case would be to notify their representatives and customers that their telephone calls are being tape recorded. If all parties know of the tape recording, then there is no violation of any statute.

Proposed Rule

As revised, the proposed Rule would apply whenever a specified percentage of a member firm's sales force is comprised of registered persons who were employed within the last two years by a firm that has been expelled from membership in a securities industry SRO or has had its registration as a broker/dealer revoked by the SEC.[21] The requisite percentage varies depending on the size of the firm, from 40 percent for a small firm to 20 percent for a larger firm. The firm must establish the required supervisory procedures within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of the Rule.

Under the proposed Rule, if a significant portion of a member's sales force previously was employed by a Disciplined Firm, the member would be required to adopt special written procedures to supervise the telemarketing activities of its registered representatives. The procedures would require, at a minimum, that the member tape-record all telephone conversations between all of its registered representatives and both existing and potential customers, and maintain these procedures for two years. The Rule would require firms to ensure that they tape record all regularly used means of telecommunications, including cellular phones. The Rule also would require firms subject to the taping requirement to establish reasonable procedures for reviewing the tape recordings to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of

[15] *See, e.g.*, letters from CIS, Duke II, ESI, Lehman, Merrill Lynch, MSC, Nathan & Lewis, and SIA.

[16] *See, e.g.*, letters from Berthel, CIS, Coastal, Duke II, ESI, GKN, Keystone, Lehman, Morgan Stanley, Nathan & Lewis, Baird, and Smith Barney.

[17] *See, e.g.*, letters from Capital, Cowen, Duncan-Smith, Hoak, SIA, and Yee.

[18] *See, e.g.*, letters from AEFA, Duke II, Lawrence, Kamin, Lehman, Morgan Stanley, MSC, Neidiger, Montgomery, SIA, and Smith Barney.

[19] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity*, 9021 (February 18, 1997).

[20] 18 U.S.C. §§ 2519 et seq.

[21] The revised definition of Disciplined Firm includes only expelled and revoked firms in order to focus, at least initially, on the most egregious cases with the greatest supervisory and disciplinary problems. This approach is similar to the one taken by the NFA, and will allow us to gain experience with the implementation of the Rule before we consider expanding the definition of Disciplined Firm to include firms that have been suspended from SRO membership or from SEC registration.

telemarketing, and to retain and catalog the tapes.

While each firm will be responsible for meeting its own obligations under the Rule, NASD Regulation will provide firms with all of the information that they need to determine if they are subject to the requirements of the Rule. NASD Regulation believes that firms should be able to rely on the accuracy of the information provided to them, and that a firm should be disciplined for failure to comply with the Rule only if it has actual knowledge of information that would make the firm subject to the Rule that is inconsistent with information provided by NASD Regulation to the firm that indicated that the firm was not subject to the Rule.

NASD Regulation will compile and maintain several lists that firms will be able to review on a quarterly basis to assist them to determine if they are in compliance with the Rule. The primary list that will be prepared will be a list of firms that meet the definition of Disciplined Firm.[22] Two additional lists will be prepared that should be helpful. One list will contain an alphabetical listing of all registered persons who had worked for Disciplined Firms within the last two years. Another list will be complied containing the same list of people grouped according to the firm for which they currently work. In order to alert firms that they are approaching the percentage that would make them subject to the requirements of the Rule, the second list will contain a computation of the percentage of all registered persons at the firm represented by registered persons who had been employed at a Disciplined Firm within the last two years.

The Rule is thus very similar to an NFA interpretation concerning supervision of telemarketing activity.[23] NFA member firms subject to the requirements of the interpretation must tape record all sales solicitations.[24] The NFA interpretation applies to firms that meet criteria relating to the percentage of the firm's associated persons who formerly were employed at a firm that was closed down and barred from the industry through enforcement actions for deceptive telemarketing practices.[25] These firms are required by the NFA interpretation to tape record sales solicitations. An NFA member subject to these procedures may seek a waiver of the taping requirement upon a satisfactory showing that its current supervisory procedures provide effective supervision over its employees, including enabling the member to identify potential problem areas before customer abuse occurs. The NFA has rarely granted such waivers. In one instance, a waiver was granted to a firm that did not engage in telemarketing and had only institutional customers. In two other instances, partial waivers were granted to firms that hired outside consultants. NFA informed NASD Regulation that they were not satisfied with the work performed by the outside consultants and would not grant such waivers in the future.[26] In response to commenter requests, NASD Regulation has included a waiver provision in the proposed Rule, and also has proposed a conforming change to the Rule 9600 Series.[27]

Statutory Basis

NASD Regulation believes that the proposed Rule change is consistent with Section 15A(b)(6) of the Act,[28] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that requiring members that hire more than a certain percentage of registered representatives who formerly were employed by a Disciplined Firm will further these requirements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed Rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed Rule change was published for comment in NASD Notice to Members 96–59 (September 1996). Forty-two comments were received in response to the Notice.[29]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests comments on all aspects of the proposal as well as the following specific items.

1. Should customers be notified by firms that their calls are being taped? Should firms be required to obtain their customers' written consent to be taped? Why or why not?

2. Should registered representatives subject to the Rule be notified by the firms that their calls are being taped? Why or why not?

3. In light of the information already available on the Central Registration Depository, is a list of all registered persons who have worked for a Disciplined Firm within the last two years necessary to ensure compliance with the Rule? Would such a publicly available list be used in other ways (for example, as a screening device for applicants for registered representative positions)?

The Commission also is soliciting comments concerning whether the Rule captures the appropriate registered persons in the percentage calculation that triggers the taping requirement. The Rule would apply whenever a specified percentage of a member firm is comprised of registered persons who were employed within the last two years by a firm that has been expelled from

[22] For the two-year period 1995–1996, 14 firms met the definition of Disciplined Firm: 4 firms were expelled from SRO membership and 10 had their registration revoked.

[23] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity,* ¶ 9021 (February 18, 1997).

[24] NASDR states that no NFA member firm is currently taping sales solicitations. Due to recent changes to the NFA interpretation that were approved by the Commodity Futures Trading Commission in December, 1996, seven new firms became subject to the requirements of the interpretation, but all are in the process of seeking waivers from the taping requirement. If these firms do not obtain waivers from the NFA, or adjust their personnel numbers, they will be required to tape-record conversations.

[25] In early 1997, 44 firms met the NFA definition of Disciplined Firm. *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity,* ¶ 9021 (February 18, 1997).

[26] Telephone conversation between Mary N. Revell, Associate General Counsel, NASD, and Daniel Driscoll, Vice President, Compliance, NASD (February 26, 1997).

[27] *See, e.g.,* letters from Edwards, Barington, Cullum, Duke I, Duke II, Duncan-Smith, GKN, Hoak, Morgan Stanley, Baird, and Montgomery.

[28] 15 U.S.C. § 78o–3(b)(6).

[29] *See* discussion *supra* Section II(A) Comments and Response.

membership in an SRO or has had its registration as a broker-dealer revoked by the SEC. The requisite percentage varies from 40 to 20 percent, depending on the size of the firm.

4. As proposed, the Rule captures registered persons who have worked at a Disciplined Firm within the past two years. Is the proposed time frame appropriate?

5. Should the percentage of registered persons counted in the calculation exclude registered persons who have worked at a Disciplined Firm within the past two years, but who themselves have no disciplinary history or customer complaints?

6. Should the percentage of registered persons counted in the calculation include registered persons who may not have worked at a Disciplined Firm, but who have, as individuals, been barred by the Commission from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer?

7. Should firms with fewer than five registered persons be excepted from the Rule?

8. As proposed, the Rule limits the taping requirement to registered representatives in conversation with existing or potential customers. Should the taping requirement apply to registered principals in conversation with existing or potential customers? Should it apply to any other associated person of a member firm?

9. What are the estimated costs to comply with the Rule? Please comment generally on the benefits and costs of the Rule, as well as ways to reduce the costs while preserving the benefits of the Rule.

Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should File No. SR–NASD–97–69 in the caption above and should be submitted by December 29, 1997.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31846 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39371; File No. SR–NASD–97–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Punitive Damages in Arbitration

November 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the NASD's Code of Arbitration Procedure to add a new rule relating to the award of punitive damages. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rules of the Association

10000. Code of Arbitration Procedure

10300. Uniform Code of Arbitration

10336. Punitive Damages

This Rule explains when a party may seek punitive damages, what standards and limitations apply to the claim, and what the arbitration award must state.

(a) The Availability of Punitive Damages

(1) This Rule applies to any claim that must be arbitrated under Rule 10301 between a public customer and a member, or between a public customer and an associated person.

(2) A party may request punitive damages if, at the time the party files a claim, the party is a citizen of a state that allows its courts to award punitive damages for the same type of claim.

(3) A member or an associated person may request punitive damages from a public customer only if the public customer is a citizen of a state that allows its courts to award punitive damages for one or more of the public customer's claims.

(4) A party seeking punitive damages must state the amount in its claim.

(5) For purposes of this Rule, the term ''claim'' means any dispute or controversy described in the Statement of Claim (including Counterclaims, Third-Party Claims, and Cross-Claims) for which the claimant is seeking any form of remedy.

(b) Arbitrators to Apply State Standard

(1) When arbitrators decide whether to award punitive damages, they will apply the same standard of conduct applied by courts in the state where the requesting party is a citizen at the time a claim is filed.

(2) Arbitrators will apply this standard even if the parties signed a choice of law agreement that specifies a different state.

(c) Limitations on the Amount and Availability of Punitive Damages

(1) Punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less.

(2) For purposes of this paragraph only, compensatory damages do not include attorneys' fees, costs of arbitration, or post-award interest.

(3) Arbitrators cannot award punitive damages if they have already awarded multiple damages for the same claim under:

(A) the Racketeer Influenced and Corrupt Organizations Act (RICO), or

(B) any other federal or state statute that provides for multiple damages awards.

(4) The limitations in this Rule apply even if state laws differ.

(d) Statement in Award

If the arbitrators award compensatory and punitive damages, they must state separately the amount they awarded for each.

---

[30] 17 CFR 200.30–3(a)(12).

[1] The NASD filed Amendment Nos. 1 and 2 to the proposed rule filing on October 17, 1997 and November 14, 1997, respectively, the substance of which is incorporated into the notice. *See* letters from Joan C. Conley, Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated October 17, 1997 (''Amendment No. 1'') and November 14, 1997 (''Amendment No. 2'') respectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 1996, the NASD's Arbitration Policy Task Force (''Task Force'') [2] released its report on Securities Arbitration Reform. The Task Force Report made numerous recommendations to improve the arbitration process. Since the Report was released, NASD Regulation has been engaged in a major effort to implement the Task Force recommendations.

The proposed rule change relates to the Task Force recommendations concerning the availability of punitive damages in securities arbitration. In brief, the Task Force recommended that punitive damages remain available in NASD arbitration, subject to a cap. The Task Force's recommendations are described in more detail below.

Summary of Proposed Rule Change

The proposed rule change would apply only to arbitration disputes between public customers and member firms (or their associated persons).[3] The proposed rule change would allow a customer to seek punitive damages in arbitration if the state of which he or she is a citizen would allow punitive damages for the same type of claim in court. In deciding whether an award of punitive damages is warranted, the arbitration panel will look to the standard of conduct for the award of punitive damages applied in the state of which the party requesting punitive damages is a citizen at the time the claim is filed. That state's law is to be applied without regard to any contrary choice-of-law provision contained in the parties' agreement. The proposed rule requires a party requesting an award of punitive damages to specify in the claim the amount of punitive damages requested, and provides that punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less.

Background

Damages are defined as pecuniary compensation that may be recovered by any person who has suffered loss, detriment, or injury to his person, property, or rights through the unlawful act, omission, or negligence of another.[4] Damages may be compensatory or punitive, according to whether they are awarded (1) as compensation, indemnity, or restitution for harm sustained by a party (compensatory);[5] or (2) as other damages awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future (punitive).[6] Punitive damages usually are awarded only if compensatory damages have been sustained.[7]

For many years, courts and legal scholars debated whether punitive damages should be available in arbitration proceedings. In 1992, the Securities Industry Conference on Arbitration (''SICA'') [8] approved an amendment to the Uniform Code of Arbitration which provided that arbitrators may grant any remedy or relief that they deem just and equitable and that would have been available in a court with jurisdiction over the same dispute. This provision has not been adopted by any SRO.[9] As noted, as in 1994, the NASD formed the Task Force to study the securities arbitration process administered by the NASD and to make suggestions for reform. The NASD has followed the Task Force's recommendations, described below, in developing the proposed rule.

In 1995, the Supreme Court addressed the availability of punitive damages in securities arbitration in a case involving the NASD's arbitration forum. *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*[10] The *Mastrobuono* case involved a brokerage firm's client agreement that contained a New York ''choice-of-law'' provision and a provision requiring any controversy arising out of the parties' transactions to be arbitrated according to the rules of the NASD or the NYSE.[11] The choice-of-law provision required that disputes be decided according to New York law, which allowed courts, but not arbitrators, to award punitive damages.[12] With regard to the arbitration provision, the Court examined the NASD's rules, because the parties had elected to proceed in arbitration at the NASD.[13] The Court cited an NASD rule providing that arbitrators may award ''damages and other relief,'' [14] and determined this language to be broad enough to include punitive damages.[15] In addition, the Court observed that the Arbitrator's Manual provided to NASD arbitrators stated that ''arbitrators can consider punitive damages as a remedy.'' [16] The Court concluded that the choice-of-law provision introduced an ambiguity into an agreement that would otherwise allow punitive damages awards. The Court construed the ambiguity against the brokerage firm that drafted the agreement, thus enforcing the award of

[2] The NASD formed the Arbitration Policy Task Force in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force, chaired by David S. Ruder, former Chairman of the SEC, delivered its Report to the NASD Board in January 1996.

[3] The proposed rule change does not apply to industry and clearing controversies that may be arbitrated pursuant to the Rule 10200 Series, such as disputes between or among member firms, associated persons, and other industry parties. The NASD will address punitive damages for these disputes in a separate filing.

[4] *Black's Law Dictionary* 389 (6th ed. 1990).

[5] *Restatement (Second) of Torts* § 903 (1979). The word ''damages'' is used in the Restatement of Torts in the same sense in which it is used in the Restatement of Contracts. *See id.* § 902 cmt. a (1979).

[6] *Restatement (Second) of Torts* § 908 (1979). ''In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.'' *Id.*

[7] *See Restatement (Second) of Torts* § 908 cmt. c (1979) and cases cited therein. Some courts allow recovery of punitive damages when only nominal damages have been awarded. *Id.*

[8] SICA is a group composed of representatives of the self-regulatory organizations (''SROs'') that provide arbitration forums, public investors, and the securities industry. Staff of the SEC attend as non-voting invitees. Currently, there are ten SRO representatives, three public investor representatives, and one representative from the securities industry.

[9] In 1994, the New York Stock Exchange (''NYSE'') held a symposium on issues significant in securities arbitration, including punitive damages. *Symposium: New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry*, 63 Fordham L. Rev. 1495 (1995).

[10] 514 U.S. 52, 131 L. Ed. 2d 76, 115 S. Ct. 1212 (1995).

[11] 514 U.S. at 58–59.

[12] *See Garrity* versus *Lyle Stuart, Inc.*, 353 N.E.2d 793 (1976). Since *Mastrobuono* was decided, a New York appellate court has held that, with respect to arbitrations governed by the Federal Arbitration Act, which preempts the *Garrity* rule, the arbitration of punitive damages claims is required unless the parties have unequivocally agreed otherwise. *Mulder* versus *Donaldson, Lufkin & Jenrette*, 648 N.Y.S.2d 535 (1996).

[13] 514 U.S. at 60–61.

[14] This is currently Rule 10330(e).

[15] 514 U.S. at 61.

[16] *Id.* The Arbitrator's Manual was compiled by members of SICA to explain the Uniform Code of Arbitration.

punitive damages to the customers.[17] The *Mastrobuono* decision left open the possibility that a more clearly drafted agreement might permit, exclude, or limit punitive damages.[18]

Trends in State and Federal Law

In the past few years, the United States Congress and several state legislatures have acted to place limits on the amount of punitive damages that may be recovered in court proceedings. Although many of these new laws relate to causes of action that would not normally be alleged in securities arbitrations, such as personal injury and product liability, the number of statutes restricting the award of punitive damages is an indication of growing legislative concern. Some examples of state and federal laws are provided below.

A review of NASD arbitration records indicates that about half of all claimants in the past three years have been residents of California, New York, Florida, New Jersey, Texas, Illinois, or Michigan; over 40% of all claimants lived in the first three listed states.[19] State laws are constantly evolving; however, it appears that all seven of the above states allow for the award of punitive damages for some types of tort actions;[20] five states have some statutory limitations on punitive damages;[21] and two states have no statutory limit on the amount that may be awarded, although case law allows the trial or appellate courts to reduce the amount awarded by the trier of fact.[22] Two states provide for payment of a share of the award to the state in certain circumstances.[23] In some of the states, punitive damages requests must be separately pleaded or tried, or are otherwise subject to special procedures to avoid prejudice to the defendant.[24] As noted earlier, many of the state statutes described above relate to claims that one would not expect to find in securities arbitrations.

At the federal level, Congress has acted to provide for punitive damages in two specific areas, while at the same time placing limits on the amounts that may be recovered.[25]

[17] 514 U.S. at 62.

[18] Under the NASD's rules, however, parties are not allowed to include in their arbitration agreements ''any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.'' Rule 3110(f)(4). This rule was not at issue in *Mastrobuono* because the Mastrobuonos' contract was executed prior to the effective date of the rule. 514 U.S. at 61 n.6. The NASD intends to amend Rule 3110(f) to be consistent with the proposed rule change.

[19] This informal survey of claims filed in 1994, 1995, and 1996 counted the number of separate claimants from each state; there could have been several claimants in one case. It also considered each claimant's mailing address, which may or may not have been the claimant's domicile for legal purposes. In about 2% of cases, only the address of the claimant's attorney was provided; these addresses were omitted from the survey. Furthermore, the survey did not differentiate between types of claimants, so it includes member firms and associated persons who were claimants in industry disputes. Therefore, these figures are only approximate.

[20] *California,* Cal. Civ. Code § 3294 (West Supp. 1996) (punitive damages are available for ''breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. * * *''); New York, *see, e.g., Kelly* v. *Defoe,* 636 N.Y.S. 2d 123 (N.Y. App. Div. 1996) (holding that punitive damages are available under case law for certain tort actions, but are not generally awarded to redress private wrongs); Florida, Fla. Stat. Ann. § 768.73(1)(a) (1996) (punitive damages are allowed in civil actions based on negligence, strict liability, products liability, misconduct in commercial transactions, professional liability, or breach of warranty, and involving willful, wanton, or gross misconduct); New Jersey, N.J. Stat. § 2A:15–5.12 (West Supp. 1996) (punitive damages are awarded ''if the plaintiff proves, by clear and convincing evidence, that the harm suffered was [caused] by actual malice or accompanied by wanton and willful disregard. * * *''); Texas, Tex. Civ. Prac. & Rem. Code §§ 41.002, 41.003 (1997) (punitive damages are generally allowed, unless excluded by statute, upon a finding of fraud or malice, and must be proven by clear and convincing evidence); Illinois, 735 Ill. Comp. Stat. Ann. 5/2–1115.05(b) (1997) (punitive damages are available for certain tort actions involving injury to person or property where it is proven ''by clear and convincing evidence that the defendant's conduct was with evil motive or with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the rights and safety of others''), *see, e.g., Siegel* v. *Levy Org. Dev. Co.,* 607 N.E. 2d 194, 200 (Ill. 1992) (''If a plaintiff can demonstrate gross deception or willful and wanton misconduct, the determination as to whether plaintiff is entitled to exemplary damages lies with the trier of fact.''); Michigan, *see, e.g., Veselenak* v. *Smith,* 327 N.W.2d 261 (Mich. 1982) (exemplary damages are awardable where the defendant commits a voluntary act that inspires feelings of humiliation, outrage, and indignity, and where the conduct was malicious or so willful and wanton as to demonstrate a reckless disregard of the plaintiff's rights); punitive damages are also available in Michigan under specific statutes for causes of action inapplicable in securities arbitration. *See infra* note 22.

[21] In Florida, punitive damages may be awarded in an amount up to three times compensatory damages in certain civil actions involving willful, wanton, or gross misconduct. Fla. Stat. Ann § 768.73(1)(a) (1996). Florida law requires, however, that 35% of the punitive damages award be payable to the state or a medical trust fund. *See id.* § 768.73(2)(b). This effectively reduces the amount payable to the winning party to less than two times compensatory damages. In New Jersey, the cap on punitive damages is five times the compensatory damages or $350,000, whichever is greater. N.J. Rev. Stat. § 2A:15–5.14(b) (1996) (certain causes of action are exempted from the cap). In Texas, the cap on punitive damages is the greater of two times ''economic'' damages plus one times non-economic damages up to $750,000, or $200,000. Tex. Civ. Prac. & Rem. Code § 41.008 (1997). For purposes of this provision, economic damages are defined as ''compensatory damages for pecuniary loss'' and exclude damages for ''physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.'' *See id.* § 41.001. In Illinois, punitive damages are available for physical injury or property damage in an amount up to three times economic damages, 735 Ill. Comp. Stat. Ann. 5/2–1115.05(a) (1997) (as noted below, the court may apportion this amount among the plaintiff, the attorney, and a state agency). In Michigan, there is a cap for flagrant or repeated wage law violations of two times wages and benefits due, Mich. Stat. Ann. § 17.277(18) (Law. Co-op. 1996), and a treble damages provision for violations of the funds transfer facilities law resulting in injury to business or property. *See id.* § 23.1137(28).

[22] The two states with no specific cap on punitive damages are California, Cal. Civ. Code § 3294 (West Supp. 1996), and New York. In California, however, courts requires a ''reasonable relationship'' between actual and punitive damages. *Torres* v. *Automobile Club of Southern California,* 15 Cal. 4th 771, 781, 937 P. 2d 290 (Ca. 1997). *See infra* note 38. In addition, Michigan courts have held that the purpose of exemplary damages is not to punish the defendant, but to render the plaintiff whole; therefore, when compensatory damages can make the injured party whole, exemplary damages must not be awarded. *See, e.g., Jackson Printing Co.* v. *Teresa,* 425 N.W.2d 791, 794 (Mich. Ct. App. 1988) (citations omitted).

[23] In Florida, 35% of the award is payable to the state's General Revenue Fund. Fla. Stat Ann § 768.73(2)(b) (1996). In cases of injury or death, 35% is paid to a medical fund instead. In Illinois, for cases involving physical injury, the court may apportion the award among the plaintiff, the plaintiff's attorney, and the Illinois Department of Rehabilitation Services. 735 Ill. Comp.Stat. Ann. 5/2–1207 (1997).

[24] California's Civil Code prohibits claims for punitive damages from stating the amount sought, Cal. Civ. Code § 3295(e) (West Supp. 1996), and provides that a court ''shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud in accordance with Section 3294.'' *See id.* § 3295(d). These restrictions safeguard defendants by ensuring that they are not coerced into settlements to avoid unwarranted intrusions into their private financial affairs, and by minimizing potential prejudice to them in front of a jury. *Torres* v. *Automobile Club of Southern California*, 15 Cal. 4th 771, 777, 937 P. 2d 290 (Ca. 1997). In Florida, the Supreme Court has recently issued revised Standard Jury Instructions—Civil Cases for use in bifurcated proceedings in which, during the second stage of the proceeding, evidence is presented and argued that will allow the jury to determine the amount of punitive damages, if any, that should be awarded. 689 So. 2d 1042; 1997 Fla. LEXIS 22 (February 13, 1997). In New Jersey, punitive damages must be specifically ''prayed for'' in the complaint. N.J. Stat Ann. § 2A:15–5.11 (West Supp. 1996). In cases involving a punitive damages claim, the defendant may seek a bifurcated trial. *See id.* § 2A:15–5.13(a). A Michigan statute provides that punitive damages may not be recovered in libel actions unless the plaintiff has first given the defendant notice and an opportunity to publish a retraction. Mich. Stat. Ann. § 27A.2911(2)(b) (Law. Co-op. 1996).

[25] In the Civil Rights Act Amendments of 1991 (P.L. 102–166), Congress agreed to a compromise in which compensatory and punitive damages became available for violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973, conditioned on the right to a jury trial on the underlying claim, proof of intentional discrimination (as opposed to disparate impact), a finding (for the award of punitive damages) that the employer acted with ''malice or with reckless indifference to the federally protected rights of an aggrieved individual,'' and a cap of $50,000 to $300,000 for combined compensatory and punitive

Task Force Report

In its Report, the Task Force noted that the subject of punitive damages has generated widespread controversy and polarization between the investor and broker/dealer communities.[26] The Task Force observed that about 50% of all new arbitration claims include a claim for punitive damages, although punitive damages are awarded in only about 1% of cases. The Task Force Report expressed the opinion that the existence of a punitive damages claim can lead to more adversarial litigation, as respondents use every available tactic to defend themselves against a potentially enormous award. The Task Force Report also noted the views of some claimants' lawyers that it could be considered malpractice for them to omit punitive damages claims. After interviewing many interested groups and individuals, and after numerous discussions, the Task Force recommended that:

- punitive damages remain available in NASD arbitration, subject to a cap;
- the cap on punitive damages be the lesser of two times compensatory damages or $750,000;
- damages under the Racketeer Influenced and Corrupt Organizations Act (''RICO'')[27] and punitive damages not be awarded for the same claim;
- punitive damages be available to an investor where they would be available in court for the same types of claims, in the state where the investor is domiciled;
- the standard of conduct justifying the award of punitive damages be based on state law where the investor is domiciled;
- the award specify the amount given for compensatory damages and the amount given for punitive damages; and
- where requested by the party against whom the award is rendered, the award describe the conduct giving rise to the award.[28]

The Task Force noted that the cap on punitive damages finds support by analogy to recently enacted state and federal statutes imposing limitations on punitive damages.[29] The Task Force recommended further that any predispute arbitration agreement between the parties expressly provide for the award of punitive damages (subject to their availability for the same types of claims in state court), refer to the relevant NASD Rule, and provide that the parties' agreement to permit punitive damages in arbitration preempts any state arbitration law to the contrary.[30] The Task Force's research indicated that this type of agreement would comport with existing law under the Federal Arbitration Act (''FAA''),[31] which has been held to preempt conflicting state law.[32]

Positions of Interested Organizations

In order to carry out the recommendations of the Task Force, NASD Regulation considered the views of various organizations and reviewed relevant federal and state law. In particular, NASD Regulation considered letters from and conversations with representatives of the Public Investors Arbitration Bar Association (''PIABA''), SICA, and the Securities Industry Association (''SIA'').

Attorneys and groups representing investors argued that arbitration should afford the same types of relief as would be available in court, including punitive damages. These groups contended that, since virtually all firm agreements with their customers contain a clause mandating arbitration of disputes arising under the agreement, customers are unable to take their claims to court but must proceed in arbitration. Such groups generally oppose any limitation on punitive damages, such as ceilings on the amount that may be awarded, or ratios of punitive damages to compensatory damages. For example, PIABA expressed the initial opinion that there should be no cap on punitive damages, as such damages provide a ''significant and important curb on customer abuse.''[33]

Public members of SICA, *i.e.*, those not affiliated with the securities industry or with the SROs, sent a letter to the Chairman of the NASD shortly before the NASD Board of Governors met to consider the proposed rule change,[34] In the letter, the public members stated their view that the proposed punitive damages rule would result in an arbitrary limitation of arbitrators' authority to award punitive damages, and would conflict with an NASD rule prohibiting arbitration agreements from containing limitations on arbitrators' authority. The public members also expressed the opinion that the issue should be returned to SICA for development of an acceptable resolution.

Representatives of the broker-dealer community, however, recommended limiting or prohibiting the award of punitive damages in arbitration. The SIA expressed the views that: (i) Arbitration claimants do not have an absolute right to punitive damages; rather, punitive damages are purely discretionary on the part of the jury or arbitrator in order to punish a person for conduct that is outrageous to society as a whole; (ii) punitive damages were devised to serve the purposes of punishment and deterrence, but, in the securities industry, state and federal regulators already have a broad arsenal of weapons to use against wrongdoers; (iii) arbitration does not offer the due process safeguards that are available in court; for example, the rules of evidence do not apply in arbitration; there are no set standards of proof, such as preponderance of the evidence, clear and convincing evidence, or reasonable doubt; and there is no right to appeal the award except on very narrow grounds; (iv) arbitration cases are difficult to settle due to the threat of punitive damages; because claimants hope for larger awards in arbitration through an award of punitive damages, they are less willing to settle cases at what firms consider a ''reasonable'' amount; and (v) the chief advantage of arbitration, its relatively speedy resolution of a dispute by ordinary individuals using notions of simple justice, will be lost as the process becomes more complex and more like the court system.

The SIA stated that its Board had recommended that the cap be reduced to $250,000 or one times compensatory damages, whichever is less.[35] The SIA noted that $750,000 is greater than the total net capital of half of the member firms of the SIA and of an additional several thousand firms that are members of the NASD. The SIA contended that, since arbitration awards are very difficult to appeal, there should be reasonable restraints on punitive damages to avoid endangering the viability of the vast majority of NASD members.

damages, depending on the number of persons employed by the defendant. 42 U.S.C. § 1981a. In the Futures Trading Practices Act of 1992, Congress provided for the award of punitive damages in the amount of two times actual damages for certain violations of the future trading laws. Under that Act, punitive damages are only available for certain claimants who prove a ''willful and intentional'' violation in the execution of an order on the floor of a contract market. 7 U.S.C. § 25(a)(3).

[26] *See* Task Force Report at 35 *et seq.*

[27] 18 U.S.C. 1961 *et seq.*

[28] *See* Task Report at 40–46.

[29] *Id.* at 43.

[30] The Task Force's recommendations concerning the contents of predispute arbitration agreements are under consideration by NASD Regulation.

[31] 9 U.S.C. 1 *et seq.* (Supp. 1997).

[32] *See, e.g., Allied-Bruce Terminix Cos., Inc.* v. *Dobson,* 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995).

[33] Letter from L. Jerome Stanley, 1995–96 PIABA President, to Deborah Masucci, Vice President and Director of Arbitration (March 15, 1996).

[34] Letter from SICA Public Members to Daniel P. Tully (December 9, 1996).

[35] Letter from A.B. Krongard, SIA Chairman, to Mary Alice Brophy, Chairman, NASD Regulation (June 7, 1996).

Other suggestions made by the SIA were that the term ''compensatory damages'' be defined as ''out-of-pocket losses,'' based upon the difference in price between purchases and sales of the investment (or current value, if still held); that the term ''exemplary damages'' be used instead of ''punitive damages''; that a uniform national standard of conduct be used to determine when punitive damages are appropriate; that the rule specify that exemplary damages may be awarded ''up to'' the stated cap, to clarify that the cap is not an automatic amount; that the applicable state law to determine whether punitive damages are available be that of the investor's domicile at the time the transaction occurred; and that the award of punitive damages be considered in a separate proceeding from the rest of the case (a process often referred to as ''bifurcation'').

Purpose of Proposed Rule Change

During the past several years, interested parties have been unable to reach a consensus on punitive damages, and NASD Regulation believes that it must take action at this time to implement a punitive damages rule. After reviewing the positions of various interested groups, NASD Regulation adopted an amendment to the code of Arbitration Procedure that generally follows the Task Force recommendations, with minor changes considered appropriate. NASD Regulations believes that the proposed rule change best effectuates the interests of providing a forum to investors that provides appropriate relief while limiting the potential for awards that are disproportionate based on the claims alleged.

NASD Regulation recognizes that it is not appropriate or feasible to eliminate the availability of punitive damages in arbitration so long as public customers are required by most member firms to sign predispute arbitration agreements. At the same time, NASD Regulation realizes that some of the safeguards against excessive punitive damages awards that may be available to defendants in court are not available in arbitration, such as special pleading requirements for requests of punitive damages,[36] separate hearings for the liability and damages phases of the case,[37] post-trial review of the award by a judge,[38] and judicial appeals on the merits of the decision rather than on the narrower grounds for overturning an arbitration award.[39] Therefore, NASD Regulation believes it has balanced these considerations fairly in endorsing the recommendation of the Task Force that a cap on punitive damages is necessary and appropriate if punitive damages are to be permitted in the NASD Regulation forum.

The cap on punitive damages of the lesser of two times compensatory damages or $750,000 is believed to be appropriate in an industry that is already subject to extensive regulatory oversight. As discussed above, the $750,000 amount is larger than the net capital requirement of many NASD member firms.[40] Therefore, a cap of $750,000 provides a significant deterrent to egregious behavior, since it could threaten a firm's continued operations. Considering the fact that arbitration by its nature is more informal than a court proceeding, with relaxed rules of evidence and procedure, and the fact that arbitration awards may be modified or vacated only on very narrow grounds, NASD Regulation believes that the limitation on the amount of punitive damages is reasonable.

Description of Proposed Rule Change

The proposed rule has been drafted using the ''plain English'' principles of written communication that the Commission has encouraged. NASD Regulation believes the proposed rule will be easier for all arbitration participants to understand, most notably participants who represent themselves (*pro se* parties). Unlike the NASD's Membership and Conduct Rules, which are mainly referred to and applied by member firms, their compliance officers, and their attorneys, the Code of Arbitration Procedure is often used by *pro se* parties who are not attorneys and who are usually coming into contact with the dispute resolution process for the first time.[41] In such circumstances, plain English rules are particularly important. In conformity with plain English principles, the term ''arbitrators'' has been used instead of ''arbitration panel'' in the proposed rule change. This usage is not meant to imply that the proposed rule change applies only to cases heard by more than one arbitrator; rather, it applies to any arbitration panel, which may be composed of one or more arbitrators.

Proposed new Rule 10336 provides in paragraph (a)(1) that it applies only to disputes between a public customer and a member or between a public customer and an associated person. Therefore, the proposed rule will not apply to disputes between or among members and associated person (''industry disputes'').[42]

Proposed paragraph (a)(2) states that a party may request an award of punitive damages if a court (not an arbitration panel) of the state of which that party is a citizen, at the time the claim is filed, could award punitive damages for the same type of claim.[43] A party seeking punitive damages may, either at the party's option or at the request of the arbitrators, brief the applicable state law in order to demonstrate to the arbitrators that his or her state does allow the award of punitive damages in its courts for the same type of claim. Thus, the party's citizenship at the time of filing, rather than at the time of the underlying transaction(s), determines the applicable state law. This facet of the proposed rule follows the Task Force's recommendation rather than the SIA's suggestion. NASD Regulation believes this provision will be considerably easier to administer, especially where

[36] *See supra* note 24.

[37] *See supra* note 24.

[38] *See, e.g., Brewer* v. *Second Baptist Church,* 197 P. 2d 713 (Cal. 1948) (if a jury awards excessive exemplary damages, there is an adequate remedy by way of an appropriate motion before the trial court or by appeal).

[39] Under the Federal Arbitration Act, for example, arbitration awards may be vacated on the following grounds: (1) Where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10(a) (Supp. 1997).

[40] The $750,000 amount is also larger than the annual revenue of most member firms. The Report of the Select Committee on Structure and Governance of the NASD Board of Governors (''Rudman Report'') observed that, ''Most NASD member firms are relatively small. Approximately 55% report gross revenues from their securities business below $680,000. 80% report gross securities revenues under $4 million. Fewer than 5% report gross revenues over $80 million. The number of NASD member firms that generate securities revenues over $375 million is only 43, or 0.8% of the membership.'' Rudman Report at C–11 (Sept. 15, 1995).

[41] NASD Regulation estimates that as many as one-third of all claims filed involve a *pro se* party. *See* Securities Arbitration Commentator, Vol. VIII, No. 9 (February 1997). The number of *pro se* parties is much higher for smaller claims; more than three-quarters of claims involving $10,000 or less involved *pro se* claimants. *Id.*

[42] *See supra* note 3.

[43] This may mean that punitive damages will become available under the proposed rule change when they were not previously available in arbitration proceedings in a particular state. For example, in Illinois, courts have held that punitive damages may be awarded in arbitration, but only where the parties have expressly agreed to the arbitrators' authority to award punitive damages. *City of Chicago v. American Federation of State, County and Municipal Employees,* 1996 WL 496825 at *3, 669 N.E. 2d 1311 (Ill. App. Ct. 1996), *citing Edward Electric Co. v. Automation, Inc.,* 593 N.E. 2d 833, 843 (Ill. App. Ct. 1992).

several transactions or events take place over a long period of time, during which time the party seeking punitive damages could have moved one or more times.

Proposed paragraph (a)(3) was added to address the situation in which an investor lives in a state that does not allow the recovery of punitive damages for the investor's claims. In that situation, the rule would prevent a member firm (or associated person) which is a citizen of a state that permits punitive damages from seeking punitive damages against the investor. If the investor has several claims and is able to request punitive damages for any one of them, then the member or associated person may also request punitive damages as allowed under relevant state law.

Proposed paragraph (a)(4) requires a party requesting an award of punitive damages to specify in its claim the amount of punitive damages it is requesting. Specification is required because the amount of the claim determines the size of the arbitration panel appointed, the member surcharge, the claimant's filing fees, and the hearing session fees.

Proposed paragraph (a)(5) defines the term ''claim'' for purposes of the proposed rule as including any dispute or controversy described in a Statement of Claim (including Counterclaims, Third-Party Claims, and Cross-Claims) for which the claimant is seeking any form of remedy, in order to reduce the verbiage needed each time the term ''claim'' is used.

Proposed paragraph (b)(1) provides that the standard of conduct to be applied is that of the state of which the party requesting punitive damages is a citizen at the time the claim is filed. This follows the Task Force recommendation and conforms to paragraph (a)(2) in looking to state law to determine what conduct justifies an award of punitive damages.

Proposed paragraph (b)(2) specifies that the standard of paragraph (b)(1) applies regardless of any choice-of-law provision in the parties' predispute arbitration agreement. This provision is intended to avoid the situation in which a member firm inserts a choice-of-law clause in its customer agreements that specifies use of the law of a state that does not allow, or that strictly limits, the award of punitive damages in arbitration. Often that state is the one in which the member firm is headquartered, but it may not be the state in which the customer lives or in which the customer did business with the member firm. The NASD believes it is fairer to apply the law of the state in which the customer is a citizen at the time the claim is filed, rather than to apply the law of a state specified in a choice-of-law provision that the customer may not have noticed or understood when opening an account some months or years earlier. Paragraph (b)(2) applies only to the availability of punitive damages, and not to the substantive claims, which would still be subject to applicable choice-of-law and conflicts of law principles to the extent not inconsistent with other NASD rules.

Proposed paragraph (c) sets out the limitations discussed earlier, stating in (c)(1) that punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less. The use of the phrase ''up to'' makes clear that the limitation is not a standard amount to be awarded in every case. The amount of the cap is the same as contained in the Task Force's recommendation.

The Task Force intentionally did not define compensatory damages, leaving it to the discretion of the arbitrators. This choice reflected the fact that there are different theories of loss for compensatory damages, such as out-of-pocket loss or lost opportunity costs, that may be appropriate in different circumstances. The proposed rule deviates only in a minor respect from this recommendation. The definition of compensatory damages set out in proposed paragraph (c)(2) excludes attorneys' fees, other costs of arbitration, and post-award interest. Such amounts may continue to be awarded, but simply are not considered for purposes of the formula in paragraph (c)(1) for punitive damages. Arbitrators, however, may include pre-award interest in compensatory damages for purposes of paragraph (c)(1) if they have awarded such interest.

Proposed paragraph (c)(3) makes clear that punitive damages are not to be awarded in addition to the multiple damages allowed by RICO or other similar statutes for the same claim.[44] This recommendation is in accordance with the Task Force's recommendation that arbitrators be precluded from awarding both RICO damages and punitive damages for the same claim. The term ''multiple'' was used instead of ''treble'' to be more comprehensive, since there may be state and federal statutes that provide for automatic doubling, tripling, or other multiples of compensatory damages. For purposes of the proposed rule, a statute providing for punitive damages in an amount equal to (one times) compensatory damages would not be considered to be ''multiple.'' Likewise, a statute providing for punitive damages in an amount ''up to'' a certain multiple of compensatory damage would not be considered to be ''multiple'' for purposes of paragraph (c)(3) because the actual amount of punitive damages is discretionary rather than automatic. In the latter two cases, the amount of punitive damages would be subject to the cap in the NASD rule.

Proposed paragraph (c)(4) states that the limitations of paragraph (c) supersede any applicable state law on the size of punitive damage awards. This may result in a higher or lower award of punitive damages in arbitration than would be available under state law. As noted above, NASD Regulation believes this result is fair, in that it provides uniform remedies for claimants in different states (if there state allows punitive damages), as well as a consistent limit of liability for member firms with offices in several states. In addition, the disciplinary processes of NASD Regulation (as well as of the SEC, the state securities regulators, and federal and state criminal authorities) remain available to customers who feel they have been wrongly treated by their broker-dealers.

Finally, proposed paragraph (d) requires the arbitrators to set forth separately in their award the amounts awarded for compensatory and punitive damages. This requirement is in accordance with the Task Force's recommendation and not opposed by the SIA and PIABA. The paragraph does not require arbitrators to describe the facts and conduct upon which the award of punitive damages was based, or to set forth their reasons for not awarding punitive damages. The Task Force had recommended that, where requested by the party against whom the award is rendered, the arbitrators should describe the conduct giving rise to the award. NASD Regulation believes such explanations could slow the completion of the arbitration. They also would create uncertainly as to the date of the award for appeal purposes. However, parties will continue to be allowed to request an opinion of the arbitrators as described in the Arbitration Procedures booklet compiled by SICA and distribution to all public customer claimants. Under this practice, a party must make any such request no later than the date of the hearing, and the arbitration panel

[44] NASD Regulation did not agree with the SIA's suggestion that RICO awards be limited to the formula for other punitive damages, and believes that the same RICO damages should be available in arbitration as in court. We note, however, that federal RICO damages for fraud in the purchase or sale of securities are available when a criminal conviction has been obtained for the same conduct. 18 U.S.C. § 1964 (1995).

has the discretion to grant or deny the request.

All newly approved NASD arbitrators who have not presided at a hearing are required to attend a training program, which includes information on the awarding of punitive damages. If the proposed rule change is approved, Office of Dispute Resolution staff will make appropriate changes to the arbitrator training and education materials to reflect the requirements of the new rule.

NASD Regulation is requesting that the proposed rule change be effective within 45 days of SEC approval.[45]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[46] in that it will promote just and equitable principles of trade by providing an additional remedy for wrongdoing by broker/dealers and their associated persons, and it will protect investors and the public interest by clarifying that punitive damages are available in the NASD Regulation arbitration forum, where they would be available under relevant state law for similar court proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–47 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31877 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39365; File No. SR–ODD–97–2]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of Proposed Supplement to Options Disclosure Document Regarding Mutual Fund Index Options

November 26, 1997.

On November 13, 1997, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five definitive copies of a Supplement to its options disclosure document (''ODD''), which describes, among other things, the risks and characteristics of trading in options on mutual fund indexes.

The Commission has approved an options exchange proposal to list and trade options on particular mutual fund indexes.[2] OCC now proposes this Supplement, which is to be read in conjunction with the more general ODD entitled ''Characteristics and Risks of Standardized Options,'' that provides disclosures to specifically accommodate the introduction of mutual fund index options and to reflect current rules of options markets on which mutual fund index options are approved for trading. Pursuant to Rule 9b–1, the Supplement will have to be provided to investors in mutual fund index options whose account is approved for trading standardized options.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act. The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The Supplement provides additional information regarding mutual fund index options sufficient to further describe the special characteristics and risks of these products.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the protection of investors.[3] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[4] that the proposed Supplement (SR–ODD–97–2) regarding mutual fund index options is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[45] NASD Regulation consents to an extension of the time projects specified in Section 19(b)(2) of the Act until the SEC is prepared to approve NASD Regulation's yet-to-be-filed rule filing proposing to amend Rule 310(f) to revise the requirements for customer predispute arbitration agreements used by members. NASD Regulation intends to amend the rules governing customer predispute arbitration agreements to give effect to the punitive damages rule proposed herein and the eligibility rule proposed in SR–NASD–97–44. The purpose of the extension is to permit the SEC to act simultaneously on this rule filing, the yet-to-be-filed rule filing proposing to amend Rule 3110(f), and the eligibility rule proposed in SR–NASD–97–44.

[46] 15 U.S.C. 78*o*3(b)(6).

[1] 17 CFR 240.9b–1.

[2] *See* Securities Exchange Act Release No. 39244 (October 15, 1997) (order approving proposed rule change by the Chicago Board Options Exchange, Incorporated, relating to the listing and trading of options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes).

[3] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[4] 17 CFR 240.9b–1.

[5] 17 CFR 200.30–3 (a)(39).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31842 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Work Incapacitation and Reintegration Study—0960–0543. The purpose of this study is to identify those incentives and interventions that are most successful in assisting persons who are disabled due to a back condition to return to work. The information collected will be used primarily to complete a cross-national analysis of this issue. Data will also be gathered on subjects of particular importance in the U.S. The findings will provide policy-makers with information that will be highly useful in establishing disability policy. The respondents are persons entitled to Social Security Disability Insurance, Supplemental Security Income or State Temporary Disability Insurance benefits due to a back condition.

Number of Respondents: 800.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 800 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: December 1, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–31864 Filed 12–4–97; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1499).

TIME AND DATE: 9 a.m. (EST), December 9, 1997.

PLACE: Cocke County High School Auditorium, 216 Hedrick Drive, Newport, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 15, 1997.

New Business

B—Purchase Awards

B1. Contract with Motion Industries, Inc., for mechanical drive parts and bearings for use at all TVA locations.

B2. Increase in Blanket Purchase Order No. 96P1E–186526 with Hydro Group, Inc., for post tensioning services at Chickamauga Lock and Fontana Dam.

C—Energy

C1. Delegation of authority to the Executive Vice President, or a designated representative, to enter into an agreement with the Metropolitan Government of Davidson County for the assignment to TVA of various environmental credits to be included with the purchase of electric power from the Bordeaux Landfill Gas Project.

E—Real Property Transactions

E1. Public auction of 0.06 acre of the Browns Ferry Nuclear Plant property to resolve an encroachment by a private residence, Tract No. XBFSP–1.

E2. Modification of a permanent easement affecting approximately 0.92 acre at the Cadiz Primary Substation, to allow the City of Cadiz, Kentucky, to construct a police station, jail, offices, and other buildings needed for city operations, Tract No. XCADSSA–1E.

E3. Grant of a permanent easement to the Warren County Water District for a sewerline easement over approximately 0.29 acre of TVA's new Bowling Green, Kentucky, Customer Service Center property, Tract No. XTBCSC–1S.

E4. Abandonment of easement rights affecting approximately 19.5 acres of Shelby Substation railroad spur track right-of-way, Shelby and Tipton Counties, Tennessee, Tract Nos. SSRR–1,–2,–3,–4,–5,–6,–7,–7A, and –8.

E5. Sale of noncommercial, nonexclusive permanent easement to R. Todd Tiller affecting 0.06 acre of Tellico Lake shoreline in Monroe County, Tennessee, Tract No. XTELR–199RE.

E6. Grant of a permanent easement to Hamilton County, Tennessee, for a wastewater pump station and access road affecting 0.22 acre of land on Chickamauga Lake, Tract No. XTCR–193PS.

E7. Deed modification to allow residential development by Harbor Lights Marina on 11.23 acres of former TVA land on Chickamauga Lake, Hamilton County, Tennessee, Tract No. XCR–67.

Unclassified

F1. Approval to file condemnation cases in connection with the following power transmission line: Spring City Flood Damage Reduction Project, Rhea County, Tennessee, Tract No. SCFP–72.

Information Items

1. Approval for the issuance, exchange, and sale of TVA Power Bonds.
2. Approval relating to the sale of options to enter into interest rate swap arrangements (''Options'') associated with call provisions on previously issued TVA Power Bonds.
3. Extension of the program offering incentives for TVA employees and retirees to purchase efficient electric appliances for their homes (Buy Electric Program).
4. Approval for the sale of TVA Power Bonds and authorization and delegation of authority to enter into currency swap arrangements with Merrill Lynch Derivative Products.
5. Filing of condemnation cases along the Freeport-Miller Transmission Line in DeSoto County, Mississippi.
6. Research and Development Agreement with Pure Energy Corporation and delegation of authority to the Executive Vice President, Resource Group, or a designated representative, to take the necessary actions to implement the agreement.
7. Contract with Bloomberg, L.P., for TVA to receive financial data.

8. Approval for the sale of TVA Power Bonds for refinancing the existing debt.
9. Modification and extension of Contract No. P–97P01–197103 with Sugar Camp Coal Company.
10. Approval of the Chief Financial Officer's power system operating budget and power system capital budget for fiscal year 1998.
11. Approval to execute an agreement with Vanguard Research, Inc., to supply a commercial-scale Plasma Energy Pyrolysis System demonstration of a new patented technology for treating military waste streams.
12. Modification of term coal Contract Nos. P–95P08–120446 and P–97P01–200000 for Shawnee, Colbert, and Widows Creek Fossil Plants.
13. Approval of new Labor Relations Agreements between TVA and the International Brotherhood of Teamsters.
14. Grant of a permanent easement for a water intake site, a pump station, waterlines, and an access road for South Blount County Utility District affecting approximately 3.67 acres of land on Tellico Lake in Monroe County, Tennessee, Tract No. XTTELR–36E.
15. Approval to add 750,000 tons per year of subbituminous coal to the Thunder Basin Coal Company contract for the Allen and Shawnee Fossil Plants under Requisition 35, Request for Proposals of Subbituminous Term Coal.
16. Approval to enter into a contract with Borg-Warner Protective Services Corporation for security services at nuclear plants and some office locations.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: December 2, 1997.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 97–32002 Filed 12–3–97; 10:50 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 28, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the Applications by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1642.

Date Filed: November 28, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 26, 1997.

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of its Route 729 authority between Cleveland, Ohio and London Gatwick, England and the right to integrate its Route 729 authority with Continental's certificate and exemption authority to serve other points.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31849 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held January 7–9, 1998, starting at 1:00 p.m. on Wednesday, January 7, and 9:00 a.m. on January 8 and 9. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

January 7: Working Group 1 Minimum Aviation System Performance Standards (MASPS); January 8: Continue Working Group 1; January 9: Plenary Session.

The agenda of the Plenary Session will be as follows: (1) Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Approval of the Summary of the Previous Meeting; (4) Review of Working Group 1 (MASPS) Work; (5) Discussion of Air Mobility Command Data Link Initiatives; (6) Review Activities of Other Standards Groups; (7) Open Discussion; (8) Dates and Places of Next Meetings; (9) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 28, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31933 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 191; Collaborative Decisionmaking and Near-Term Procedures

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 191 meeting to be held January 6, 1998, starting at 10:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Old Business/Action Items; (3) RTCA Special Committee 191 Scope and Structure Briefing; (4) User Perspective Briefing; (5) Working Group Charters, Progress, and Status (NAS Status Information, CDM, Collaborative Routing); (6) Review of Action Items; (7) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 28, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31934 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Traverse City, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed construction of a new Boardman River crossing with a connection between US–31 south of Traverse City and US–31 east of Traverse City, Grand Traverse County, Michigan. The project will provide an alternate route around Traverse City which may function as a local, interim by-pass for Traverse City. The proposed project will mostly follow existing roadways in the Traverse City area.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Environmental Programs and Field Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Mark Dionise, Urban Program Manager, Local Agency Programs, Bureau of Highways, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373–9570.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), and the Grand Traverse County Road Commission, is preparing an Environmental Impact Statement (EIS) for the proposed construction of a new Boardman River crossing with a connection between US–31 south of Traverse City and US–31 east of Traverse City, Michigan. The proposed project will replace the existing one-lane Cass Road Bridge over the Boardman River with a new bridge with connections to US–31 both south of and east of Traverse City. The completion of this project will provide an alternate route around Traverse City and will relieve congestion on US–31 through downtown Traverse City. The existing Cass Road Bridge will remain in place, but will be closed to traffic upon completion of the project.

The alternatives under consideration include (1) No Build, (2) the re-construction and connection of Hartman and Hammond Roads along with the study of a suitable connection to US–31 east of Traverse City, and (3) Transportation System Management (TSM) improvements to existing roads in the study area to relieve congestion.

An Environmental Assessment had been prepared for the replacement of the Cass Road Bridge which is located on the Boardman River dam. The Cass Road Bridge and Boardman dam complex has been determined to be eligible for the National Register of Historic Places. The Environmental Assessment analyzed the social, environmental, and economic impacts of various alternative locations for replacement of the Cass Road Bridge. A preferred alternative for a new bridge across the Boardman River, connecting Hartman Road with Hammond Road, upgrading Hartman Road from two lanes to four and five lanes with a new intersection location at U–31, upgrading Hammond Road from two lanes to four and five lanes, and closing the existing Cass Road Bridge was presented at a public hearing on June 24, 1997. As a result of the public hearing, it was determined to revise the scope of the proposed project to include alternatives to connect this project with US–31 east of Traverse City and to prepare an Environmental Impact Statement on this proposed action. A scoping document will be prepared describing the proposed action to solicit comments from appropriate Federal, State, and local agencies. Citizen involvement is also being solicited in the process. A public hearing will be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments, and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and all significant issues identified. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 25, 1997.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 97–31908 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33506]

Coach USA, Inc.—Control Exemption—Browder Tours, Inc. and El Expreso, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of Petition for Exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier in control of 28 motor passenger carriers at the time of filing its petition,[1] seeks an exemption under 49 U.S.C. 13541 from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire control of Browder Tours, Inc. (Browder) and El Expreso, Inc. (El Expreso), through acquisition of all of the outstanding shares of stock of the two motor passenger carriers.[2]

DATES: Comments must be filed by January 5, 1998. Petitioner may file a reply by January 14, 1998.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33506 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to petitioner's representatives: Betty Jo Christian and David H. Coburn, Steptoe

[1] Coach currently controls the Nation's second largest group of motor passenger carriers. *See Coach USA, Inc.—Control Exemption—America Charters, Ltd.*, STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. Since the filing of the instant petition on October 31, 1997, Coach has been authorized to acquire control of an additional three motor passenger carriers in *Coach USA, Inc., and Leisure Time Tours—Control and Merger Exemption—Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway-Wager, Inc.*, STB Finance Docket No. 33428 (STB served Nov. 13, 1997).

In addition to the instant petition, Coach has two other pending petitions: *Coach USA, Inc. and K-T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada*, STB Finance Docket No. 33431 (STB served Aug. 22, 1997), in which it seeks an exemption to acquire control of one additional motor passenger carrier, and *Coach USA, Inc.—Control Exemption—Air Travel, Inc.; Airlines Acquisition Co., Inc.; and Transportation Management Services, Inc.*, STB Finance Docket No. 33471 (STB served Nov. 14, 1997), in which it seeks to acquire control of three additional motor passenger carriers.

[2] The stock of Browder and El Expreso was placed in an independent voting trust to avoid any unlawful control pending disposition of this proceeding.

& Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach, a noncarrier, seeks an exemption to acquire control of two motor carriers of passengers: (1) Browder Tours, Inc. (MC–236290), a Tennessee corporation that is authorized to operate as a common carrier of passengers in interstate commerce over irregular routes transporting passengers in charter and special services between points in the United States, other than Alaska and Hawaii;[3] and (2) El Expreso, Inc. (MC–244195), a Texas-based corporation that is authorized to operate as a common carrier of passengers in interstate commerce over regular routes transporting passengers between various points within Texas, including points on the U.S./Mexico border, as well as between points in several southeastern states.[4]

Coach reported, at the time it filed this petition for exemption, that it controlled 28 motor carriers of passengers. Coach claims that its acquisition of control of the two motor carriers through the acquisition of their stock will not inhibit competition or reduce transportation options available to the public. Coach asserts that the two carriers do not compete with any Coach-owned carrier.

Petitioner also claims that the acquisition of control of the two carriers will allow each carrier to offer improved service at lower costs. This will be made possible by the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored and that employee benefits will improve. Additional information may be obtained from petitioner's representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: November 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31922 Filed 12–4–97; 8:45 am]

BILLING CODE 4915–00–P

[3] Browder focuses on tour and charter operations in Tennessee and nearby states.

[4] El Expreso focuses on providing service to persons traveling between Mexico and the United States, as well as to persons traveling between Texas and other states.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33518]

Burlington Shortline, Inc., d/b/a Burlington Junction Railway—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Burlington Shortline, Inc., d/b/a Burlington Junction Railway (BSL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 9,205 feet, or 1.74 miles, of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF) between a point 247 feet south of BNSF's mainline switch east of BNSF's equipment maintenance facility at Burlington, IA, and a point 9,452 feet south of BNSF's mainline switch, in the vicinity of Burlington, Des Moines County, Iowa. BSL will interchange traffic with BNSF at Burlington.

The transaction was expected to be consummated on or after the November 24, 1997 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33518, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: December 1, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31921 Filed 12–4–97; 8:45 am]

BILLING CODE 4915–00–P

federal register

Friday
December 5, 1997

Part II

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1806

Bank Enterprise Award Program; Interim Rule

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The purpose of the BEA Program is to encourage insured depository institutions to increase their level of activities in the form of loans, investments, services, and technical assistance within distressed communities and to provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. The revisions contain a number of changes which clarify current requirements, but do not change them. This rule also simplifies current requirements and updates various references, and contains one revision that the Fund believes will generally inure to the benefit of insured depository institutions. Specifically, the revision clarifies the measured value of renewed loans and rolled over time deposits to include the entire amount of the renewed loans and rolled over deposits. However, in order to facilitate implementation of the BEA program regulations by participating insured depository institutions, the complete text of the regulations, as amended, is published by this interim rule.

DATES: Interim rule effective December 5, 1997; comments must be received on or before April 6, 1998.

ADDRESSES: All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Director, the Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute. The Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. This initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, revitalizing neighborhoods, developing affordable housing, and unleashing the economic potential of small businesses. The Fund recognizes the important role traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these revised regulations amend the Bank Enterprise Award (BEA) Program, which has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The BEA Program was significantly modified as part of the Act to enable it to function as a companion to the Community Development Financial Institutions (CDFI) Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The purpose of the BEA Program is to encourage insured depository institutions to increase loans, services, and technical assistance within distressed communities and to make Equity Investments or engage in CDFI Support Activities. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants participate in the Program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Elsewhere in this issue of the **Federal Register** is a separate Notice of Funds Availability (NOFA) for this Program. A final regulation will be published after receipt and consideration of public comments. The Fund previously promulgated an interim regulation with a request for comment, which was published in the **Federal Register** on March 7, 1997 (62 FR 10679). No comments were received in response to the March 7, 1997 interim rule. Since these regulations were last amended, the Fund has identified several provisions that need to be updated, clarified, or simplified.

II. Summary of Changes

Authorities

The current rule contains a list of authorities. This interim rule updates the list by adding 12 U.S.C. 4713, 12 U.S.C. 1834a, and 31 U.S.C. 321. Such authorities concern the promulgation of regulations, procedures and guidelines. The current rule lists 12 U.S.C. 4703 note with a reference to Pub. L. 104–19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the section 4703 note.

Definition of Community Services

Section 1806.103(p)(1) of the current rule defines the forms of assistance that constitute Community Services. This interim rule does not change the definition of what constitutes Community Services, but it clarifies that all forms of such assistance may be provided by officers, employees, or agents (contractual or otherwise) of the Applicant. This revision conforms with the Fund's interpretation of the current rule.

Measuring the Value of Renewed Loans and Rolled Over Deposits

Section 1806.202(c)(1) of the current rule provides that for purposes of calculating BEA Program awards, the Fund will assess the value of Equity Investments, loans, grants, and deposits at the original amount of such investments, loans, grants or deposits. Section 1806.202(c)(1) of the current rule excludes the value of any loans which are renewed, rolled over, or refinanced in an amount equal to or less than the principal amount outstanding at the time of refinancing. Because the Fund believes that the interim rule in its current form: (1) Appears too restrictive with regard to loans; and (2) is unclear with regard to renewed loans and rolled over time deposits, the Fund is revising § 1806.202(c)(1) as follows.

With regard to loans, the Fund believes that where a loan matures, is fully paid, and is then renewed during an applicable Baseline or Assessment period, the renewed loan constitutes a new origination. As such, the Fund will assess the full principal amount of the renewed loan in calculating a BEA Program award. However, the Fund is not changing the current interim rule with regard to refinancings. Specifically, where a loan is refinanced during an applicable Baseline or Assessment period, the Fund will only assess the value of any increase in the principal amount of the refinanced loan.

With regard to deposits, the Fund will assess the full amount of any deposit which is rolled over during an applicable Baseline or Assessment period. For example, where an Applicant made a time deposit with an insured CDFI, *e.g.* a five year certificate of deposit with an interest rate materially below market rates, which matures and is rolled over during an Assessment Period, the Fund will assess the full amount of the rolled over time deposit in calculating a BEA Program award.

Estimated Award Amounts for Development and Service Activities

The current rule at 12 CFR 1806.203(c)(3) describes a calculation step for estimating an award amount for Development and Service Activities. This step requires adding the weighted values of deposit liabilities and Financial Services to yield a service score. This revised rule corrects an omission to the step by adding Community Services. This addition conforms with previous and the most current BEA Program Application packets.

For purposes of regulatory economy, the Fund is deleting the parenthetical reference in § 1806.203(c)(5) of the current rule, which references the Act. This deletion is technical in scope and will have no substantive effect on the implementation of the BEA Program.

Application Contents for Equity Investment and CDFI Support Activities

Section 1806.206(b)(9) of the current rule describes the collection of information requirements set forth in the Application packet for those Applicants proposing to engage in CDFI Related Activities. The current rule describes the Application packet as requiring each Applicant to submit a narrative description of each CDFI in which it proposes to engage in CDFI Related Activities and a description of the amount, terms, and conditions of the assistance to be provided or, alternatively, a list of potential CDFIs and a description of the Applicant's investment, lending, or selection criteria. However, the most recently revised Application packet, which has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995, simplifies the collection of information from Applicants. Specifically, the revised Application packet requires Applicants to list the potential CDFIs to which they may provide assistance and provide a description of the amount, terms, and conditions for such assistance. Because the revised Application packet does not require a narrative description of each potential CDFI or a description of the Applicant's investment, lending or selection criteria, the Fund is revising § 1806.206(b)(9) in this interim rule to accurately reflect the collection of information requirements set forth in the most current Application packet.

III. Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0153. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to the Director, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

The Fund is promulgating this revised interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also finds good cause for dispensing with a notice of proposed rulemaking because such advance notice and public procedure are unnecessary. First, most of the changes in this interim rule are minor or technical amendments which do not affect the substance of the regulation. Second, the changes to this interim rule are narrow in scope, clarify existing requirements, and inure to the benefit of the regulated community, namely insured depository institutions, by making participation in the BEA Program easier for Applicants, reducing regulatory burden, and clarifying the measured value of renewed loans and rolled over time deposits.

The Fund also is making this interim rule effective upon publication without providing the 30-day period between publication and effective date contemplated by the APA because, as noted above, the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA found at 5 U.S.C. 553(d). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period, which as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 1998. The Fund also believes that an immediate effective date is appropriate because this interim rule inures to the benefit of the affected community by removing a potential restriction on the measured value of renewed loans and rolled over time deposits.

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

IV. Catalog of Federal Financial Assistance Numbers

Bank Enterprise Award Program—21.021.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, 12 CFR part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in or otherwise support Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

§ 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means an origination of a loan (other than a Multi-Family Loan or a Single Family Loan) used for commercial purposes to finance construction and land development or an origination of a loan that is secured by real estate and used to finance the acquisition or rehabilitation of a building used for commercial purposes;

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200(b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the **Federal Register**, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200(b) through (h) of this chapter if:

(1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified;

(2) The uncertified CDFI is certified by the end of the applicable Assessment Period; and

(3) The Applicant retains the option of recapturing said assistance in the event that the uncertified CDFI is not certified by the end of the applicable Assessment Period;

(n) *CDFI Related Activities* means Equity Investments and CDFI Support Activities;

(o) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that is integrally involved in a Distressed Community in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(p) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs;

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided for Low- and Moderate-Income persons in a Distressed Community or enterprises integrally involved in a Distressed Community deemed appropriate by the Fund;

(q) *Consumer Loan* means an origination of a loan to one or more individuals for household, family, or other personal expenditures;

(r) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(s) *Development and Service Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(t) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other comparable services as may be specified by the Fund that are provided to Low- and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(w) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(y) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(z) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(aa) *Multi-Family Loan* means an origination of a loan secured by a five- or more family residential property;

(bb) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is integrally involved with a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, related to commercial real estate, single family housing, multi-family housing, business or agriculture (as defined in this part);

(cc) *Qualified Activities* means CDFI Related Activities and Development and Service Activities;

(dd) *Resident* means an individual domiciled in a Distressed Community;

(ee) *Single Family Loan* means an origination of a loan secured by a one-to-four family residential property;

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(gg) *Unit of General Local Government* means any city, county town, township, parish, village or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out CDFI Support Activities or Development and Service Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is integrally involved with such a Distressed Community. In the case of an Applicant proposing to make an Equity Investment, the Fund reserves the right to request information on Distressed Communities served by such a CDFI should such information be deemed necessary by the Fund to complete the selection process described in § 1806.204. In the case of an Applicant that proposes to carry out both CDFI Support Activities and Development and Service Activities it may designate different Distressed Communities for these two categories of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph (b).

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii) (A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be a Distressed Community. A prospective Applicant is encouraged to contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *CDFI Related Activities.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment or carrying out CDFI Support Activities during an Assessment Period.

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Development and Service Activities during an Assessment Period.

(2) *Area served.* The Development and Service Activities listed in paragraphs (b)(4)(i) through (x) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Development and Service Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Development and Service Activities.* Development and Service Activities are listed in this paragraph with their corresponding priority factors:

(i) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor = 1.0);

(ii) Financial Services (priority factor = 1.2);

(iii) Community Services (priority factor = 1.4);

(iv) Consumer Loans (priority factor = 1.2);

(v) Single Family Loans and related Project Investments (priority factor = 1.4);

(vi) Multi-Family Loans and related Project Investments (priority factor = 1.6);

(vii) Commercial Real Estate Loans and related Project Investments (priority factor = 1.6);

(viii) Business Loans, Agricultural Loans, and related Project Investments of $100,000 or less (priority factor = 1.9);

(ix) Business Loans, Agricultural Loans, and related Project Investments of more than $100,000 through $250,000 (priority factor = 1.8); and

(x) Business Loans and related Project Investments of more than $250,000 through $1,000,000 and Agricultural Loans and related Project Investments of more than $250,000 through $500,000 (priority factor = 1.7).

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If an Applicant is seeking assistance for both

CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an Applicant is unable to report its activities in the aforementioned manner, the Applicant shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a NOFA for each funding round.

(b) *Exception.* An Applicant may select not to report its deposit liabilities as described in § 1806.201(b)(4)(i). In such a case, an Applicant's deposit liabilities will not be considered in calculating the service score pursuant to § 1806.203(c).

(c) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans, grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits. Where a loan matures, is fully paid and is then renewed, the Fund will assess the value of the principal amount of the renewed loan. Where a deposit, such as a certificate of deposit, matures and is then rolled over, the Fund will assess the value of the full amount of the rolled over deposit. However, where an existing loan is refinanced, the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

(i) The Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(3) Financial Services, Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services; and

(4) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(d) *Closed transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if:

(1) The documentation evidencing the transaction:

(i) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively, as specified in the applicable NOFA; and

(ii) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(2) An initial disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction, (both as determined by the Fund).

(e) *Reporting.* An Applicant shall report Qualified Activities on the basis of transactions that were:

(1) Completed during the Baseline Period; and

(2) Are expected to be completed during the Assessment Period and disbursed by the Applicant to a borrower or investee within the period described in § 1806.205(a).

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

(b) *CDFI Support Activities.* If an Applicant is not a CDFI, the estimated award amount for CDFI Support Activities will be equal to 11 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period. If Applicant is a CDFI, the estimated award amount for CDFI Support Activities will be equal to 33 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period.

(c) *Development and Service Activities.* The estimated award amount for Development and Service Activities will be calculated as follows:

(1) *Step 1.* For each type of Development and Service Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Development and Service Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities, Financial Services and Community Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Development and Service Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score;

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability* of funds. All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all estimated award amounts, an Applicant that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the priority categories described in this paragraph (b). All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category. Selections within each priority category will be based on the relative rankings within each such category, subject to the availability of funds.

(2) *First priority.* (i) If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities in the following order:

(A) Equity Investments in CDFIs serving Distressed Communities;

(B) Equity Investments in CDFIs not serving Distressed Communities; and

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.* Estimated awards for Equity Investments may be ranked within each applicable priority subcategory based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). The Applicant, however, may not reduce its award percentage below 12 percent. For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(iii) *Ranking CDFI Support Activities.* Estimated awards for CDFI Support Activities may be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.* Estimated awards for Development and Service Activities may be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this section, the award amounts will be combined into a single Bank Enterprise Award.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period and expected to be disbursed to an investee, borrower, or other recipient within three years of the end of the applicable Assessment Period. The Fund reserves the right to extend this period on a case-by-case basis where it has a high degree of confidence that disbursement will occur and the activity will promote the purposes of the Act. Subject to § 1806.204 and any recapture sanction for failure to perform pursuant to this part, the actual award amount that an Awardee will receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Achievement.* If an Applicant carries out all or a portion of its projected Qualified Activities and satisfies all program requirements described in this part, its award amount will be calculated on a pro-rata basis to reflect the increase in activities actually carried out except that if:

(1) The amount of funds available is insufficient for all estimated award amounts; and

(2) An Applicant carries out less than 75 percent of its projected Qualified Activities, the Fund in its sole discretion, may limit the amount or deny an award.

(c) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part:

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(d) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason, including if an Applicant submits an application based on unrealistic Assessment Period projections.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the **Federal Register**. The NOFA will advise potential Applicants with respect to obtaining an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which includes:

(1) A copy of the Applicant's certificate of insurance issued by the Federal Deposit Insurance Corporation and a copy of the Applicant's incorporation, charter, organizing, formation, or otherwise establishing documents to be used to establish eligibility for an award;

(2) A completed Bank Enterprise Award Rating and Calculations worksheet. (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(3) A narrative summary of each Qualified Activity expected to be performed in the Assessment Period;

(4) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report, to its Appropriate Federal Banking Agency;

(5) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(6) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(7) A copy of the Applicant's most recent annual report;

(8) In the case of an Applicant proposing to engage in Development

and Service Activities, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(9) In the case of an Applicant proposing to engage in CDFI Related Activities:

(i) *Equity Investment.* An Applicant shall submit a list of potential CDFIs to which assistance may be provided, and a description of the amount, terms and conditions of any Equity Investment that may be provided.

(ii) *CDFI Support Activities.* An Applicant shall submit:

(A) A list of potential CDFIs to which assistance may be provided and a description of the amount, terms and conditions of the assistance that may be provided; and

(B) Information that indicates that each CDFI to which an Applicant proposes to provide CDFI Support Activities is integrally involved within a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

At the end of an Assessment Period, each Applicant shall submit to the Fund:

(a) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(b) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and

(c) *Documentation.* The Applicant shall make available the following:

(1) With respect to Equity Investments and CDFI Support Activities, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(2) With respect to Development and Services Activities where the original amount of the value of the activity is $250,000 or greater, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(3) With respect to Development and Services Activities where the original amount of the value of the activity is less than $250,000, the Applicant shall submit a schedule that describes the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument; and

(4) Any other information reasonably requested by the Fund in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1997.

Maurice A. Jones,

Acting Deputy Director.

[FR Doc. 97–31452 Filed 12–4–97; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide incentives to insured depository institutions for the purpose of promoting investments in or other support to Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published elsewhere in this issue of the **Federal Register**. This interim rule implements the Bank Enterprise Award (BEA) Program. The Fund reserves the right to award funds under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, the Fund intends to make available up to $25 million in BEA Program funds. The Fund reserves the right to award in excess of $25 million if it deems it appropriate.

DATES: Applications may be submitted at any time after December 5, 1997. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on February 12, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 are strongly encouraged to submit the Application Form for Certification, the contents of which are described in 12 CFR 1805.701(b) (1) through (8), by February 12, 1998. If an entity fails to submit such Application by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b) (1) through (8). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Washington DC 20005. Applications sent by fax will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Washington DC 20005, (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 (Act) authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

III. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide prospective Applicants with data and other information to help identify areas eligible to be Distressed Communities. The Fund is requiring all applicants to contact the BEA Help Desk at (202) 622–8662 to obtain such necessary data and information.

IV. Designation Factors

The revised interim rule published separately in this issue of the **Federal Register** (12 CFR part 1806) describes the process for selecting applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to applicants in the following priority of categories: Equity Investments in CDFIs serving Distressed Communities, Equity Investment in CDFIs not serving Distressed Communities, CDFI Support Activities, and Development and Services Activities (as such activities are defined in the revised interim rule). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities. The revised interim rule establishes the ranking and selection process. For an applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such applicants within each category, the Fund will apply criteria contained in the revised interim rule. The Fund, in its sole discretion, may adjust the estimated award amount that an applicant may receive prior to the end of the Assessment Period. The Fund may, in its sole discretion, establish any limitations on the maximum amount that may be awarded to an applicant. The Fund reserves the right to limit the amount of an award to any Awardee if deemed appropriate.

V. Baseline Period and Assessment Period Dates

As part of its application, an applicant shall report the Qualified Activities that it actually carried out during a 6-month Baseline Period. Such Baseline Period will begin on January 1, 1997, and end on June 30, 1997. An applicant shall also project the Qualified Activities that it expects to carry out during a 6-month Assessment Period. Such Assessment Period will begin on January 1, 1998, and end on June 30, 1998. Applicants selected to participate in the Program during the Assessment Period will be required to submit to the Fund a Final Report of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Standard Time on July 31, 1998. The Fund will evaluate the performance of applicants in carrying out projected activities to determine actual award amounts.

Authority: 12 U.S.C. 4703, 4703 note; 12 U.S.C. 1834a; 12 CFR part 1806.

Maurice A. Jones,

Acting Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 97–31451 Filed 12–4–97; 8:45 am]

BILLING CODE 4810–70–P

federal register

Friday
December 5, 1997

Part III

Department of Labor

Employment and Training Administration

Bureau of Apprenticeship and Training Proposed Procedure and Policy; Request for Comment; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Bureau of Apprenticeship and Training Proposed Procedure and Policy; Request for Comment

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Procedure for Releasing Identities of Program Sponsors; Request for Comment.

SUMMARY: In October 1993, both President Clinton and Attorney General Janet Reno asked that each Federal department and agency review its commitment to the Freedom of Information Act (FOIA) and to the principles of openness in Government. Subsequently, then U.S. Labor Secretary Robert B. Reich directed this Department to ensure commitment with both the letter and spirit of the FOIA. In furtherance of those goals, the Bureau of Apprenticeship and Training, (BAT) a bureau within the Employment and Training Administration, is proposing a procedure and policy to release the identities of apprenticeship program sponsors registered and recognized by the BAT. The BAT seeks written comments on this policy and procedure.

DATES: Written comments must be received by February 3, 1998.

ADDRESSES: Send written comments to Anthony Swoope, Director, BAT, ETA, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marion M. Winters, FOIA Coordinator for BAT, Telephone: (202) 219–5921 (Ext. 118) (this is not a toll-free number). FAX (202) 219-5011.

SUPPLEMENTARY INFORMATION:

Background

In October 1993, both President Clinton and Attorney General Reno asked each Federal department's agency to review its commitment to the Freedom of Information and to the principle of openness in government. In accordance with this directive, the BAT, a component of the Labor Department, re-examined its disclosure policies to see if the purposes of the FOIA could be better fostered. The Department of Labor is fully committed to these directives. In an effort to implement this Administration's policy, the Department's BAT wishes to clarify its position on the release of the fact of the existence of an apprenticeship program as well as the identities of participating apprenticeship program sponsors.

The BAT administers and promotes this nation's apprenticeship and training programs. Individuals join an apprenticeship program to learn the skills the program has to offer as well as to obtain employment. Apprenticeship is a relationship between an employer and an employee during which the employee, or apprentice, learns a trade. The training lasts a specified length of time. An apprenticeship covers all aspects of the trade and includes both on-the-job training and related instruction.

Apprenticeship programs are sponsored and operated on a voluntary basis by employer, employee associations, or partnership between employers and labor unions. The sponsor of an apprenticeship program plans, administers and pays for the program. When an apprentice is accepted into a program, he or she and the sponsor sign an apprenticeship agreement. The apprentice agrees to perform the work faithfully and complete the related study, and the sponsor agrees to make every effort to keep the apprentice employed and to comply with the standards established for the program. An apprenticeship program must meet certain requirements set down by BAT.

BAT regulations require that apprenticeship programs be registered with BAT or a federally approved State Apprenticeship Agency. Registered programs must meet federally approved standards relating to job duties, related instruction, wages, and safety and health conditions. Apprentices who successfully complete registered programs receive certificates of completion from the U.S. Department of Labor or a federally approved State Apprenticeship Agency.

Further Background

In the past, when BAT received FOIA requests for information concerning apprenticeship programs, it would notify the appropriate sponsor and seek his/her views regarding the effect disclosure of the relevant data would have on their competitive business position. This procedure was followed because of BAT's understanding of Executive Order 12600 (29 CFR 70 et. seq; 29 CFR 70.26).

Executive Order 12600, issued May 30, 1989, requires Federal Agencies to notify submitters of commercial information (apprenticeship program sponsors) if its potential release could be considered sensitive to business interests. In its effort to comply with Executive Order 12600, BAT referred all records to submitters for their comments regarding a proposed release of the information. Regrettably, *this included even the existence of an apprenticeship program*. BAT sought views of sponsors on whether the disclosure of the existence of a registered program could be harmful to its proprietary interests.

Discussion

BAT does not believe the relevant information is proprietary to the sponsor. This information belongs to the government as well as to the sponsors and apprentices. It has been BAT's experience that when we have contacted sponsors and sought their comments on any commercial harm they would experience by the publication of the fact that a registered program exists, the vast majority offered no objection. There is little basis, if any, for supporting a claim of negative proprietary impact on sponsors by identifying their participation as an apprenticeship program sponsor. It is BAT's understanding that in an overwhelming number (if not in all) State Apprenticeship Council (SAC) states the fact of the existence of apprenticeships programs is released to the public. Requests for disclosure are honored whether received by telephone, FAX, or mail.

Conclusion

Publication of the apprenticeship program sponsors will bring many benefits. It would stimulate the establishment of more apprenticeship programs. It will encourage students who may not otherwise investigate other options by these programs sponsors to learn about alternative training programs that serve as an important pathway to registered apprenticeship. A publication of BAT's 35,000 or more organizations offering apprenticeship training would be a welcome addition on the shelves of thousands of libraries across the country. Traditionally associated with the skilled trades, apprenticeship is now available in over 800 occupations. BAT is exploring identification of apprenticeship programs that it has registered to be publicized on its WEB page. The adoption of this procedure is in keeping with the administration's desire for more openness in government operation to FOIA users.

Request for Comments

Please provide us with your comments regarding the policy to release the identities of apprenticeship program sponsors registered and recognized by the BAT. The BAT seeks written comments on this policy and procedure. In particular, we welcome comments from the apprenticeship community on the relationship, if any, to their business interests of disclosure of the existence of a registered apprenticeship program.

Signed at Washington, D.C., this 1st day of December 1997.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training, Employment and Training Administration.

[FR Doc. 97–31861 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–30–P

federal register

Friday
December 5, 1997

Part IV

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 1998 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1998 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66), was signed into law by President Clinton on October 27, 1997. Pending further consideration of a multi-year authorization next Spring, Congress has passed a six-month extension of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), known as the Surface Transportation Extension Act of 1997. This act, signed by President Clinton on December 1, 1997, provides additional funding authorizations for the transit, highway, and highway safety programs for the period October 1, 1997, through March 31, 1998. The previous authorizations, under ISTEA, were effective through September 30, 1997.

Funding for the Federal Transit Administration (FTA) is derived from two sources: the general funds of the Treasury and motor fuel taxes deposited into the Mass Transit Account of the Highway Trust Fund. The 1998 DOT Appropriations Act provides $240,000,000 in general funds for the formula programs under 49 U.S.C. Sections 5307, 5311, and 5310. It also provides general funds in the amount of $52,250,000 for the transit planning and research programs of 49 U.S.C. Sections 5303, 5313(b), and 5311(b). The Surface Transportation Extension Act of 1997 provides an additional $1,328,400,000 for formula programs in the form of contract authority from the Mass Transit Account for a total of $1,568,400,000 for the formula programs.

The capital programs are funded exclusively with trust funded resources. The Surface Transportation Extension Act of 1997 provides $1,131,600,000 in new contract authority, consisting of $452,640,000 each for the Fixed Guideway Modernization and New Starts categories and $226,320,000 for the Bus category. The obligational authority for New Starts when combined with $392,000,000 in unobligated contract authority for New Starts remaining under ISTEA exceeds the obligation limitation in the 1998 DOT Appropriations Act of $800,000,000. Therefore, this notice contains allocations to make $800,000,000 for New Starts available for obligation.

This Notice contains (1) a listing of the full amount of the fiscal year 1998 apportionments and allocations for the formula, capital, and transit planning and research programs, including both trust funds and general funds, based on the 1998 Appropriations Act and Federal transit laws; and (2) a listing of apportionments and allocations based on the fiscal year 1998 available funds for the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, the Capital Program, the Metropolitan Planning Program, and the State Planning and Research program, in accordance with the 1998 DOT Appropriations Act and the Surface Transportation Extension Act of 1997. As soon as authorizing legislation covering the remainder of the fiscal year, April 1, 1998, through September 30, 1998, has been enacted, the entire apportionment will be made available. If the reauthorization act affects the distribution of funds within the programs, FTA will republish the apportionments and allocations in their entirety, taking the provisions of both the 1998 DOT Appropriations Act and the reauthorization act into consideration. In any case, even though the Surface Transportation Extension Act of 1997 provides contract authorizations for the period October 1, 1997, through March 31, 1998, funding is available to grantees throughout the typical period of availability for each specific program. For example, Urbanized Area Formula Program funding is available to the grantees for fiscal year 1998 plus the next three years through fiscal year 2001. In the interim, grantees are able to obligate the fiscal year 1998 available apportionments, allocations, and carryover balances remaining under the various FTA formula and capital programs.

Also included in this Notice is a listing of prior year unobligated earmarks for the Section 5309 New Starts and Bus Programs as in previous year notices. In addition, the FTA policy regarding pre-award authority to incur project costs, as well as other pertinent program information, is included.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, or the Capital Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program and the State Planning and Research Program.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

I. Background

Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the Governors for capital, operating and administrative assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. Funds appropriated for the Metropolitan Planning Program are apportioned by a statutory formula to the Governors for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. Appropriated funds for the State Planning and Research Program also are apportioned to states by a statutory formula. New Start funds identified for specific projects in the 1998 DOT Appropriations Act and Bus fund allocations in the accompanying Conference Report are also included in this Notice.

II. Overview of Appropriations for Grant Programs

A. General

In fiscal year 1998, the appropriation and obligation limitation for the Urbanized Area Formula Program and the Nonurbanized Area Formula Program is $2,437,780,611. Of this amount, 94.50 percent ($2,303,702,677) would be available to the Urbanized Area Formula Program, and 5.50 percent ($134,077,934) would be available to the Nonurbanized Area Formula Program. The other program appropriations contained in this Notice are as follows: $4,500,000 for the Rural Transit Assistance Program (RTAP); $62,219,389 for the Elderly and Persons with Disabilities Program; $39,500,000 for the Metropolitan Planning Program; $8,250,000 for the State Planning and Research Program; and $2,000,000,000 in obligation limitation for the Capital Program. Of the Capital Program amount, $800,000,000 is for Fixed Guideway Modernization, $800,000,000 is for New Starts, and $400,000,000 is for Bus.

Table 1 displays the amounts of obligation limitation and appropriations for these programs, including adjustments and final apportionment and allocation amounts. Also included is a listing of amounts for the formula and capital programs based on the fiscal year 1998 available funds. The following text provides a narrative explanation for the funding levels and other factors affecting these apportionments and allocations.

B. Funds Available for Obligation

Because the Surface Transportation Extension Act of 1997 only provides contract authority through March 31, 1998, FTA is publishing both (1) the apportionment and allocation tables that contain the full program levels in the DOT Appropriations Act for fiscal year 1998; and (2) the apportionments and allocations based on the fiscal year 1998 available funds for the various programs. The column titled ‘‘FY 1998 Apportionment’’ includes both trust funds (contract authority) and general funds, and does not represent the amount that is actually available for obligation at this time. Rather, it reflects the total dollar amount of obligation limitation and appropriations in the 1998 DOT Appropriations Act, once a full year contract authority is made available. Only funds shown in the column titled ‘‘FY 1998 Available Apportionment,’’ may be obligated pending further reauthorizing legislation.

C. Project Management Oversight

49 U.S.C. Section 5327 allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available under the Capital Program; the Urbanized Area Formula Program, the Nonurbanized Area Formula Program; the National Capital Transportation Act, as amended; and an additional one-quarter of one percent of Capital Program funds to contract with any person to oversee the construction of any major project under these statutory programs and to conduct safety, procurement, management and financial reviews and audits.

The 1998 DOT Appropriations Act states ‘‘That none of the funds in this Act shall be available for the execution of contracts under section 5327(c) of title 49, United States Code, in an aggregate amount that exceeds $15,000,000.’’ Accordingly, the Project Management Oversight (PMO) amount takes into account both the 1998 DOT Appropriations Act and Federal transit laws. The obligation limitation and appropriations for the Sections 5307, 5311, and 5309 Programs, and the National Capital Transportation Act, as amended, total $4,637,780,611. The higher amount as authorized under Federal transit laws was reduced to the $15,000,000 required by the 1998 DOT Appropriations Act by taking a pro rata reduction across all categories of the four programs. Therefore, .32343056 of one percent of the funds appropriated within the obligation limitation and appropriation for the Urbanized Area Formula Program; the Nonurbanized

Area Formula Program; the Capital Program; and the National Capital Transportation Act, as amended, for fiscal year 1998, have been reserved for these purposes before apportionment of the funds.

III. Expanded Definition of Capital

A. Preventive Maintenance

Effective for fiscal year 1998, preventive maintenance will be eligible for Federal assistance as a capital expense with a Federal/local share ratio of 80/20 in the FTA formula programs. Thus preventive maintenance is an eligible capital cost under the Section 5307 Urbanized Area Formula Program; the Section 5310 Elderly and Persons with Disabilities Program; and the Section 5311 Nonurbanized Area Formula Program. This provision does not apply to the Section 5309 Capital Program. This change implements Section 316 of the 1998 DOT Appropriations Act, in which Congress amended the definition of an eligible capital project under the FTA formula programs to add preventive maintenance.

Since the DOT Appropriations Act covers only Federal fiscal year 1998, this new policy applies only to funds within the obligation limitation and appropriation in the DOT Appropriations Act for fiscal year 1998. It does not apply to carryover funds apportioned in previous years.

Preventive maintenance costs for fiscal year 1998 are defined as all maintenance costs. For general guidance as to the definition of eligible maintenance costs, the grantee should refer to the definition of maintenance in the most recent National Transit Database (NTD) reporting manual. During fiscal year 1998 a grantee may continue to request assistance for capital expenses under the FTA policies governing associated capital maintenance items (spare parts), maintenance of vehicles leased under contract, and vehicle overhauls; or a grantee may choose to capture all maintenance under preventive maintenance, and also may continue to request operating assistance within the grantee's operating assistance limitation at the 50/50 match share. However, a grantee may not count the same costs twice. Preventive maintenance costs eligible for FTA capital assistance from fiscal year 1998 appropriations are those costs incurred by a grantee within a local fiscal year ending during calendar 1997, or thereafter. If a grantee purchases service instead of operating service directly, and maintenance is included in the contract for that purchased service, then the grantee may apply for capital assistance under preventive maintenance for the actual maintenance costs of the purchased service.

For accounting purposes, the grantee is cautioned not to confuse the fact that an item generally considered to be an operating expense is now eligible for FTA capital assistance. Generally accepted accounting principles and the grantee's accounting system determine those costs that are to be accounted for as operating costs. The National Transit Database Reporting System (NTD) follows generally accepted accounting principles, and so a grantee reporting to the NTD must report the operating costs the grantee has incurred as operating regardless of grant eligibility as capital. Nevertheless, under provisions of the fiscal year 1998 Appropriations Act, some of those operating costs, while continuing to be accounted for as operating costs in the grantee's accounting records, are now eligible for FTA capital assistance.

B. Operating Assistance for Urbanized Areas Less Than 200,000 in Population

Section 316 of the 1998 DOT Appropriations Act further amended the definition of a capital project to include "financing the operating costs of equipment and facilities used in mass transportation in urbanized areas with a population of less than 200,000".

A grantee in an urbanized area of less than 200,000 in population may elect to employ this amended definition of capital and request 80 percent Federal assistance for funding net operating expenses, or the grantee may choose to use the fiscal year 1998 operating assistance limitations published in this notice and apply for operating assistance at the 50 percent Federal share. If operating expenses are applied for as capital costs, the operating assistance limitation does not apply. The net operating expenses eligible for capital funding under the amended definition of capital will be determined according to guidance in FTA Circular 9030.1B, Appendix D. As for preventive maintenance, only fiscal year 1998 funds may be used for operating assistance as a capital cost.

IV. Departmental Initiatives

A. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Home Page web site, including this Apportionment Notice. Also posted on the web site are FTA program circulars: C9030.1B, Urbanized Area Formula Program: Grant Application Instructions, dated October 10, 1996; C9040.1D, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated May 8, 1997; C9070.1D, Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 22, 1997; C9300.1, Capital Program: Grant Application Instructions, dated September 29, 1995; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1B, Grant Management Guidelines, dated September 7, 1995; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The fiscal year 1998 Annual List of Certifications and Assurances is also posted on the FTA web site. Other documents on the FTA web site of particular interest to public transit providers and users include the 1996 Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

The FTA Home Page may be accessed at: http://www.fta.dot.gov. FTA circulars and other guidance are at: http://www.fta.dot.gov/program.

Grantees should check our web site frequently to keep up to date on new postings.

B. State Infrastructure Banks

The State Infrastructure Bank (SIB) pilot program was authorized in the National Highway System Designation Act of 1995. It allows the creation of state-level institutions that can use Federal Highway Administration (FHWA) and FTA funds to make loans and loan guarantees (and other forms of credit enhancement) to transit and highway projects. The SIBs may earn interest on deposits of Federal funds, and they may charge below-market interest rates on long-term loans.

In 1996, ten (10) states were designated to establish SIBs. On June 19, 1997, an additional 29 states were designated to participate in the SIB Pilot Program. The Secretary of Transportation has awarded $150,000,000 in capitalization funding to these 29 designated states.

V. Section 5307 Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1998 Urbanized Area Formula funds of $2,303,702,677, the apportionment also includes $7,162,381 in deobligated funds which have become available for reapportionment for the Urbanized Area Formula

Program as provided by 49 U.S.C. 5336(i).

Table 2 displays the amount apportioned for the Urbanized Area Formula Program. After the .32343056 of one percent for PMO is reserved ($7,450,879), the amount appropriated for this program is $2,296,251,798. The funds to be reapportioned, described in the previous paragraph, have then been added. Thus, the total amount apportioned for this program is $2,303,414,179.

Table 2 also shows by urbanized area and state the amount of funds which are currently available. The total of $1,444,234,826 includes $1,441,735,458 in fiscal year 1998 trust funded contract authority and general fund appropriation, $7,162,381 in deobligated funds from previous years which have become available for reapportionment, minus $4,663,013 for PMO. The available operating assistance limitation in the amount of $150,000,000 is also shown on Table 2.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1996 NTD (49 U.S.C. 5335) Report Year submitted in late 1996 and early 1997 have been used to calculate the fiscal year 1998 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2)(E) provides that, if a recipient of Urbanized Area Formula Program funds demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336(b)(2)(A)(i) shall not be reduced as a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1998 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Urbanized Area Formula Fiscal Year 1998 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each state is shown on Table 2. Table 2 also contains the total apportionment amount attributable to each of the urbanized areas within the state. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section G, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Urbanized Area Formula Operating Assistance Limitations

The fiscal year 1998 limitations on the amount of Urbanized Area Formula funds that may be used for operating assistance are shown on Table 2 with the fiscal year 1998 apportionment.

The operating assistance limitations for all urbanized areas have been adjusted by 49 U.S.C. 5336(d)(2) to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar years. *The CPI Detailed Report*, December 1996, published by the Department of Labor (DOL), establishes that the calendar year 1996 CPI increase for all urban consumers is 3.3 percent. This increase was applied against the base operating assistance limitation calculated in accordance with 49 U.S.C. 5336(d)(2).

These adjustments result in an overall national fiscal year 1998 authorized operating assistance limitation level of $1,178,642,366. However, the 1998 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $150,000,000. Further, it maintains the level of transit operating assistance to urbanized areas of less than 200,000 in population at 75 percent of the amount of operating assistance such areas received in fiscal year 1995. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1998 DOT Appropriations Act and Federal transit laws. Therefore, the higher operating assistance limitation as authorized under Federal transit laws ($1,178,642,366) was reduced to the $150,000,000 required by the 1998 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees. Further, the operating assistance limitation to urbanized areas less than 200,000 in population was adjusted to $92,949,803 or 75 percent of the amount of their fiscal year 1995 level of $123,933,070.

The operating assistance limitation of $85,791 for Flagstaff, Arizona (a newly designated urbanized area under 200,000 in fiscal year 1996), was then added to the amount of the fiscal year 1995 level, thereby increasing the fiscal year 1998 level for these areas to $93,035,594. The remaining $56,964,406 of the $150,000,000 was prorated to urbanized areas above 200,000 in population, as authorized by the 1998 DOT Appropriations Act.

Consistent with the 1998 Conference Report, the Secretary hereby directs each area of 1,000,000 or more in population to give priority consideration to the impact of reductions in operating assistance on smaller transit authorities operating within the area, and to consider the needs and resources of such transit authorities when the limitation is distributed among all transit authorities operating in the area.

F. Statewide Operating Assistance Limitations

49 U.S.C. 5307(f) specifies that in any case in which a statewide agency or instrumentality is responsible under state laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. However, the amount of operating assistance provided for another state or local transportation agency within the affected urbanized areas may not be reduced.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. Section 5305. These designations were formally made in a **Federal Register** notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1997, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg, Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were combined and designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas.
	Lewisville, Texas.
Houston, Texas	Galveston, Texas.
	Texas City, Texas.
Orlando, Florida	Kissimmee, Florida.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania.
	Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA, except for those amounts which can be used for the payment of operating expenses, are also available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) funds may be available for highway projects under title 23, U.S.C., only if funds used for the state or local share of such highway projects are eligible to fund either highway or transit projects.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the Federal Highway Administration (FHWA). The MPO should notify FTA of its intent to program FTA funds for highway purposes.

VI. Section 5311 Nonurbanized Area Formula Program and Section 5311(b) Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The fiscal year 1998 Nonurbanized Area Formula apportionments to the states totaling $134,819,045 are displayed in Table 3. Of the $134,077,934 appropriated, .32343056 of one percent ($433,649) was reserved for PMO. In addition to the current appropriation and obligation limitation, the funds available for apportionment include $1,174,760 in deobligated funds from fiscal years prior to 1996.

Table 3 also shows a state-by-state apportionment of the amount of funds which are currently available. The total of $84,813,897 includes $83,910,529 in fiscal year 1998 trust funded contract authority and general fund appropriation, $1,174,760 in prior year carryover available to be reapportioned, minus $271,392 for PMO.

The population figures used in calculating these apportionments are from the 1990 Census.

The Nonurbanized Formula Program provides capital, operating and administrative assistance for areas less than 50,000 in population. Each state must spend no less than 15 percent of its fiscal year 1998 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met. Fiscal year 1998 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. Rural Transit Assistance Program (RTAP)

The fiscal year 1998 RTAP allocations to the states totaling $4,678,778 are also displayed on Table 3. This amount includes $4,500,000 in fiscal year 1998 appropriated funds, and $178,778 in prior year deobligated funds, which have become available for reallocation for this program.

Table 3 also shows a state-by-state allocation of RTAP funds. RTAP is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $4,500,000 is currently available plus $178,778 in reapportioned funds.

The funds are allocated to the states to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the states' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $62,221,661 is apportioned to the states for fiscal year 1998 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 1998 appropriation of $62,219,389, the fiscal year 1998 apportionment also includes $2,272 in prior year unobligated funds which have become available for reapportionment for the Elderly and Persons with Disabilities Program. Table 4 shows each state's apportionment.

Table 4 also shows a state-by-state allocation of the amount of funds which are currently available. The total of $42,756,285 includes $42,754,013 in fiscal year 1998 trust funded contract authority and general fund appropriation, and $2,272 in reapportioned funds.

The formula for apportioning these funds uses 1990 Census population data for persons aged 65 and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the state that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. Surface Transportation Program ''Flexible'' Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

''Flexible'' DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use in transit projects, are transferred from the FHWA to FTA after which FTA approves the project and awards a grant. Flexible funds designated for transit projects must result from the metropolitan and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the funds are to be used for transit purposes and requests that the funds be obligated by FHWA as a transfer project to FTA. The flexible funds transferred to FTA will be placed in an urbanized area or state account for one of the three existing formula programs—Urbanized Area, Nonurbanized Area, or Elderly and Persons with Disabilities.

The flexible funds are then treated as FTA formula funds, although they retain a special identifying code. They may be used for any purpose eligible under these FTA programs except for operating expenses. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in states with large areas of Indian and certain public domain lands, and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide 10 percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized in Title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New Starts, or Fixed Guideway Modernization) for obligation and are administered as Capital projects.

IX. Section 5309 Capital Program

A. Fixed Guideway Modernization

Fixed Guideway Modernization funds are allocated by formula. Statutory percentages were established to allocate the first $497,700,000 to 11 fixed guideway areas. The next $70,000,000 is allocated one-half to these 11 urbanized areas and one-half to other urbanized areas with fixed guideways which are at least seven years old on the basis of the Urbanized Area Formula Program fixed guideway tier formula factors. The remaining funds are allocated to all of these urbanized areas as one universe. For fiscal year 1998, there is a $800,000,000 obligation limitation for fixed guideway modernization. After deducting the .32343056 of one percent for oversight ($2,587,445), $797,412,555 would be available for apportionment to the specified urbanized areas for Fixed Guideway Modernization funding. Table 5 displays these apportionments.

Table 5 also shows a state and area allocation of the fiscal year 1998 funds which are currently available. The total of $451,176,024 includes $452,640,000 in fiscal year 1998 trust funded contract authority, minus $1,463,976 for PMO, distributed on a pro rata basis as directed in the Surface Transportation Extension Act of 1997.

Funds apportioned for this section must be used for capital projects to modernize or improve fixed guideway systems. The expanded definition of capital to include preventive maintenance does not apply to the Fixed Guideway Modernization Program.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the NTD reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the NTD are not included. Urbanized areas should be aware that the formula allocating Fixed Guideway Modernization funds may be changed under a new authorization act.

B. New Starts

The fiscal year 1998 obligation limitation for New Starts is $800,000,000.

The Project Management Oversight (PMO) reduction was applied to this amount and subtracted on a pro rata basis from all 65 projects specified in the 1998 DOT Appropriations Act. For fiscal year 1998, this amount is $2,587,445. This amount was computed by applying .32343056 of one percent to the obligation limitation. After subtracting this amount from the $800,000,000, a total of $797,412,555 is available for obligation. The final allocation for each of these projects, which also reflects the PMO reduction, is contained in Table 6 of this **Federal Register** notice.

The Surface Transportation Extension Act of 1997 provides $452,640,000 for New Starts. This obligational authority for New Starts when combined with $392,000,000 in unobligated contract authority for New Starts remaining under ISTEA exceeds the obligation limitation in the 1998 Appropriations Act of $800,000,000. Therefore, $800,000,000 minus $2,587,445 for PMO is currently available.

Prior year unobligated appropriations for New Starts in the amount of $299,434,442 remain available for obligation in fiscal year 1998. These allocations are displayed in Table 6A.

C. Bus

The fiscal year 1998 obligation limitation for Bus is $400,000,000. In addition Congress reprogrammed $975,000 in unobligated Bus funds originally appropriated in fiscal year 1995, yielding an overall total of $400,975,000. This entire amount was allocated to projects specified in the 1998 DOT Appropriations Act. After deducting the .32343056 of one percent for oversight ($1,293,722) from the 1998 appropriated amount ($400,000,000), $399,681,278 remains available for projects.

The Conference Report accompanying the 1998 DOT Appropriations Act earmarked all of the fiscal year 1998 Bus funds to specified states or localities for bus and bus-related projects. Where funds were earmarked to states, in most cases, there were additional suballocations to local entities. In Louisiana the suballocation is included in the Conference Report; however, a letter dated October 14, 1997, from Chairman Frank R. Wolf of the House Appropriations Committee clarifies the amount of suballocations within the State. This clarification is reflected in the Bus allocations displayed in Table 7.

The conference report directs the FTA to make available to the state of Michigan for the procurement of buses and bus-related equipment funds ($4,000,000) originally provided in the fiscal year 1995 Department of Transportation and Related Agencies Appropriations Act for a passenger intermodal transit center in Detroit, Michigan.

The Conferees also direct the FTA to reallocate funds in the amount of $4,962,500, made available in Public Law 103–331 for the Twin Cities Central Corridor project and not obligated by the end of fiscal year 1997, and make these funds available for similar bus and bus facilities projects in the Twin Cities Central Corridor.

Also shown in Table 7 is a state and area allocation of the fiscal year 1998 funds which are currently available. The total of $226,563,012 includes $226,320,000 in fiscal year 1998 trust funded contract authority, $975,000 in reprogrammed funds, minus $731,988 for PMO.

All bus projects must be eligible for FTA funding under FTA Circular 9300.1 in order to be approved by FTA. In previous years, there have been funds allocated for projects which were subsequently found to be ineligible for FTA assistance. Applicants with projects listed in Table 7 are advised to consult early in the fiscal year with the appropriate regional office regarding the project to ensure its eligibility for funding. This early consultation is especially critical when exercising pre-award authority.

Because the .32343056 of one percent for PMO was subtracted from the amount appropriated, each bus project identified in the Conference Report receives .32343056 of one percent less than the funding level contained in the report. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 7 displays the allocations of the fiscal year 1998 Bus funds by state and area.

Prior year unobligated appropriations for Bus in the amount of $188,761,911 remain available for obligation in fiscal year 1998, and are displayed in Table 7A.

X. Unit Values of Data for the Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Capital Fixed Guideway Modernization

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Fixed Guideway Modernization apportionments are included in this Notice in Table 9. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and data from the NTD by these unit values.

XI. Section 5303 Metropolitan Planning Program and 5313(b) State Planning and Research Program

A. Metropolitan Planning Program

The fiscal year 1998 Metropolitan Planning apportionment to states for MPOs to be used in urbanized areas totals $39,625,587. This amount includes $39,500,000 in fiscal year 1998 appropriated funds, and $125,587 in prior year deobligated funds which have become available for reallocation for this program. A basic allocation of 80 percent of this amount ($31,700,470) is distributed to the states based on a statutory formula for subsequent state distribution to each urbanized area, or parts thereof, within each state. A supplemental allocation of the remaining 20 percent ($7,925,117) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 8 contains the final state apportionments for the combined basic and supplemental allocations. Each state, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the state. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable, that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each state formula must include a provision for the minimum MPO allocation. Where the state and MPOs desire to use a new formula not previously approved by FTA, the state or MPO must submit the new formula to the appropriate FTA Regional Office for prior approval.

The Metropolitan Planning Program is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $39,500,000 is currently available plus $125,587 in reapportioned funds.

B. State Planning and Research Program

The fiscal year 1998 apportionment for the State Planning and Research Program totals $8,472,086. This amount includes $8,250,000 in fiscal year 1998 appropriated funds, and $222,086 in prior year deobligated funds which have become available for reallocation to this program. Final state apportionments, based on a statutory formula for this program, are also contained on Table 8. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training and cooperative research. In addition, a state may authorize a portion of these funds to be used to supplement planning funds allocated by the State to its urbanized areas as the state deems appropriate.

The State Planning and Research Program is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $8,250,000 is currently available plus $222,086 in reapportioned funds.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each state by administrative formula in fiscal year 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. FHWA Metropolitan Planning Program and State Planning and Research Program

Last year, estimated apportionments for the corresponding FHWA planning programs were provided along with the FTA apportionments. This year, no information will be available for the FHWA apportionments since their programs have not been reauthorized.

E. Local Match Waiver for Job Access Planning Activities

Federal, state, and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA are permitting the waiver of the local match requirement for job access planning activities undertaken with Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in metropolitan Unified Planning Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas

This notice includes newly developed transportation Planning Emphasis Areas (PEAs). The PEAs were prepared to advise state and local officials and transit operators of the national issues that warrant consideration in carrying out the metropolitan and statewide transportation planning process. The four major PEA themes were developed to promote general consistency between the planning initiatives being advanced in the metropolitan and statewide planning processes and national policy goals likely to be included in the reauthorized transportation legislation, as well as consistency with the USDOT Strategic Plan currently being finalized. Consideration of the PEAs in each state and metropolitan area, as appropriate in the Unified Planning Work Programs and State Planning Work Programs, is expected to reflect their unique challenges and goals. The Office of Planning anticipates working with a broad cross-section of stakeholders in preparing clarifying language and possible ways to relate the PEAs to the statewide and metropolitan planning processes.

Goals developed as part of USDOT's strategic planning process are designed to ensure the highest quality of surface transportation which promotes the Nation's economic and community vitality and environmental quality. Towards these goals, transportation Planning Emphasis Areas are prepared to advise state and local officials of the national issues that warrant consideration in carrying out the metropolitan and statewide transportation planning process (the planning process). Consideration of the emphasis areas in each state and metropolitan area is expected to reflect their unique challenges and goals. MPOs, states and transit operators may want to explore opportunities for local governments, the private sector, academic and research centers, environmental and human service agencies and other stakeholders to participate in the transportation planning process.

1. System Management and Operation

Planning for effective and efficient transportation system management and operation with ongoing performance monitoring preserves capacity, maximizes personal mobility and freight movement, ensures user safety and system security, and improves and maintains structural integrity. Innovative technologies, such as those included in Intelligent Transportation Systems (ITS), can improve communications, operational efficiencies, safety and system performance. Effectively managed transportation systems support the national Welfare-to-Work initiative by providing access to employment opportunities and support economic development by reducing the time for moving people and freight. The development of non-traditional transportation services to meet emerging new markets would help improve accessibility and mobility.

2. Financial Planning

A cooperative planning process which considers innovative funding sources, such as State Infrastructure Banks (SIBs), assists with developing sound transportation financial planning processes with accurate estimates of reasonably available funds, costs for system expansion, and future operation and maintenance costs. Coordinated activities to develop transportation plans will be improved with rigorous analysis of the financial dimensions of proposed major infrastructure investments.

3. Environmental and Community Impact

Local planning processes are encouraged to give early consideration of the natural environment and communities affected by transportation planning and project activities. Air quality issues are a key concern in some metropolitan areas. Coordinated planning for transportation and land use management will help to create sustainable communities with protection of natural resources, concentration of new development in suitable areas, and control of sprawl with infill development of under-utilized areas. State and local officials may choose to evaluate their decisionmaking process to determine how well it responds to community needs, as called for in the Livable Communities initiative. Consideration may be given to joint development of transportation infrastructure projects along with facilities providing goods and services to communities and neighborhoods.

4. Transportation and Equity

Transportation planning processes should address the equitable distribution of mobility benefits and possible adverse environmental and health impacts created by federally funded transportation investments and activities. The benefits of Federal transportation investments should be equitably distributed as required by Title VI. Planning processes should evaluate proposed transportation investments to ensure they do not disproportionately create adverse human health and environmental impacts on low-income and minority populations.

G. Federal Planning Certification Reviews

Federal certification of the planning process is conducted in a Transportation Management Area (TMA), which is an urbanized area over 200,000 in population or other urbanized area designated by the Secretary of Transportation (the Secretary). The Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law. More detail on these reviews can be found in the September 8, 1997, **Federal Register** notice, which announced the metropolitan planning processes that will jointly be reviewed by FTA and FHWA and requested comments on the metropolitan planning processes under review.

Dates for site visits for the TMAs to be reviewed in fiscal year 1998 are being established and are available on the FTA Home Page at http://www.fta.gov/office/planning.

For further information regarding Federal certifications of the planning process contact: For FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division (TPL–12), 202–366–1944; or Scott Biehl, FTA Office of Chief Counsel (TCC–30), 202–366–4063. For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division (HEP–20), 202–366–4066; or Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), 202–366–1371.

H. Consolidated Planning Grant

In fiscal year 1997, FTA and FHWA began offering states the option of participating in a pilot Consolidated Planning Grant (CPG) program. Thirteen states have agreed to participate in the pilot. In fiscal year 1997, more than $33.9 million was obligated for 11 CPG pilot states. The total obligations are approximately two-thirds FHWA planning funds and one-third FTA planning funds. One of our original goals in developing the CPG pilot was to give states and MPOs more control over their planning resources with a combination of broader financial controls and greater flexibility in the management of their planning activities. As part of the pilot, grants can be made with a ''blended'' ratio, if appropriate, to address different FTA and FHWA Federal matches. The blended ratio would allow billing at a single ratio determined on the relative shares of FTA and FHWA planning funds.

To further reduce paperwork for our customers, the CPG pilot offers the states two options for carrying the CPGs over from year to year. The first option is to treat the CPG much as FHWA grants are treated currently; that is, as basically annual grants with a yearly close-out, deobligation and reobligation cycle. The second option is to treat the CPG more like an FTA grant, but with even greater flexibility. Under this second option, the CPG grant would stay open for a multi-year period to be determined by the state (and MPO, jointly, for Metropolitan Planning funds) with the approval of the Federal Government. New apportionments will be added by a grant amendment as the funds become available. So far, over one-half of the current CPG grantees plan to follow this second option.

The FTA is exploring with FHWA the potential for extending FTA's pre-award authority to the entire CPG program. This would allow states to continue their planning program activities from year to year with the assurance (granted to all FTA grantees in the annual **Federal Register** notice) that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency.

FTA will also be providing an enhancement to its Electronic Grant Making and Management (EGMM) program that is now used to request planning grants, obligate funds, monitor fund balances and grant status, and file financial and status reports for the CPG. These enhancements will benefit all grants including the CPG. For further information on participating in the CPG Pilot, contact Ms. Candace Noonan, Intermodal and Statewide Planning Division (TPL–11) at (202) 366–1648.

XII. Period of Availability of Funds

The funds apportioned under the Urbanized Area Formula Program, the Fixed Guideway Modernization Program, the Metropolitan Planning Program and the State Planning and Research Program in this notice will remain available to be obligated by FTA to recipients for three fiscal years following fiscal year 1998. Any of these apportioned funds unobligated at the close of business on September 30, 2001, will revert to FTA for reapportionment under these respective programs.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following fiscal year 1998. Any such funds remaining unobligated at the close of business on September 30, 2000, will revert to FTA for reapportionment among the states under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1998. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the states under the Elderly and Persons with Disabilities Program. The 1998 DOT Appropriations Act includes a provision requiring that fiscal year 1998 New Starts and Bus funds not obligated for their original purpose as of September 30, 2000, shall be made available for other discretionary projects within the respective categories of the Capital Program. Similar provisions in the 1997 and 1996 DOT Appropriations Acts required that fiscal year 1997 Bus and New Starts funds that are not obligated by September 30, 1999, shall also be made available for other discretionary Bus or New Start projects, respectively, and fiscal year 1996 Bus and New Starts funds unobligated by September 30, 1998, shall be made available for other discretionary Bus or New Start projects, respectively.

XIII. Notice of Pre-Award Authority to Incur Project Cost

A. Background

Since fiscal year 1994, FTA has provided grantees pre-award authority to cover planning and capital costs prior to grant award. Previous to this grantees had authority to incur costs for operating assistance prior to grant award. This automatic pre-award spending authority permitted a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. In order to ensure eligibility for future FTA funds, grantees are encouraged to consult with the appropriate regional office prior to exercising pre-award authority.

B. Current Coverage

In fiscal year 1998, authority to incur costs for Fixed Guideway Modernization Formula, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, and State Planning and Research in advance of possible future Federal participation is provided to fiscal year 1998 funds apportioned and allocated in this notice. This pre-award authority also applies to Capital Bus funds identified in this notice. Pre-award authority for carryover amounts for these programs was provided in the *FTA Fiscal Year 1997 Apportionments and Allocations Federal Register* notice. This pre-award authority is also extended to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal year 1998. Pre-award authority applies to FTA funds and flexible funds provided the conditions in C and D below are met. The pre-award authority does not apply to Capital New Start funds. Preaward authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

C. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee which prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.

(6) For funds to which this authority applies, the authority expires with the lapsing of fiscal year 1998 funds.

D. Environmental, Planning and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed *before* state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771) the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented thereby. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for activities requiring funding beyond fiscal year 1998, it must first obtain a written LONP from the FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

XIV. Rail Fixed Guideway Systems: State Safety Oversight (49 CFR Part 659)

There are 19 states and the District of Columbia in which rail fixed guideway transit systems operate. These states and the District of Columbia must comply with 49 U.S.C. Section 5330, by designating an agency to oversee the safety and security for those rail fixed guideway systems, which are not regulated by the Federal Railroad Administration. On December 27, 1995, FTA issued a final regulation implementing the State Safety Oversight provisions of Section 5330. Compliance with safety provisions of the rule was required by January 1, 1997. Compliance with the security provisions of the final rule is required by January 1, 1998. Codified at 49 CFR part 659, the State Safety Oversight regulation delineates responsibilities of the state, the oversight agency, the transit agency, and the FTA.

A State Oversight Agency must establish a ''System Safety and Security Program Standard,'' review and approve a transit agency's System Safety and Security Program Plan, conduct investigations of accidents and unacceptable hazards, conduct on-sight safety reviews, and report annually to FTA. Rail transit systems must develop and implement a System Safety and Security Program Plan, classify and report accidents and unacceptable hazards, develop corrective action plans, and conduct on-going safety audits. On-site safety reviews by the State Oversight Agency and audits by the transit agency must measure the effectiveness of the Plan and identify how and where to improve the system safety and security process.

The Administrator of the FTA may withhold up to five percent of the amount required to be apportioned for use in any state or affected urbanized area in such state under FTA's formula program for urbanized areas for any fiscal year beginning after September 30, 1997, if the state in the previous fiscal year has not met the requirements of this part and the Administrator determines that the state is not making adequate efforts to comply with this part. States which are not in compliance have been notified of their status. Affected grantees will be notified of any fiscal year 1998 funds to be withheld for non-compliance.

XV. Electronic Grant Making and Management Initiatives

A. Background

In 1994 FTA began the Electronic Grant Making and Management (EGMM) initiative. The EGMM program is a paperless electronic grant application, review, approval, acceptance and management process. This program started as a pilot effort and involved 10 grantees nationwide to serve as pilots. By fiscal year 1997 120 grantees were participating in the FTA EGMM program for the grant application process. Over 558 grantees were on line for various management activities such as filing of financial status reports and narrative status reports. In addition, grantees may use EGMM for the electronic signature of annual certifications and assurances.

B. Graphical User Interface

The latest enhancement to the EGMM program is the Graphical User Interface program, otherwise known as GUI. GUI is a windows based program and therefore is more user friendly than the original EGMM system. With GUI, the user can rely on a limited number of windows, each with a user friendly menu bar. As this windows based environment is not directly interfacing with the FTA mainframe computer, problems of slowness of the connection are eliminated. In addition, GUI will provide greater compatibility with other systems, allowing more data migration by providing opportunities to simplify the information entry process. GUI is now being tested with a limited number of grantees. Following this testing, it will be made available to all EGMM grantees. Please contact the FTA Regional office to learn about this new enhancement to EGMM and the hardware and software requirements.

C. Fiscal Year 1998 Emphasis

In fiscal year 1998 FTA continues to strongly encourage grantees to become EGMM grantees for grant application and approval as well as for grant management activities if they have not already done so. We also encourage all grantees to file the fiscal year 1998 Certifications and Assurances electronically using the EGMM system. A major goal is the completion of the pilot phase of GUI and the conversion of our EGMM grantees to the new enhanced EGMM system.

XVI. 1998 Annual List of Certifications and Assurances

The Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements notice was published in the **Federal Register** on October 14, 1997. It appears as Part IV on pages 53512 through 53522. This October 14 document contains two major changes to the previous year's **Federal Register** publication. (1) Starting with fiscal year 1998, all applicants for FTA Capital Program or Formula Program assistance, and current grantees with an active project financed with FTA Capital Program or Formula Program assistance will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of the October 14 publication or with its first grant application in fiscal year 1998, whichever comes first. (2) The attorney signature from previous years on the single signature page will no longer be acceptable. FTA requires a current attorney's affirmation of the applicant's legal authority to certify compliance with fiscal year 1998 FTA funding assistance. This does not affect the electronic opportunity for a grant applicant's authorized representative to electronically enter a PIN in the On-Line Program, offered to applicants through the Grant Management Information System (GMIS), indicating that a current valid 1998 attorney's signature is on file. The fiscal year 1998 Annual List of Certifications and Assurances is accessible on the Internet at www.fta.dot.gov/. Any questions regarding this document may be addressed to the appropriate Regional Office or to Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470.

XVII. Quarterly Approval of Grants

The FTA has established a quarterly approval and release cycle for processing grants. All Urbanized Area Formula, Nonurbanized Area Formula, Elderly and Persons with Disabilities, Capital, Metropolitan Planning, and State Planning and Research grants are processed on a quarterly basis. This includes grants using STP or CMAQ funds.

If completed applications are submitted to the appropriate FTA Regional Office no later than the first business day of the quarter, FTA will award grants by the last business day of the quarter.

In order to expedite the grant approval process within the quarterly approval structure, grants which are complete and have received the required Transit Employee Protective Certification from the Department of Labor (DOL) will be approved before the end of the quarter. There are only two factors which would delay FTA approval of the project beyond the end of a quarter. First is a failure by DOL to issue a Transit Employee Protective Certification where such certification is a prerequisite to a grant approval, and second is the failure of FHWA to actually transfer flexible funds.

For an application to be considered complete, all required activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), a Federally approved State Transportation Improvement Program (STIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, clean air requirements and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the labor protection certification which is issued by DOL. Incomplete applications will not be processed, but if the missing components are supplied, applications will be considered in the next quarter.

It is the policy of FTA to expedite grant application reviews and speed program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year for each formula program. The single application should contain the fiscal year's capital (including flexible funds), planning and operating elements.

XVIII. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. Formula grant applications should be prepared in conformance with the following FTA Circulars: Urbanized Area Formula Program: Grant Application Instructions—C9040.1B, October 10, 1996; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1D, May 8, 1997; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions—C9070.1D, October 22, 1997; Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995; and Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996. Applications for STP ''flexible'' fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Home Page on the Internet.

Issued on: December 2, 1997.

Gordon J. Linton,

Administrator.

BILLING CODE 4910–57–U

TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1998 APPROPRIATIONS AND FUNDS AVAILABLE FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1998 APPROPRIATIONS	*FY 1998 FUNDS AVAILABLE*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM AND SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$2,437,780,611	*$1,525,645,987*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM	$2,303,702,677	*$1,441,735,458*
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (.32343056 of 1 percent)	(7,450,879)	*(4,663,013)*
Reapportioned Funds Added	7,162,381	*7,162,381*
Total Apportioned	$2,303,414,179	*$1,444,234,826*
Operating Assistance Limitation	$150,000,000	*$150,000,000*
SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$134,077,934	*$83,910,529*
5.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (.32343056 of 1 percent)	(433,649)	*(271,392)*
Reapportioned Funds Added	1,174,760	*1,174,760*
Total Apportioned	$134,819,045	*$84,813,897*
SECTION 5311(b) RTAP PROGRAM	$4,500,000	*$4,500,000*
Reapportioned Funds Added	178,778	*178,778*
Total Apportioned	$4,678,778	*$4,678,778*
SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM	$62,219,389	*$42,754,013*
Reapportioned Funds Added	2,272	*2,272*
Total Apportioned	$62,221,661	*$42,756,285*
SECTION 5309 CAPITAL PROGRAM	$2,000,000,000	*$1,478,960,000*
SECTION 5309 FIXED GUIDEWAY MODERNIZATION	$800,000,000	*$452,640,000*
Less Oversight (.32343056 of 1 percent)	(2,587,445)	*(1,463,976)*
Total Apportioned	$797,412,555	*$451,176,024*
SECTION 5309 NEW STARTS	$800,000,000	*$800,000,000*
Less Oversight (.32343056 of 1 percent)	(2,587,445)	*(2,587,445)*
Total Allocated	$797,412,555	*$797,412,555*
SECTION 5309 BUS	$400,000,000	*$226,320,000*
Less Oversight (.32343056 of 1 percent)	(1,293,722)	*(731,988)*
Reprogrammed Funds	975,000	*975,000*
Total Allocated	$399,681,278	*$226,563,012*
SECTION 5303 METROPOLITAN PLANNING PROGRAM	$39,500,000	*$39,500,000*
Reapportioned Funds Added	125,587	*125,587*
Total Apportioned	$39,625,587	*$39,625,587*
SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM	$8,250,000	*$8,250,000*
Reapportioned Funds Added	222,086	*222,086*
Total Apportioned	$8,472,086	*$8,472,086*
TOTAL APPROPRIATIONS (Above Grant Programs)	$4,552,250,000	*$3,099,610,000*

97FR-T1C/D586

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
OVER 1,000,000 IN POPULATION	$1,695,106,078	$44,501,476	*$1,062,827,196*	*$44,501,476*
200,000-1,000,000 IN POPULATION	386,848,509	12,462,930	*242,553,029*	*12,462,930*
50,000-200,000 IN POPULATION	221,459,592	93,035,594	*138,854,601*	*93,035,594*
NATIONAL TOTAL	$2,303,414,179	$150,000,000	*$1,444,234,826*	*$150,000,000*

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas Over 1,000,000 in Population:				
Atlanta, GA	$33,563,442	$522,720	*$21,044,192*	*$522,720*
Baltimore, MD	27,966,141	836,655	*17,534,698*	*836,655*
Boston, MA	64,000,425	1,570,816	*40,128,104*	*1,570,816*
Chicago, IL-Northwestern IN	152,550,404	4,351,943	*95,648,715*	*4,351,943*
Cincinnati, OH-KY	11,424,379	453,194	*7,163,056*	*453,194*
Cleveland, OH	19,893,765	829,196	*12,473,340*	*829,196*
Dallas-Fort Worth, TX	31,015,068	743,577	*19,446,368*	*743,577*
Denver, CO	20,582,640	507,634	*12,905,263*	*507,634*
Detroit, MI	27,626,734	1,840,863	*17,321,891*	*1,840,863*
Ft Lauderdale-Hollywood-Pompano Bch, FL.	15,689,474	631,351	*9,837,261*	*631,351*
Houston, TX	34,105,533	781,343	*21,384,082*	*781,343*
Kansas City, MO-KS	7,848,454	384,002	*4,920,961*	*384,002*
Los Angeles, CA	155,482,274	4,909,929	*97,486,990*	*4,909,929*
Miami-Hialeah, FL	30,084,773	721,206	*18,863,076*	*721,206*
Milwaukee, WI	14,457,431	469,900	*9,064,773*	*469,900*
Minneapolis-St. Paul, MN	20,739,471	626,541	*13,003,595*	*626,541*
New Orleans, LA	12,931,516	568,363	*8,108,028*	*568,363*
New York, NY-Northeastern NJ	492,969,034	11,371,052	*309,090,332*	*11,371,052*
Norfolk-Virginia Beach-Newport News, VA	10,116,875	361,027	*6,343,255*	*361,027*
Philadelphia, PA-NJ	87,660,336	2,737,314	*54,962,808*	*2,737,314*
Phoenix, AZ	18,302,162	404,818	*11,475,410*	*404,818*
Pittsburgh, PA	24,978,923	817,085	*15,661,721*	*817,085*
Portland-Vancouver, OR-WA	18,665,277	378,598	*11,703,081*	*378,598*
Riverside-San Bernardino, CA	13,869,169	216,389	*8,695,933*	*216,389*
Sacramento, CA	10,643,675	299,264	*6,673,557*	*299,264*
San Antonio, TX	15,131,089	393,778	*9,487,155*	*393,778*
San Diego, CA	31,783,015	628,324	*19,927,869*	*628,324*
San Francisco-Oakland, CA	89,835,076	1,672,986	*56,326,363*	*1,672,986*
San Jose, CA	23,719,669	568,403	*14,872,172*	*568,403*
San Juan, PR	25,194,931	646,034	*15,797,157*	*646,034*
Seattle, WA	42,829,556	530,880	*26,854,022*	*530,880*
St. Louis, MO-IL	19,734,636	824,867	*12,373,567*	*824,867*
Tampa-St. Petersburg-Clearwater, FL	13,508,204	449,110	*8,469,610*	*449,110*
Washington, DC-MD-VA	76,202,527	1,452,314	*47,778,791*	*1,452,314*
TOTAL	$1,695,106,078	$44,501,476	*$1,062,827,196*	*$44,501,476*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population :				
Akron, OH	$4,841,196	$198,178	*$3,035,417*	*$198,178*
Albany-Schenectady-Troy, NY	5,421,182	192,211	*3,399,067*	*192,211*
Albuquerque, NM	4,349,741	132,830	*2,727,276*	*132,830*
Allentown-Bethlehem-Easton, PA-NJ	3,734,203	200,963	*2,341,335*	*200,963*
Anchorage, AK	1,894,060	65,584	*1,187,571*	*65,584*
Ann Arbor, MI	2,875,230	84,265	*1,802,762*	*84,265*
Augusta, GA-SC	1,450,360	67,126	*909,372*	*67,126*
Austin, TX	9,815,913	126,410	*6,154,552*	*126,410*
Bakersfield, CA	2,850,748	82,423	*1,787,412*	*82,423*
Baton Rouge, LA	2,412,064	110,143	*1,512,358*	*110,143*
Birmingham, AL	3,355,019	202,324	*2,103,588*	*202,324*
Bridgeport-Milford, CT	5,010,853	175,655	*3,141,793*	*175,655*
Buffalo-Niagara Falls, NY	9,793,358	515,601	*6,140,411*	*515,601*
Canton, OH	1,459,419	97,050	*915,052*	*97,050*
Charleston, SC	2,336,928	92,013	*1,465,248*	*92,013*
Charlotte, NC	4,713,132	110,924	*2,955,122*	*110,924*
Chattanooga, TN-GA	1,972,468	83,621	*1,236,733*	*83,621*
Colorado Springs, CO	3,259,000	83,011	*2,043,385*	*83,011*
Columbia, SC	2,197,786	93,936	*1,378,005*	*93,936*
Columbus, GA-AL	1,361,748	70,383	*853,812*	*70,383*
Columbus, OH	8,895,475	373,955	*5,577,441*	*373,955*
Corpus Christi, TX	3,083,018	73,863	*1,933,045*	*73,863*
Davenport-Rock Island-Moline, IA-IL	2,322,844	96,107	*1,456,417*	*96,107*
Dayton, OH	9,256,807	248,838	*5,803,994*	*248,838*
Daytona Beach, FL	2,670,588	66,739	*1,674,452*	*66,739*
Des Moines, IA	2,062,061	93,603	*1,292,907*	*93,603*
Durham, NC	2,611,822	68,789	*1,637,605*	*68,789*
El Paso, TX-NM	7,017,166	153,097	*4,399,745*	*153,097*
Fayetteville, NC	1,343,417	63,304	*842,319*	*63,304*
Flint, MI	3,060,995	130,206	*1,919,235*	*130,206*
Fort Myers-Cape Coral, FL	1,765,640	48,615	*1,107,051*	*48,615*
Fort Wayne, IN	1,571,585	92,844	*985,380*	*92,844*
Fresno, CA	4,259,081	124,943	*2,670,433*	*124,943*
Grand Rapids, MI	3,221,334	132,060	*2,019,768*	*132,060*
Greenville, SC	1,462,028	63,831	*916,688*	*63,831*
Harrisburg, PA	1,793,157	96,402	*1,124,305*	*96,402*
Hartford-Middletown, CT	6,963,481	195,632	*4,366,085*	*195,632*
Honolulu, HI	16,712,601	242,285	*10,478,758*	*242,285*
Indianapolis, IN	7,411,257	325,542	*4,646,839*	*325,542*
Jackson, MS	1,600,808	76,957	*1,003,703*	*76,957*
Jacksonville, FL	6,337,864	172,487	*3,973,824*	*172,487*
Knoxville, TN	1,936,354	76,717	*1,214,090*	*76,717*
Lansing-East Lansing, MI	2,602,399	99,032	*1,631,697*	*99,032*
Las Vegas, NV	11,350,546	117,557	*7,116,764*	*117,557*
Lawrence-Haverhill, MA-NH	2,638,462	72,773	*1,654,308*	*72,773*
Lexington-Fayette, KY	1,556,842	110,392	*976,135*	*110,392*
Little Rock-North Little Rock, AR	2,315,467	88,271	*1,451,791*	*88,271*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population (continued):				
Lorain-Elyria, OH	1,081,127	66,587	*677,864*	*66,587*
Louisville, KY-IN	8,283,667	332,478	*5,193,838*	*332,478*
Madison, WI	3,736,106	84,931	*2,342,529*	*84,931*
McAllen-Edinburg-Mission, TX	1,119,999	70,560	*702,237*	*70,560*
Melbourne-Palm Bay, FL	2,801,174	59,990	*1,756,329*	*59,990*
Memphis, TN-AR-MS	7,411,453	308,137	*4,646,962*	*308,137*
Mobile, AL	1,704,668	85,867	*1,068,823*	*85,867*
Modesto, CA	2,334,390	84,510	*1,463,657*	*84,510*
Montgomery, AL	1,080,222	87,373	*677,297*	*87,373*
Nashville, TN	4,365,977	142,865	*2,737,457*	*142,865*
New Haven-Meriden, CT	7,983,564	197,384	*5,005,674*	*197,384*
Ogden, UT	2,488,159	59,658	*1,560,070*	*59,658*
Oklahoma City, OK	4,025,502	197,732	*2,523,980*	*197,732*
Omaha, NE-IA	4,596,831	202,787	*2,882,202*	*202,787*
Orlando, FL	11,301,675	149,215	*7,086,121*	*149,215*
Oxnard-Ventura, CA	5,754,319	115,722	*3,607,943*	*115,722*
Pensacola, FL	1,560,459	64,671	*978,404*	*64,671*
Peoria, IL	1,563,379	90,107	*980,235*	*90,107*
Providence-Pawtucket, RI-MA	12,952,750	405,070	*8,121,341*	*405,070*
Provo-Orem, UT	2,404,553	69,446	*1,507,648*	*69,446*
Raleigh, NC	2,435,612	62,317	*1,527,123*	*62,317*
Reno, NV	2,837,057	71,840	*1,778,827*	*71,840*
Richmond, VA	4,795,131	165,060	*3,006,535*	*165,060*
Rochester, NY	5,775,980	264,595	*3,621,525*	*264,595*
Rockford, IL	1,487,344	82,920	*932,561*	*82,920*
Salt Lake City, UT	10,228,839	209,274	*6,413,456*	*209,274*
Sarasota-Bradenton, FL	3,177,602	108,029	*1,992,349*	*108,029*
Scranton-Wilkes-Barre, PA	2,661,738	148,461	*1,668,903*	*148,461*
Shreveport, LA	2,190,645	89,975	*1,373,529*	*89,975*
South Bend-Mishawaka, IN-MI	1,798,966	98,290	*1,127,948*	*98,290*
Spokane, WA	4,827,840	95,376	*3,027,043*	*95,376*
Springfield, MA-CT	5,001,617	173,282	*3,136,001*	*173,282*
Stockton, CA	2,924,057	114,418	*1,833,377*	*114,418*
Syracuse, NY	3,785,163	162,453	*2,373,287*	*162,453*
Tacoma, WA	8,171,972	132,788	*5,123,806*	*132,788*
Toledo, OH-MI	4,060,306	191,849	*2,545,801*	*191,849*
Trenton, NJ-PA	4,046,743	169,388	*2,537,297*	*169,388*
Tucson, AZ	6,832,007	141,921	*4,283,651*	*141,921*
Tulsa, OK	3,695,897	134,373	*2,317,318*	*134,373*
West Palm Bch-Boca Raton-Delray Bch, FL	11,485,105	141,430	*7,201,131*	*141,430*
Wichita, KS	2,569,226	116,249	*1,610,898*	*116,249*
Wilmington, DE-NJ-MD-PA	4,983,717	171,931	*3,124,779*	*171,931*
Worcester, MA-CT	3,577,049	99,242	*2,242,801*	*99,242*
Youngstown-Warren, OH	2,021,415	152,887	*1,267,422*	*152,887*
TOTAL	$386,848,509	$12,462,930	*$242,553,029*	*$12,462,930*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population:				
ALABAMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,155,019	$1,970,561	*$2,605,188*	*$1,970,561*
Anniston, AL	400,780	231,980	*251,288*	*231,980*
Auburn-Opelika, AL	321,546	129,622	*201,609*	*129,622*
Decatur, AL	366983	152,422	*230,097*	*152,422*
Dothan, AL	308,237	133,304	*193,264*	*133,304*
Florence, AL	429,422	235,002	*269,247*	*235,002*
Gadsden, AL	379,537	233,057	*237,969*	*233,057*
Huntsville	1,204,818	504,984	*755,418*	*504,984*
Tuscaloosa, AL	743,696	350,190	*466,296*	*350,190*
ALASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	*$0*	*$0*
ARIZONA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,087,601	$292,757	*$681,923*	*$292,757*
Flagstaff, AZ	427,864	85,791	*268,270*	*85,791*
Yuma, AZ-CA (AZ)	659,737	206,966	*413,653*	*206,966*
ARKANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,587,516	$798,674	*$995,368*	*$798,674*
Fayetteville-Springdale, AR	438,127	168,344	*274,704*	*168,344*
Fort Smith, AR-OK (AR)	596,410	275,251	*373,947*	*275,251*
Pine Bluff, AR	403,041	269,436	*252,706*	*269,436*
Texarkana, TX-AR (AR)	149,938	85,643	*94,011*	*85,643*
CALIFORNIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$24,317,143	$6,801,253	*$15,246,787*	*$6,801,253*
Antioch-Pittsburg, CA	1,375,193	345,636	*862,243*	*345,636*
Chico, CA	600,437	185,098	*376,473*	*185,098*
Davis, CA	728,893	213,010	*457,014*	*213,010*
Fairfield, CA	885,267	255,671	*555,060*	*255,671*
Hemet-San Jacinto, CA	738,574	195,698	*463,084*	*195,698*
Hesperia-Apple Valley-Victorville, CA	942,206	265,938	*590,761*	*265,938*
Indio-Coachella, CA	446,596	126,070	*280,014*	*126,070*
Lancaster-Palmdale, CA	1,584,815	162,437	*993,675*	*162,437*
Lodi, CA	620,447	175,169	*389,019*	*175,169*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
CALIFORNIA (Continued):				
Lompoc, CA	381,051	107,558	*238,918*	*107,558*
Merced, CA	677,434	188,067	*424,749*	*188,067*
Napa, CA	707,844	266,728	*443,817*	*266,728*
Palm Springs, CA	881,856	180,689	*552,921*	*180,689*
Redding, CA	509,904	149,645	*319,708*	*149,645*
Salinas, CA	1,341,823	423,192	*841,319*	*423,192*
San Luis Obispo, CA	635,440	179,409	*398,419*	*179,409*
Santa Barbara, CA	2,075,863	700,123	*1,301,561*	*700,123*
Santa Cruz, CA	1,073,405	376,707	*673,022*	*376,707*
Santa Maria, CA	976,594	227,014	*612,322*	*227,014*
Santa Rosa, CA	1,893,508	449,066	*1,187,225*	*449,066*
Seaside-Monterey, CA	1,272,398	521,884	*797,791*	*521,884*
Simi Valley, CA	1,204,416	306,429	*755,166*	*306,429*
Vacaville, CA	731,169	206,423	*458,441*	*206,423*
Visalia	835,155	225,542	*523,640*	*225,542*
Watsonville, CA	460,101	129,889	*288,482*	*129,889*
Yuba City, CA	734,140	236,597	*460,304*	*236,597*
Yuma, AZ-CA (CA)	2,614	1,564	*1,639*	*1,564*
COLORADO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,480,672	$1,839,230	*$2,809,370*	*$1,839,230*
Boulder, CO	997,017	412,508	*625,127*	*412,508*
Fort Collins, C0	830,420	294,588	*520,671*	*294,588*
Grand Junction, CO	472,808	189,506	*296,450*	*189,506*
Greeley, CO	664,183	283,630	*416,441*	*283,630*
Longmont, CO	605,263	170,885	*379,498*	*170,885*
Pueblo, CO	910,981	488,113	*571,183*	*488,113*
CONNECTICUT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$14,702,762	$4,543,229	*$9,218,594*	*$4,543,229*
Bristol, CT	706,223	297,793	*442,800*	*297,793*
Danbury, CT-NY (CT)	2,460,646	492,302	*1,542,818*	*492,302*
New Britain, CT	1,322,395	626,111	*829,138*	*626,111*
New London-Norwich, CT	1,064,141	533,937	*667,213*	*533,937*
Norwalk, CT	2,607,937	676,464	*1,635,170*	*676,464*
Stamford, CT-NY (CT)	3,318,354	1,016,038	*2,080,600*	*1,016,038*
Waterbury, CT	3,223,066	900,584	*2,020,855*	*900,584*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
DELAWARE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$338,034	$95,414	*$211,946*	*$95,414*
Dover, DE	338,034	95,414	*211,946*	*95,414*
FLORIDA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,302,524	$3,152,975	*$6,459,657*	*$3,152,975*
Deltona, FL	342,555	96,684	*214,781*	*96,684*
Fort Pierce, F	820,583	205,216	*514,504*	*205,216*
Fort Walton Beach, FL	795,448	258,405	*498,744*	*258,405*
Gainesville, FL	1,019,417	351,847	*639,172*	*351,847*
Kissimmee, FL	474,813	134,039	*297,707*	*134,039*
Lakeland, FL	1,042,155	345,542	*653,429*	*345,542*
Naples, FL	685,880	146,868	*430,045*	*146,868*
Ocala, FL	460,737	147,105	*288,881*	*147,105*
Panama City, FL	691,440	234,999	*433,531*	*234,999*
Punta Gorda, FL	452,160	127,629	*283,503*	*127,629*
Spring Hill, FL	345,652	97,565	*216,723*	*97,565*
Stuart, FL	603,105	170,246	*378,145*	*170,246*
Tallahassee, FL	1,162,085	393,861	*728,624*	*393,861*
Titusville, FL.	332,656	93,895	*208,575*	*93,895*
Vero Beach, FL	421,297	118,916	*264,152*	*118,916*
Winter Haven, FL.	652,541	230,158	*409,141*	*230,158*
GEORGIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,510,706	$2,169,758	*$2,828,201*	*$2,169,758*
Albany, GA.	558,708	316,131	*350,308*	*316,131*
Athens, GA.	535,672	197,454	*335,865*	*197,454*
Brunswick, GA	308,261	87,007	*193,279*	*87,007*
Macon, GA.	1,001,396	542,798	*627,873*	*542,798*
Rome, GA.	314,255	149,674	*197,037*	*149,674*
Savannah, GA	1,310,221	689,903	*821,505*	*689,903*
Warner Robins, GA	482,193	186,791	*302,334*	*186,791*
HAWAII:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,198,826	$475,852	*$751,661*	*$475,852*
Kailua, HI	1,198,826	475,852	*751,661*	*475,852*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
IDAHO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,372,693	$809,759	*$1,487,673*	*$809,759*
Boise City, ID	1,451,884	469,898	*910,328*	*469,898*
Idaho Falls, ID	520,472	146,933	*326,335*	*146,933*
Pocatello, ID	400,337	192,928	*251,010*	*192,928*
ILLINOIS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,868,126	$5,371,412	*$6,814,287*	*$5,371,412*
Alton, IL	587,346	372,784	*368,265*	*372,784*
Aurora, IL	1,644,985	723,464	*1,031,401*	*723,464*
Beloit, WI-IL (IL)	75,067	25,498	*47,067*	*25,498*
Bloomington-Normal, IL	946,216	382,645	*593,275*	*382,645*
Champaign-Urbana, IL	1,335,295	616,763	*837,227*	*616,763*
Crystal Lake, IL	536,136	151,340	*336,156*	*151,340*
Decatur, IL	751,643	446,782	*471,278*	*446,782*
Dubuque, IA-IL (IL)	17,509	8,765	*10,978*	*8,765*
Elgin, IL	1,186,612	636,793	*744,002*	*636,793*
Joliet, IL	1,372,067	953,579	*860,283*	*953,579*
Kankakee, IL.	538,497	262,596	*337,636*	*262,596*
Round Lake Beach-McHenry, IL-WI (IL)	781,410	209,575	*489,942*	*209,575*
Springfield, IL.	1,095,343	580,828	*686,777*	*580,828*
INDIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,338,764	$3,063,742	*$3,974,388*	*$3,063,742*
Anderson, IN	512,352	303,284	*321,244*	*303,284*
Bloomington, IN	764,556	287,968	*479,374*	*287,968*
Elkhart-GosheN, IN	766,279	288,505	*480,455*	*288,505*
Evansville, IN-KY (IN)	1,419,525	712,185	*890,038*	*712,185*
Kokomo, IN	515,957	265,091	*323,504*	*265,091*
Lafayette-West Lafayette, IN	1,025,753	439,016	*643,144*	*439,016*
Muncie, IN	754,058	435,588	*472,792*	*435,588*
Terre Haute, IN	580,284	332,105	*363,837*	*332,105*
IOWA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,450,748	$1,777,815	*$2,163,611*	*$1,777,815*
Cedar Rapids, IA	1,072,377	542,576	*672,378*	*542,576*
Dubuque, IA-IL (IA)	521,966	302,695	*327,272*	*302,695*
Iowa City, IA	617,876	207,305	*387,407*	*207,305*
Sioux City, IA-NE-SD (IA)	570,671	311,588	*357,809*	*311,588*
Waterloo-Cedar Falls, IA	667,858	413,651	*418,745*	*413,651*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
KANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,675,445	$759,970	*$1,050,501*	*$759,970*
Lawrence, KS	634,456	217,653	*397,803*	*217,653*
St. Joseph, MO-KS (KS)	5,237	3,866	*3,284*	*3,866*
Topeka, KS	1,035,752	538,451	*649,414*	*538,451*
KENTUCKY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,320,524	$635,567	*$827,966*	*$635,567*
Clarksville, TN-KY (KY)	161,131	73,054	*101,029*	*73,054*
Evansville, IN-KY (KY)	197,865	45,056	*124,061*	*45,056*
Huntington-Ashland, WV-KY-OH ((KY)	394,576	218,446	*247,398*	*218,446*
Owensboro, KY	566,952	299,011	*355,478*	*299,011*
LOUISIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,910,860	$1,868,922	*$2,452,098*	*$1,868,922*
Alexandria, LA	570,706	326,140	*357,831*	*326,140*
Houma, LA	401,434	192,233	*251,698*	*192,233*
Lafayette, LA	987,459	428,989	*619,134*	*428,989*
Lake Charles, LA	793,209	413,989	*497,340*	*413,989*
Monroe, LA	754,221	393,577	*472,894*	*393,577*
Slidell, LA	403,831	113,994	*253,201*	*113,994*
MAINE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,702,077	$808,464	*$1,067,198*	*$808,464*
Bangor, ME	349,748	152,758	*219,291*	*152,758*
Lewiston-Auburn, ME	406,402	215,633	*254,813*	*215,633*
Portland, ME	868,981	409,648	*544,849*	*409,648*
Portsmouth-Dover-Rochester, NH-ME (ME)	76,946	30,425	*48,245*	*30,425*
MARYLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,892,791	$751,514	*$1,186,775*	*$751,514*
Annapolis, MD	616,485	228,635	*386,534*	*228,635*
Cumberland, MD-WV (MD)	327,880	180,307	*205,580*	*180,307*
Frederick, MD	444,824	125,567	*278,904*	*125,567*
Hagerstown, MD-PA-WV (MD)	503,602	217,005	*315,757*	*217,005*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
MASSACHUSETTS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,496,319	$4,010,979	*$4,700,172*	*$4,010,979*
Brockton, MA	1,369,355	966,707	*858,582*	*966,707*
Fall River, MA-RI (MA)	1,335,566	628,972	*837,397*	*628,972*
Fitchburg-Leominster, MA	541,231	265,581	*339,350*	*265,581*
Hyannis, MA	386,496	109,085	*242,332*	*109,085*
Lowell, MA-NH (MA)	1,695,046	997,173	*1,062,789*	*997,173*
New Bedford, MA	1,468,840	695,995	*920,959*	*695,995*
Pittsfield, MA	349,869	211,988	*219,367*	*211,988*
Taunton, MA	349,916	135,478	*219,396*	*135,478*
MICHIGAN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,397,059	$3,283,763	*$4,010,940*	*$3,283,763*
Battle Creek, MI	534,275	313,820	*334,989*	*313,820*
Bay City, MI	596,871	343,896	*374,237*	*343,896*
Benton Harbor, MI	431,733	211,224	*270,695*	*211,224*
Holland, MI	484,541	136,779	*303,806*	*136,779*
Jackson, MI	596,543	327,621	*374,031*	*327,621*
Kalamazoo, MI	1,288,207	614,106	*807,703*	*614,106*
Muskegon, MI	785,753	414,697	*492,665*	*414,697*
Port Huron, MI	517,120	218,257	*324,233*	*218,257*
Saginaw, MI	1,162,016	703,363	*728,581*	*703,363*
MINNESOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,279,724	$1,090,931	*$1,429,380*	*$1,090,931*
Duluth, MN-WI (MN)	554,756	358,439	*347,830*	*358,439*
Fargo-Moorhead, ND-MN (MN)	320,764	152,304	*201,118*	*152,304*
Grand Forks, ND-MN (MN)	70,300	37,533	*44,078*	*37,533*
La Crosse, WI-MN (MN)	34,437	12,455	*21,592*	*12,455*
Rochester, MN	625,708	287,183	*392,317*	*287,183*
St. Cloud, MN	673,759	243,017	*422,445*	*243,017*
MISSISSIPPI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,957,190	$906,680	*$1,227,154*	*$906,680*
Biloxi-Gulfport, MS	1,211,753	552,169	*759,766*	*552,169*
Hattiesburg, MS	377,667	166,061	*236,797*	*166,061*
Pascagoula, MS	367,770	188,450	*230,591*	*188,450*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
MISSOURI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,697,035	$1,205,239	*$1,691,032*	*$1,205,239*
Columbia, MO	532,464	222,473	*333,853*	*222,473*
Joplin, MO	373,937	158,607	*234,457*	*158,607*
Springfield, MO	1,256,141	512,465	*787,597*	*512,465*
St. Joseph, MO-KS (MO)	534,493	311,694	*335,125*	*311,694*
MONTANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,795,419	$865,821	*$1,125,723*	*$865,821*
Billings, MT	692,421	332,854	*434,146*	*332,854*
Great Falls, MT	645,696	324,442	*404,850*	*324,442*
Missoula, MT	457,302	208,525	*286,727*	*208,525*
NEBRASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,995,955	$783,608	*$1,251,458*	*$783,608*
Lincoln, NE	1,909,613	747,115	*1,197,322*	*747,115*
Sioux City, IA-NE-SD (NE)	86,342	36,493	*54,136*	*36,493*
NEVADA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	*$0*	*$0*
NEW HAMPSHIRE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,423,808	$930,889	*$1,519,722*	*$930,889*
Lowell, MA-NH (NH)	4,961	1,136	*3,111*	*1,136*
Manchester, NH	1,016,099	425,529	*637,091*	*425,529*
Nashua, NH	812,541	270,768	*509,461*	*270,768*
Portsmouth-Dover-Rochester, NH-ME (NH)	590,207	233,456	*370,059*	*233,456*
NEW JERSEY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,836,483	$1,162,152	*$1,151,470*	*$1,162,152*
Atlantic City, NJ	1,323,682	913,408	*829,945*	*913,408*
Vineland-Millville, NJ	512,801	248,744	*321,525*	*248,744*
NEW MEXICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,000,064	$346,371	*$627,038*	*$346,371*
Las Cruces, NM	555,540	185,079	*348,322*	*185,079*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
NEW MEXICO (Continued):				
Santa Fe, NM	444,524	161,292	*278,716*	*161,292*
NEW YORK:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$5,548,675	$2,887,397	*$3,479,005*	*$2,887,397*
Binghamton, NY	1,392,738	753,963	*873,243*	*753,963*
Danbury, CT-NY (NY)	18,877	4,225	*11,836*	*4,225*
Elmira, NY	571,903	328,474	*358,582*	*328,474*
Glens Falls, NY	393,289	163,510	*246,591*	*163,510*
Ithaca, NY	396,938	112,051	*248,879*	*112,051*
Newburgh, NY	515,436	203,473	*323,177*	*203,473*
Poughkeepsie, NY	1,082,741	630,599	*678,876*	*630,599*
Stamford, CT-NY (NY)	128	109	*80*	*109*
Utica-Rome, NY	1,176,625	690,993	*737,741*	*690,993*
NORTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$9,007,746	$3,807,386	*$5,647,834*	*$3,807,386*
Asheville, NC	695,284	313,739	*435,941*	*313,739*
Burlington, NC	504,369	238,562	*316,238*	*238,562*
Gastonia, NC	738,517	363,032	*463,048*	*363,032*
Goldsboro, NC	383,529	162,993	*240,472*	*162,993*
Greensboro, NC	1,588,403	686,529	*995,925*	*686,529*
Greenville, NC	441,593	124,657	*276,877*	*124,657*
Hickory, NC	421,158	173,702	*264,065*	*173,702*
High Point, NC	710,228	357,277	*445,311*	*357,277*
Jacksonville, NC	685,698	205,012	*429,931*	*205,012*
Kannapolis, NC	495,015	207,368	*310,373*	*207,368*
Rocky Mount, NC	395,704	111,702	*248,106*	*111,702*
Wilmington, NC	647,229	259,914	*405,811*	*259,914*
Winston-Salem, NC	1,301,019	602,897	*815,736*	*602,897*
NORTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,750,190	$694,941	*$1,097,366*	*$694,941*
Bismarck, ND	504,681	217,303	*316,434*	*217,303*
Fargo-Moorhead, ND-MN (ND)	729,898	285,401	*457,645*	*285,401*
Grand Forks, ND-MN (ND)	515,611	192,237	*323,287*	*192,237*
OHIO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,812,213	$2,454,959	*$3,017,246*	*$2,454,959*
Hamilton, OH	994,642	413,830	*623,638*	*413,830*
Huntington-Ashland, WV-KY-OH (OH)	253,289	123,238	*158,812*	*123,238*
Lima, OH	543,603	296,760	*340,838*	*296,760*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
OHIO (Continued):				
Mansfield, OH	524,828	297,105	*329,066*	*297,105*
Middletown, OH	683,870	286,086	*428,785*	*286,086*
Newark, OH	416,674	171,899	*261,254*	*171,899*
Parkersburg, WV-OH (OH)	61,700	31,162	*38,686*	*31,162*
Sharon, PA-OH (OH)	40,687	20,995	*25,510*	*20,995*
Springfield, OH	791,053	453,628	*495,988*	*453,628*
Steubenville-Weirton, OH-WV-PA (OH)	284,592	194,158	*178,438*	*194,158*
Wheeling, WV-OH (OH)	217,275	166,098	*136,231*	*166,098*
OKLAHOMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$748,995	$386,416	*$469,618*	*$386,416*
Fort Smith, AR-OK (OK)	13,140	6,655	*8,239*	*6,655*
Lawton, OK	735,855	379,761	*461,379*	*379,761*
OREGON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,905,989	$1,425,107	*$2,449,045*	*$1,425,107*
Eugene-Springfield, OR	1,838,634	725,646	*1,152,819*	*725,646*
Longview, WA-OR (OR)	12,228	5,369	*7,667*	*5,369*
Medford, OR	568,223	194,556	*356,274*	*194,556*
Salem, OR	1,486,904	499,536	*932,285*	*499,536*
PENNSYLVANIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,210,946	$5,129,718	*$6,402,238*	*$5,129,718*
Altoona, PA	697,550	408,051	*437,362*	*408,051*
Erie, PA	1,794,431	929,251	*1,125,104*	*929,251*
Hagerstown, MD-PA-WV (PA)	6,147	3,855	*3,854*	*3,855*
Johnstown, PA	643,250	437,207	*403,316*	*437,207*
Lancaster, PA	1,622,398	607,678	*1,017,239*	*607,678*
Monessen, PA	441,519	211,581	*276,831*	*211,581*
Pottstown, PA	418,977	118,272	*262,698*	*118,272*
Reading, PA	1,893,866	1,108,504	*1,187,449*	*1,108,504*
Sharon, PA-OH (PA)	293,323	184,335	*183,913*	*184,335*
State College, PA	610,476	250,976	*382,767*	*250,976*
Steubenville-Weirton, OH-WV-PA (PA)	2,132	681	*1,337*	*681*
Williamsport, PA	511,743	277,812	*320,862*	*277,812*
York, PA	1,275,134	591,515	*799,506*	*591,515*
PUERTO RICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$9,432,754	$3,312,130	*$5,914,311*	*$3,312,130*
Aguadilla, PR	825,239	245,837	*517,423*	*245,837*
Arecibo, PR	771,083	284,696	*483,467*	*284,696*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
PUERTO RICO (Continued):				
Caguas, PR	2,019,356	615,765	*1,266,131*	*615,765*
Cayey, PR	597,049	168,563	*374,348*	*168,563*
Humacao, PR	516,734	145,877	*323,991*	*145,877*
Mayaguez, PR	1,110,203	453,778	*696,094*	*453,778*
Ponce, PR	2,470,532	1,056,142	*1,549,016*	*1,056,142*
Vega Baja-Manati, PR	1,122,558	341,472	*703,841*	*341,472*
RHODE ISLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$600,421	$246,288	*$376,462*	*$246,288*
Fall River, MA-RI (RI)	137,642	54,179	*86,301*	*54,179*
Newport, RI	462,779	192,109	*290,161*	*192,109*
SOUTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,542,719	$1,013,149	*$1,594,279*	*$1,013,149*
Anderson, SC	341,975	158,795	*214,418*	*158,795*
Florence, SC	351,748	166,525	*220,545*	*166,525*
Myrtle Beach, SC	368,874	104,116	*231,283*	*104,116*
Rock Hill, SC	391,665	149,201	*245,573*	*149,201*
Spartanburg, SC	682,759	319,995	*428,088*	*319,995*
Sumter, SC	405,698	114,517	*254,372*	*114,517*
SOUTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,262,534	$523,345	*$791,607*	*$523,345*
Rapid City, SD	402,098	177,805	*252,115*	*177,805*
Sioux City, IA-NE-SD (SD)	11,274	4,219	*7,069*	*4,219*
Sioux Falls, SD	849,162	341,321	*532,423*	*341,321*
TENNESSEE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,953,999	$887,865	*$1,225,152*	*$887,865*
Bristol, TN-Bristol, VA (TN)	182,640	90,241	*114,515*	*90,241*
Clarksville, TN-KY (TN)	445,308	167,264	*279,207*	*167,264*
Jackson, TN	337,056	148,661	*211,333*	*148,661*
Johnson City, TN	513,782	228,788	*322,140*	*228,788*
Kingsport, TN-VA (TN)	475,213	252,911	*297,957*	*252,911*
TEXAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$18,092,227	$7,687,065	*$11,343,782*	*$7,687,065*
Abilene, TX	641,883	322,174	*402,459*	*322,174*
Amarillo, TX	1,190,549	544,163	*746,472*	*544,163*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
TEXAS (Continued):				
Beaumont, TX	818,839	$436,937	*513,410*	*$436,937*
Brownsville, TX	1,190,154	343,413	*746,224*	*343,413*
Bryan-College Station, TX	797,211	248,808	*499,850*	*248,808*
Denton, TX	430,632	121,550	*270,005*	*121,550*
Galveston, TX	456,802	263,556	*286,414*	*263,556*
Harlingen, TX	584,929	213,740	*366,749*	*213,740*
Killeen, TX	1,118,807	322,616	*701,489*	*322,616*
Laredo, TX	1,413,013	440,079	*885,956*	*440,079*
Lewisville, TX	497,127	140,316	*311,697*	*140,316*
Longview, TX	489,111	205,890	*306,671*	*205,890*
Lubbock, TX	1,392,961	634,745	*873,383*	*634,745*
Midland, TX	610,326	258,553	*382,673*	*258,553*
Odessa, TX	677,073	408,081	*424,523*	*408,081*
Port Arthur, TX	738,584	418,221	*463,090*	*418,221*
San Angelo, TX	634,663	269,195	*397,932*	*269,195*
Sherman-Denison, TX	317,690	197,337	*199,191*	*197,337*
Temple, TX	360,666	147,551	*226,137*	*147,551*
Texarkana, TX-AR (TX)	291,029	142,859	*182,474*	*142,859*
Texas City, TX	773,610	308,822	*485,051*	*308,822*
Tyler, TX	604,941	272,311	*379,297*	*272,311*
Victoria, TX	419,359	202,360	*262,937*	*202,360*
Waco, TX	913,586	436,203	*572,816*	*436,203*
Wichita Falls, TX	728,682	387,585	*456,882*	*387,585*
UTAH:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$361,607	$102,073	*$226,727*	*$102,073*
Logan, UT	361,607	102,073	*226,727*	*102,073*
VERMONT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$634,513	$244,385	*$397,838*	*$244,385*
Burlington, VT	634,513	244,385	*397,838*	*244,385*
VIRGINIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,211,866	$2,010,460	*$2,640,828*	*$2,010,460*
Bristol, TN-Bristol, VA (VA)	130,027	54,597	*81,527*	*54,597*
Charlottesville, VA	605,623	258,207	*379,724*	*258,207*
Danville, VA	343,921	182,428	*215,638*	*182,428*
Fredericksburg, VA	403,773	113,974	*253,164*	*113,974*
Kingsport, TN-VA (VA)	24,549	15,609	*15,392*	*15,609*
Lynchburg, VA	576,161	290,441	*361,251*	*290,441*
Petersburg, VA	730,413	414,079	*457,967*	*414,079*
Roanoke, VA	1,397,399	681,125	*876,165*	*681,125*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
WASHINGTON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,980,286	$1,441,915	*$2,495,628*	*$1,441,915*
Bellingham, WA	468,956	178,042	*294,034*	*178,042*
Bremerton, WA	908,455	218,876	*569,599*	*218,876*
Longview, WA-OR (WA)	396,812	172,874	*248,800*	*172,874*
Olympia, WA	706,785	220,296	*443,152*	*220,296*
Richland-Kennewick-Pasco, WA	737,333	328,900	*462,306*	*328,900*
Yakima, WA	761,945	322,927	*477,737*	*322,927*
WEST VIRGINIA				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,059,049	$1,811,406	*$1,918,016*	*$1,811,406*
Charleston, WV	1,230,605	668,361	*771,586*	*668,361*
Cumberland, MD-WV (WV)	14,718	10,483	*9,228*	*10,483*
Hagerstown, MD-PA-WV (WV)	3,717	2,443	*2,331*	*2,443*
Huntington-Ashland, WV-KY-OH (WV)	690,910	434,965	*433,199*	*434,965*
Parkersburg, WV-OH (WV)	444,344	275,348	*278,602*	*275,348*
Steubenville-Weirton, OH-WV-PA (WV)	191,176	128,467	*119,867*	*128,467*
Wheeling, WV-OH (WV)	483,579	291,339	*303,203*	*291,339*
WISCONSIN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,374,272	$3,935,089	*$5,250,647*	*$3,935,089*
Appleton-Neenah, WI	1,533,477	655,709	*961,486*	*655,709*
Beloit, WI-IL (WI)	328,704	155,628	*206,097*	*155,628*
Duluth, MN-WI (WI)	143,981	94,707	*90,276*	*94,707*
Eau Claire, WI	600,643	237,885	*376,602*	*237,885*
Green Bay, WI	1,164,686	506,229	*730,255*	*506,229*
Janesville, WI	442,039	194,329	*277,157*	*194,329*
Kenosha, WI	804,867	483,440	*504,650*	*483,440*
La Crosse, WI-MN (WI)	638,971	276,146	*400,633*	*276,146*
Oshkosh, WI	557,642	282,563	*349,640*	*282,563*
Racine, WI	1,243,118	621,866	*779,432*	*621,866*
Round Lake Beach-McHenry, IL-WI (WI)	466	99	*292*	*99*
Sheboygan, WI	525,400	238,772	*329,424*	*238,772*
Wausau, WI	390,278	187,716	*244,703*	*187,716*
WYOMING:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$876,704	461,199	*$549,691*	*$461,199*
Casper, WY	402,166	247,399	*252,157*	*247,399*
Cheyenne, WY	474,538	213,800	*297,534*	*213,800*
TOTAL	$221,459,592	$93,035,594	*$138,854,601*	*$93,035,594*

TABLE 3

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	FY 1998 SECTION 5311 APPORTIONMENT	FY 1998 RTAP ALLOCATION	*FY 1998 AVAILABLE SECTION 5311 APPORTIONMENT*	*FY 1998 AVAILABLE RTAP ALLOCATION*
Alabama	$3,220,398	$99,894	*$2,025,934*	*$99,894*
Alaska	480,231	57,440	*302,110*	*57,440*
America Samoa	68,448	11,060	*43,060*	*11,060*
Arizona	1,409,806	71,842	*886,901*	*71,842*
Arkansas	2,574,574	89,888	*1,619,650*	*89,888*
California	6,283,697	147,355	*3,953,038*	*147,355*
Colorado	1,341,318	70,781	*843,816*	*70,781*
Connecticut	1,216,702	68,851	*765,420*	*68,851*
Delaware	303,538	54,703	*190,954*	*54,703*
Florida	4,039,438	112,584	*2,541,187*	*112,584*
Georgia	4,708,565	122,951	*2,962,131*	*122,951*
Guam	194,855	13,019	*122,582*	*13,019*
Hawaii	528,465	58,188	*332,454*	*58,188*
Idaho	1,066,162	66,518	*670,716*	*66,518*
Illinois	4,319,845	116,928	*2,717,590*	*116,928*
Indiana	4,172,872	114,651	*2,625,130*	*114,651*
Iowa	2,684,033	91,584	*1,688,510*	*91,584*
Kansas	2,135,063	83,079	*1,343,156*	*83,079*
Kentucky	3,524,523	104,606	*2,217,257*	*104,606*
Louisiana	2,915,035	95,163	*1,833,832*	*95,163*
Maine	1,406,618	71,793	*884,896*	*71,793*
Maryland	1,756,095	77,208	*1,104,750*	*77,208*
Massachusetts	1,882,001	79,158	*1,183,956*	*79,158*
Michigan	5,096,780	128,965	*3,206,355*	*128,965*
Minnesota	2,932,902	95,440	*1,845,072*	*95,440*
Mississippi	2,862,132	94,344	*1,800,551*	*94,344*
Missouri	3,416,076	102,926	*2,149,034*	*102,926*
Montana	863,675	63,381	*543,333*	*63,381*
Nebraska	1,303,176	70,190	*819,821*	*70,190*
Nevada	425,467	56,592	*267,659*	*56,592*
New Hampshire	1,126,526	67,453	*708,691*	*67,453*
New Jersey	1,610,693	74,955	*1,013,278*	*74,955*
New Mexico	1,266,249	69,618	*796,590*	*69,618*
New York	5,669,833	137,844	*3,566,860*	*137,844*
North Carolina	6,023,037	143,316	*3,789,058*	*143,316*
North Dakota	638,726	59,896	*401,819*	*59,896*
Northern Marianas	63,431	10,983	*39,904*	*10,983*
Ohio	6,131,870	145,002	*3,857,525*	*145,002*
Oklahoma	2,621,311	90,612	*1,649,052*	*90,612*
Oregon	2,081,344	82,247	*1,309,362*	*82,247*
Pennsylvania	6,840,165	155,976	*4,303,109*	*155,976*
Puerto Rico	2,044,057	81,669	*1,285,905*	*81,669*
Rhode Island	261,847	54,057	*164,726*	*54,057*
South Carolina	3,014,560	96,705	*1,896,443*	*96,705*
South Dakota	778,557	62,062	*489,786*	*62,062*
Tennessee	3,891,452	110,291	*2,448,091*	*110,291*
Texas	8,215,938	177,294	*5,168,602*	*177,294*
Utah	590,189	59,144	*371,285*	*59,144*
Vermont	696,098	60,785	*437,911*	*60,785*
Virgin Islands	148,988	12,308	*93,727*	*12,308*
Virginia	3,450,150	103,454	*2,170,470*	*103,454*
Washington	2,417,477	87,454	*1,520,821*	*87,454*
West Virginia	2,055,552	81,847	*1,293,136*	*81,847*
Wisconsin	3,551,752	105,028	*2,234,387*	*105,028*
Wyoming	496,753	57,696	*312,504*	*57,696*
TOTAL	$134,819,045	$4,678,778	*$84,813,897*	*$4,678,778*

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	FY 1998 APPORTIONMENT	*FY 1998 AVAILABLE APPORTIONMENT*
Alabama	$1,077,810	*$742,859*
Alaska	181,002	*161,315*
America Samoa	52,205	*51,430*
Arizona	951,875	*661,195*
Arkansas	757,127	*534,909*
California	5,779,667	*3,791,821*
Colorado	741,333	*524,667*
Connecticut	847,523	*593,527*
Delaware	266,369	*216,672*
District of Columbia	264,493	*215,455*
Florida	3,904,479	*2,575,839*
Georgia	1,393,604	*947,639*
Guam	132,334	*129,756*
Hawaii	335,184	*261,296*
Idaho	342,701	*266,171*
Illinois	2,528,718	*1,683,714*
Indiana	1,333,137	*908,428*
Iowa	812,931	*571,096*
Kansas	683,692	*487,289*
Kentucky	1,033,493	*714,121*
Louisiana	1,036,792	*716,261*
Maine	425,119	*319,615*
Maryland	1,041,632	*719,399*
Massachusetts	1,494,391	*1,012,995*
Michigan	2,165,445	*1,448,146*
Minnesota	1,056,129	*728,799*
Mississippi	735,946	*521,174*
Missouri	1,351,757	*920,503*
Montana	315,531	*248,552*
Nebraska	486,010	*359,100*
Nevada	365,018	*280,642*
New Hampshire	345,580	*268,037*
New Jersey	1,791,409	*1,205,599*
New Mexico	429,057	*322,169*
New York	4,133,305	*2,724,224*
North Carolina	1,583,068	*1,070,498*
North Dakota	270,598	*219,414*
Northern Marianas	52,014	*51,306*
Ohio	2,638,426	*1,754,855*
Oklahoma	893,710	*623,477*
Oregon	831,823	*583,346*
Pennsylvania	3,160,669	*2,093,509*
Puerto Rico	789,789	*556,089*
Rhode Island	379,870	*290,273*
South Carolina	864,320	*604,419*
South Dakota	291,138	*232,734*
Tennessee	1,270,199	*867,615*
Texas	3,263,857	*2,160,422*
Utah	400,751	*303,814*
Vermont	243,008	*201,524*
Virgin Islands	134,312	*131,038*
Virginia	1,320,844	*900,457*
Washington	1,185,993	*813,011*
West Virginia	635,202	*455,845*
Wisconsin	1,210,555	*828,938*
Wyoming	208,717	*179,287*
TOTAL.........	$62,221,661	*$42,756,285*

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE/AREA	FY 1998 APPORTIONMENT	*FY 1998 AVAILABLE APPORTIONMENT*
AZ Phoenix	$907,346	*$514,402*
CA Los Angeles	12,028,480	*6,818,828*
CA Sacramento	1,080,265	*612,306*
CA San Diego	4,167,132	*2,362,146*
CA San Francisco	52,132,486	*29,511,727*
CA San Jose	4,912,242	*2,784,726*
CO Denver	981,069	*556,103*
CT Hartford	559,246	*317,052*
CT Southwestern Connecticut	32,620,129	*18,463,443*
DE Wilmington	362,872	*205,709*
DC Washington	20,508,350	*11,623,316*
FL Ft. Lauderdale	1,316,125	*746,104*
FL Jacksonville	41,142	*23,319*
FL Miami	3,802,009	*2,154,920*
FL Tampa	36,475	*20,678*
FL West Palm Beach	990,760	*561,643*
GA Atlanta	8,442,657	*4,784,576*
HI Honolulu	297,537	*168,694*
IL Chicago/Northwestern Indiana	109,299,655	*61,886,453*
LA New Orleans	2,190,348	*1,223,907*
MD Baltimore	3,279,666	*1,858,852*
MD Baltimore Commuter Rail	13,539,895	*7,668,197*
MA Boston	54,945,005	*31,110,851*
MA Lawrence-Haverhill	539,690	*305,948*
MA Worcester	488,029	*276,679*
MI Detroit	201,347	*114,110*
MN Minneapolis	2,430,250	*1,377,621*
MO St. Louis	1,442,803	*817,776*
NJ Northeastern New Jersey	67,904,285	*38,357,140*
NJ Trenton	347,752	*197,093*
NY Buffalo	460,905	*261,235*
NY New York	275,002,766	*155,608,453*
OH Cleveland	10,886,614	*6,161,618*
OH Dayton	1,777,917	*1,007,920*
PA Philadelphia/Southern New Jersey	77,245,242	*43,708,761*
PA Pittsburgh	15,446,826	*8,615,655*
PR San Juan	620,717	*351,849*
OR Portland	1,270,565	*720,128*
RI-MA- Providence	886,604	*502,552*
TN Chattanooga	30,646	*17,374*
TX Dallas	562,895	*319,085*
TX Houston	2,610,328	*1,479,729*
VA Norfolk	495,637	*281,000*
WA Seattle	7,590,294	*4,302,749*
WA Tacoma	452,708	*256,665*
WI Madison	276,844	*156,932*
TOTAL	$797,412,555	*$451,176,024*

Page 1 of 2 pages.

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	*FY 1998 AVAILABLE ALLOCATION*
AZ	Phoenix- Metropolitan Area Transit	*3,987,062*
CA	Los Angeles- Metrorail- MOS-3 Project	*61,301,090*
CA	San Bernardino Metrolink Project	*996,766*
CA	Orange County Transitway Project	*1,993,530*
CA	Sacramento- LRT Extension	*20,234,344*
CA	San Diego Mid-Coast Corridor Project	*1,495,150*
CA	San Diego Mission Valley East Corridor Project	*996,766*
CA	San Diego Oceanside-Escondido Light Rail Project	*2,990,300*
CA	San Francisco- BART Extension to the Airport Project	*29,803,294*
CA	San Jose- Tasman West LRT Project	*21,330,786*
CO	Denver- Southwest Corridor Project	*22,925,610*
CO	Roaring Fork Valley Rail	*1,993,530*
FL	Fort Lauderdale- Tri-County Commuter Rail Project	*7,974,126*
FL	Miami- North 27th Avenue Project	*4,983,828*
FL	Miami- Metro Dade East-West Corridor Project	*4,983,828*
FL	Orlando- Lynx Light Rail Project	*31,697,150*
FL	Tampa Bay Regional Rail Project	*996,766*
GA	Atlanta- North Springs Project	*44,455,750*
GA	Atlanta- DeKalb County Light Rail Project	*996,766*
IL	Chicago- Wisconsin Central Commuter Rail Project [METRA]	*2,990,300*
IN	Northern Indiana South Shore Commuter Rail Project	*3,987,062*
IN	Indianapolis- Northeast Corridor Project	*1,245,957*
LA	New Orleans- Canal Street Corridor Project	*5,980,594*
LA	New Orleans- Desire Streetcar Project	*1,993,530*
MA	Boston- South Boston Piers (MOS-2) Transitway Project	*46,100,413*
MA	Boston- Urban Ring	*996,766*
MD	MARC- Commuter Rail Improvements	*30,899,736*
MN	Twin Cities Transitways Projects	*11,961,188*
MO	St. Louis- Metrolink St. Clair LRT Extension Project	*29,902,970*
MO	Springfield-Branson Commuter Rail	*498,383*
MS	Jackson- Intermodal Corridor project	*2,990,300*
NC	Charlotte- South Corridor Transitway Project	*996,766*
NC	Research Triangle Park Project	*11,961,188*

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	*FY 1998 AVAILABLE ALLOCATION*
NJ	Urban Core (Secaucus Transfer)	*26,912,674*
NJ	Urban Core (Hudson-Bergen)	*59,805,941*
NV	Las Vegas Clark County- Fixed Guideway Project	*4,983,828*
NY	New York- East Side Access Project	*19,935,314*
NY	New York- St. George Ferry Terminal Project	*2,491,914*
NY	New York- Whitehall Ferry Terminal	*2,491,914*
NY	Nassau Hub Rail Link EIS	*498,383*
OH	Canton-Akron-Cleveland [Northeast Ohio] Commuter Rail	*1,993,530*
OH	Cleveland- Blue Line Extension to Highland Hills Project	*797,413*
OH	Cleveland- Berea Red Line Extension to Hopkins Int. Airport	*697,736*
OH	Cleveland- Waterfront Line Extension	*996,766*
OH	Toledo Rail Project	*996,766*
OH	Cincinnati- Northeast/Northern Kentucky Rail Line Project	*498,383*
OK	Oklahoma City- MAPS Corridor Transit Project	*1,594,825*
OR	Portland- Westside/Hillboro Project	*63,194,945*
PA	Pittsburgh- Airport Busway Project	*4,983,828*
PA	Strawberry Hill/Diamond Branch Rail Project	*498,383*
PR	San Juan- Tren Urbano	*14,951,485*
SC	Charleston- Monobeam Rail Project	*1,495,150*
TN	Memphis- Regional Rail Project	*996,766*
TX	Austin- Capital Metro	*996,766*
TX	Dallas- North Central Light Rail Extension Project	*10,964,424*
TX	Dallas- Ft. Worth RAILTRAN Project	*7,974,126*
TX	Galveston- Rail Trolley [Diesel] System Project	*1,993,530*
TX	Houston- Regional Bus Project	*50,934,727*
TX	Houston- Advanced Regional Bus Project	*996,766*
UT	Salt Lake City- South LRT Project	*63,194,945*
UT	Salt Lake City- Regional Commuter Rail	*3,987,062*
VA	Tidewater [Norfolk] Rail Project	*1,993,530*
VA	Virginia Railway Express- Commuter Rail Project	*1,993,530*
VT	Burlington-Essex Commuter Rail	*4,983,828*
WA	Seattle-Tacoma Commuter and Light Rail Projects	*17,941,782*
	TOTAL (All Allocations Above)..	*$797,412,555*

TABLE 6A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	FY 1996 UNOBLIGATED ALLOCATION	FY 1997 UNOBLIGATED ALLOCATION	*TOTAL PRIOR YEAR UNOBLIGATED ALLOCATION*
AK	Hollis- Ketchikan Ferry Project	0	6,345,416	*6,345,416*
AR	Little Rock- Junction Bridge Project	0	1,986,046	*1,986,046*
CA	Los Angeles- Metrorail- MOS-3	0	69,511,602	*69,511,602*
CA	Orange County Transitway	0	2,979,069	*2,979,069*
CA	San Diego Mid-Coast Extension	0	1,489,534	*1,489,534*
CT	Hartford- Griffin Light Rail Project	0	993,023	*993,023*
FL	Jacksonville- Automated Skyway Express Extension	0	14,895,343	*14,895,343*
FL	Miami- North 27th Avenue Project	0	993,023	*993,023*
FL	Miami- Metro Dade East-West Corridor Project	0	1,489,534	*1,489,534*
GA	Atlanta- North Springs Project	0	63,960,604	*63,960,604*
IL	Chicago- Transit Improvements	0	22,343,015	*22,343,015*
LA	New Orleans- Canal Street Corridor Project	4,939,902	7,944,183	*12,884,085*
LA	New Orleans- Desire Streetcar Project	0	1,986,046	*1,986,046*
MO	St. Louis- Metrolink Project	0	3,405,809	*3,405,809*
MS	Jackson- Intermodal Corridor	0	5,461,626	*5,461,626*
NC	Research Triangle Park- Regional Transit Plan	0	1,986,046	*1,986,046*
NJ	Burlington-Gloucester Line [*]	0	0	*1,488,750*
NY	New York- Whitehall Ferry Terminal [*]	2,469,951	3,723,836	*8,675,037*
OK	Oklahoma City- MAPS Corridor Transit System	0	1,986,046	*1,986,046*
PR	San Juan- Tren Urbano	0	6,058,367	*6,058,367*
TN	Memphis- Regional Rail Plan	1,234,976	3,017,796	*4,252,772*
TX	Dallas- Ft. Worth RAILTRAN	0	15,143,599	*15,143,599*
TX	Houston- Regional Bus Plan	0	40,306,799	*40,306,799*
VA	Virginia Railway Express- Commuter Rail Project	0	2,979,069	*2,979,069*
VT	Burlington-Charlotte Commuter Rail	1,862,090	993,023	*2,855,113*
WA	Seattle-Renton-Tacoma Light Rail Project	0	2,979,069	*2,979,069*
	TOTAL (All Allocations Above)	$10,506,919	$284,957,523	*$299,434,442*

----

[*] Carryover totals include FY 1995 funds in the amount of $3,970,000 extended for obligation by the FY 1998 Appropriations Conference Report for New York City - Whitehall Ferry [$2,481,250]; and Burlington - Glouchester Commuter Rail [$1,488,750]

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
ALABAMA			
Birmingham/Jefferson County	Buses	$2,990,320	*$1,695,090*
Birmingham	Downtown intermodal transportation facility, phase 2	5,980,641	*3,390,182*
Gadsden	Buses and vans	99,677	*56,525*
Huntsville	Intermodal center, phase 1	4,983,868	*2,825,151*
Mobile	Southern market historic intermodal center	996,774	*565,030*
Mobile	Municipal pier intermodal waterfront access rehabilitation project	996,774	*565,030*
Mobile	Bus replacement	1,495,160	*847,545*
Mobile	Intermodal facility	5,482,254	*3,107,666*
Montgomery	Bus replacement	1,495,160	*847,545*
Tuscaloosa	Bus replacement	996,774	*565,030*
ARIZONA			
Phoenix	Buses and bus facilities	4,485,481	*2,542,636*
Tuscon	Intermodal center	996,774	*565,030*
CALIFORNIA			
Folsom	Multimodal facility	1,495,160	*847,545*
Foothill	Transit bus maintenance facility	8,970,962	*5,085,272*
l-5 Consortium Cities Joint Powers Authority	Facilities	4,983,868	*2,825,151*
Inglewood	Transit center project	498,387	*282,515*
Lake Tahoe	Intermodal center	996,774	*565,030*
Long Beach	Buses and bus facilities	1,495,160	*847,545*
Marina/Ft. Ord	Buses and multimodal center	996,774	*565,030*
Mendocino County	Buses	797,419	*452,024*
Modesto	Bus maintenance facility	1,744,354	*988,803*
Rialto	Metrolink depot	1,096,451	*621,533*
Riverside County	Buses and bus facility	2,342,418	*1,327,821*
Riverside County	Transit vehicle ITS communications	996,774	*565,030*
Sacramento	Bus facility	996,774	*565,030*
San Joaquin (Stockton)	Bus facilities	1,993,547	*1,130,061*
Santa Clara	Buses	2,491,934	*1,412,576*
Santa Cruz Metropolitan Transit District	Buses and bus facility	996,774	*565,030*
San Ysidro Border	Intermodal center	498,387	*282,515*
Solano County	Buses and bus-related equipment	1,196,128	*678,036*
Sonoma County	Bus facilities	996,774	*565,030*
Unitrans	Maintenance facility	996,774	*565,030*
Woodland	Transfer facility	199,355	*113,006*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
CALIFORNIA (cont'd)			
Yolo County	Buses and paratransit vehicles	996,774	*565,030*
Yosemite area	Regional transportation solution	498,387	*282,515*
COLORADO	Buses and bus facilities	5,482,254	*3,107,666*
CONNECTICUT			
Bridgeport	Buses and bus facilities	1,993,547	*1,130,061*
Bridgeport	Intermodal center	3,737,901	*2,118,863*
New Haven	Bus facility	1,196,128	*678,036*
DELAWARE	New Castle bus facility	1,495,160	*847,545*
FLORIDA			
Daytona Beach	Intermodal facility	1,993,547	*1,130,061*
Florida Citrus Connection	Buses	1,495,160	*847,545*
Lakeland	Transit buses	996,774	*565,030*
Lakeworth	Buses and bus facilities	996,774	*565,030*
LYNX	Buses and bus facilities	2,990,321	*1,695,091*
Metro-Dade County	Buses and bus facilities	4,983,868	*2,825,151*
Orlando	Intermodal facility	996,774	*565,030*
Palm Beach County	Buses and bus facilities	1,993,547	*1,130,061*
Tampa (Hillsborough County)	HARTline buses and bus facilities	1,495,160	*847,545*
Volusia County	Buses and bus facilities	1,993,547	*1,130,061*
GEORGIA			
Chatham	Bus facility	3,987,094	*2,260,121*
MARTA	Buses	4,983,868	*2,825,151*
HAWAII: Honolulu	Buses and bus facilities	4,983,868	*2,825,151*
ILLINOIS	Buses and bus facilities	4,485,481	*2,542,636*
INDIANA			
Indianapolis	Buses	1,993,547	*1,130,061*
South Bend	Intermodal facility	1,993,547	*1,130,061*
IOWA			
Statewide	Buses and bus facilities	2,741,127	*1,553,833*
Sioux City	Park and ride facility	1,245,967	*706,288*
KANSAS	Johnson County bus maintenance/ operations facility	996,774	*565,030*
LOUISIANA	Statewide buses and bus facilities		
Baton Rouge	Bus related facilities	598,064	*339,018*
Jefferson Parish	Buses	1,196,128	*678,036*
Lafayette	Bus-related facility	747,580	*423,773*
Lake Charles	Buses	149,516	*84,755*
LA DOTD	Vans and equipment	697,741	*395,521*
Monroe	Buses and bus-related equipment	797,419	*452,024*
New Orleans	Buses and bus-related facilities	8,970,962	*5,085,272*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
LOUISIANA (cont'd)			
Shreveport	Buses and bus-related facility	398,709	*226,012*
St. Tammany Parish	Bus and bus-related facility	299,032	*169,509*
MARYLAND	Buses and bus facilities	7,974,188	*4,520,242*
MASSACHUSETTS			
Franklin RTA	Buses	498,387	*282,515*
Greenfield Montague Transportation Area	Buses	697,741	*395,521*
South Station	Intermodal transporation center	996,774	*565,030*
Springfield	Intermodal center	996,774	*565,030*
Worcester	Union station	2,990,321	*1,695,091*
MICHIGAN	Buses and bus facilities	7,475,801	*4,237,727*
MINNESOTA			
Metropolitan Council transit Operations	Buses and bus facilities	8,970,962	*5,085,272*
St. Paul	Snelling bus garage	1,495,160	*847,545*
MISSISSIPPI	Jackson bus facility	1,993,547	*1,130,061*
MISSOURI			
Kansas City	Buses and fare box collection system	3,488,707	*1,977,606*
Kansas City	Union Station intermodal center	4,485,481	*2,542,636*
State of Missouri	Buses and bus facilities	7,974,188	*4,520,242*
NEVADA			
Clark County	Buses	7,974,188	*4,520,242*
Reno, Washoe County Regional Transportation Commission	Buses and bus facilities	1,495,160	*847,545*
NEW JERSEY	NJ Transit alternative fuel buses	5,980,641	*3,390,182*
NEW MEXICO			
Albuquerque	Uptown transit center	996,774	*565,030*
	Demo of universal electric transportation subsystems (DUETS)	996,774	*565,030*
Las Cruces, Santa Fe and Albuquerque	Park and ride	996,774	*565,030*
Santa Fe	Buses and bus facilities	996,774	*565,030*
Statewide	Buses and bus facilities	3,737,901	*2,118,863*
NEW YORK			
Nassau County and Long Island	Buses and bus facilities (Goodwill Games)	996,774	*565,030*
Nassau County	Natural gas buses	4,983,868	*2,825,151*
New Rochelle	Intermodal facility	1,495,160	*847,545*
New York City	Natural gas buses	7,475,801	*4,237,727*
NFTA	HUBLINK program	996,774	*565,030*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
NEW YORK (cont'd)			
Poughkeepsie	Intermodal facility	1,993,547	*1,130,061*
Rensselaer County	Intermodal facility	1,868,950	*1,059,432*
Staten Island/Brooklyn	Mobility project	996,774	*565,030*
Suffolk County	Buses	2,143,063	*1,214,815*
Syracuse	Buses	4,286,126	*2,429,630*
Westchester County	Buses	4,983,868	*2,825,151*
Yonkers	Intermodal facility	1,993,547	*1,130,061*
NORTH CAROLINA			
Chapel Hill University of North Carolina	Buses	996,774	*565,030*
Statewide	Buses and bus facilities	4,983,868	*2,825,151*
OHIO	Buses and bus facilities	12,459,669	*7,062,878*
OREGON			
Eugene-Springfield-Land County	Buses and bus facilities	996,774	*565,030*
Lane Transit District	Bus system	996,774	*565,030*
Salem and Corvallis	Buses and bus facilities	996,774	*565,030*
PENNSYLVANIA			
Allegheny County	Buses	996,774	*565,030*
Armstrong Mid-County	Buses and bus facility	199,355	*113,006*
Berks Area Reading	Transit intermodal facility	498,387	*282,515*
Cambria County	Buses and bus facilities	797,419	*452,024*
Fayette and Somerset	Buses, vans, and bus facilities	598,064	*339,018*
Indiana County	Buses	498,387	*282,515*
Lackawanna County	Paratransit vans	299,032	*169,509*
Lawrence County	Buses	996,774	*565,030*
Lehigh and Northampton	Buses	996,774	*565,030*
Mid Mon Valley transit authority	Buses	747,580	*423,773*
New Castle area transit authority	Buses	747,580	*423,773*
North Philadelphia	Intermodal facility	996,774	*565,030*
Philadelphia Eastwick	Intermodal center	996,774	*565,030*
Schuylkill County	Buses	199,355	*113,006*
Scranton	Buses and bus facility	1,495,160	*847,545*
SEPTA	Buses	7,475,802	*4,237,727*
Towanda Borough	Intermodal bus facility	1,993,547	*1,130,061*
Wilkes-Barre	Intermodal facility	1,495,160	*847,545*
Williamsport	Buses and bus facility	1,245,967	*706,288*
Statewide	Bus and bus facilities projects	3,987,094	*2,260,121*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
SOUTH CAROLINA			
Columbia	Buses and facility	1,993,547	*1,130,061*
Pee Dee Regional Planning Authority	Buses and facilities	2,990,320	*1,695,090*
Virtual Transit Enterprise	Integration of transit information processing systems	996,774	*565,030*
SOUTH DAKOTA	Statewide bus and bus facilities	2,242,740	*1,271,318*
TENNESSEE	Buses and bus facilities	7,974,188	*4,520,242*
TEXAS			
Austin	Buses	2,990,320	*1,695,090*
Brazos Transit Authority	Transit facilities and buses	2,990,320	*1,695,090*
Corpus Christi	Bus facilities	1,943,708	*1,101,809*
El Paso	Buses	996,774	*565,030*
Fort Worth	Buses	1,495,160	*847,545*
Galveston	Alternatively fueled vehicles	1,993,547	*1,130,061*
Rural Texas	Bus replacement program	2,491,934	*1,412,576*
UTAH			
Utah Transit Authority Olympic	Park and ride lots	1,993,547	*1,130,061*
Park City Transit	Buses	398,709	*226,012*
Utah Transit Authority	Bus acquisition	1,993,547	*1,130,061*
Utah Transit Authority Olympic	Intermodal transportation centers	2,491,934	*1,412,576*
Statewide	Buses and bus facilities	1,993,547	*1,130,061*
VERMONT			
Burlington	Multimodal center	1,495,160	*847,545*
Statewide	Bus and bus facilities	996,774	*565,030*
VIRGINIA			
Clarendon canopy project		249,193	*141,258*
Falls Church	Electric buses	398,709	*226,012*
Dulles corridor	Buses and bus facilities	2,491,934	*1,412,576*
Richmond	Multimodal center	2,491,934	*1,412,576*
WASHINGTON			
Bremerton	Buses and transportation center	996,774	*565,030*
Chelan- Douglas	Multimodal center	996,774	*565,030*
Community Transit	Kasch Park facility	1,495,160	*847,545*
	Intermodal center	2,491,934	*1,412,576*
King County	Multimodal facility	996,774	*565,030*
King County	Metro commuter intermodal connector	1,495,160	*847,545*
King County	Park and ride lots	4,983,868	*2,825,151*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
WASHINGTON (cont'd)			
Olympic Peninsula International Gateway	Transportation Center	996,774	*565,030*
Snohomish County	Buses	2,491,934	*1,412,576*
Tacoma Dome station project		1,495,160	*847,545*
Thurston County	Intercity buses	996,774	*565,030*
Whatcom Transportation Authority	Facilities	1,495,160	*847,545*
WEST VIRGINIA			
Huntington	Intermodal Facility and buses	6,977,415	*3,955,212*
Statewide	Buses and bus facilities, communications and computer systems	9,220,155	*5,226,530*
WISCONSIN			
Milwaukee	Rail station rehabilitation	996,774	*565,030*
Wisconsin Transit System	Buses	12,958,055	*7,345,393*
TOTAL		$399,681,278	*$226,563,012*

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	*PRIOR YEAR UNOBLIGATED ALLOCATION*
FY 1997:	
AR Statewide	*$2,679,750*
AR Little Rock	*992,500*
CA Eureka	*992,500*
CA Fairfield City	*1,389,500*
CA Folsom	*496,250*
CA Foothill	*4,714,375*
CA Lake Tahoe	*1,256,505*
CA North Orange County	*198,500*
CA Norwalk	*992,500*
CA Riverside County	*992,500*
CA San Joaquin	*2,729,375*
CA Santa Barbara (MTD)	*1,985,000*
CA Santa Cruz (MTD)	*1,985,000*
CA San Ysidro Border	*992,500*
CA Sonoma County	*992,500*
CA Thousand Oaks	*595,500*
CA Yolo County	*1,985,000*
DE Statewide	*6,947,500*
FL Miami Beach	*992,500*
FL Tampa (Hillsborough area RTD)	*2,779,000*
FL Ybor	*992,500*
GA Chatham	*1,052,050*
GA MARTA	*1,985,000*
IA Statewide	*3,693,668*
IA Fort Dodge	*688,160*
IA Ottumwa	*60,940*
IA Sioux City	*2,143,800*
IA Iowa Department of Transportation	*1,261,368*
IN Indianapolis (metro)	*992,500*
IN South Bend	*5,455,322*

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (Cont'd):	
KS Statewide	992,500
KS Johnson City	2,183,500
KY Statewide	3,970,000
KY Owensboro	99,250
LA Statewide	10,087,104
MA Boston	$992,500
MA Hyannis/Cape Cod	3,225,625
MA Lowell	992,500
MI Statewide	4,722,500
MS Jackson	992,500
MS Jackson	3,473,750
MO Kansas City	6,451,250
MO Statewide	4,290,225
MO St. Louis	1,736,875
NY Buffalo	992,500
NY New Rochelle	1,240,625
NY Syracuse	1,985,000
NY Westchester County	496,250
NC Statewide	1,170,000
OR Hood River	173,688
OR Salem	1,836,125
PA Statewide	634,300
PA Armstrong County MID-County	260,035
PA Berks Area Reading Transit	397,000
PA Erie	1,985,000
PA Indiana County	674,900
SC Spartanburg	1,488,750
TX El Paso	2,481,250
TX Galveston	496,250
TX Liberty, Montgomery, Polk Counties	1,013,170

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (Cont'd):	
UT Salt Lake City	*5,458,750*
UT Logan	*2,382,000*
VT Statewide	*188,125*
VT Burlington	*1,488,750*
VT Urban & Rural	*169,375*
VA Reston	*496,250*
VA Virginia Beach	*992,500*
WA Bremerton	*1,985,000*
WA Everett	*2,977,500*
WA Port Angeles	*992,500*
WA Seattle Metro/King County	*$3,970,000*
WI Statewide	*1,572,325*
WY Freemont County	*992,500*
TOTAL FY 1997 Allocations	*$140,214,560*
FY 1996:	
AR Statewide	*$794,000*
CA Coachella Valley	*496,250*
CA San Diego	*4,674,500*
CT Norwich	*1,488,750*
HI Honolulu	*3,970,000*
IL Statewide	*1,428,601*
LA New Orleans	*2,977,500*
LA St. Bernard Parish	*1,488,750*
MO Kansas City	*6,171,250*
NY Albany	*4,962,500*
NY Buffalo	*496,250*
NY Rensselaer	*5,833,750*
NY New Rochelle	*744,375*

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1996 (Cont'd):	
NY Westchester County	2,233,125
NC State	1,250,000
OH State	2,200,000
PA Philadelphia	992,500
PA Erie	3,970,000
TN Nashville	297,750
TX El Paso	1,465,000
VT Marble Valley	612,500
TOTAL FY 1996 Allocations	$48,547,351
TOTAL (All Allocations Above)	$188,761,911

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

1998 SECTION 5303 METROPOLITAN PLANNING AND SECTION 5313(b) STATE PLANNING AND RESEARCH APPORTIONMENTS

STATE	FY 1998 SECTION 5303 AVAILABLE APPORTIONMENT	FY 1998 SECTION 5313(b) AVAILABLE APPORTIONMENT
Alabama	$344,882	$92,758
Alaska	158,502	42,360
Arizona	618,722	133,897
Arkansas	158,502	42,360
California	6,661,928	1,283,833
Colorado	514,015	119,873
Connecticut	453,689	123,799
Delaware	158,502	42,360
District of Columbia	212,404	42,360
Florida	2,112,873	513,084
Georgia	754,563	164,380
Hawaii	158,502	42,360
Idaho	158,502	42,360
Illinois	2,312,151	427,436
Indiana	564,428	135,746
Iowa	176,442	47,522
Kansas	202,912	51,351
Kentucky	245,802	64,370
Louisiana	438,000	112,321
Maine	158,502	42,360
Maryland	920,920	180,552
Massachusetts	1,119,360	238,473
Michigan	1,470,219	293,024
Minnesota	585,964	119,526
Mississippi	158,502	42,360
Missouri	695,407	140,286
Montana	158,502	42,360
Nebraska	158,502	42,360
Nevada	170,912	45,931
New Hampshire	158,502	42,360
New Jersey	1,955,753	334,215
New Mexico	158,502	42,360
New York	3,975,833	711,632
North Carolina	463,930	126,681
North Dakota	158,502	42,360
Ohio	1,371,909	335,598
Oklahoma	252,356	68,276
Oregon	286,490	71,589
Pennsylvania	1,909,473	363,351
Rhode Island	165,658	42,360
South Carolina	263,305	71,926
South Dakota	158,502	42,360
Tennessee	414,485	111,816
Texas	2,663,133	573,309
Utah	242,743	66,523
Vermont	158,502	42,360
Virginia	868,837	193,069
Washington	698,557	162,065
West Virginia	158,502	42,360
Wisconsin	557,792	124,254
Wyoming	158,502	42,360
Puerto Rico	423,708	107,140
TOTAL	$39,625,587	$8,472,086

TABLE 9

Federal Transit Administration - Unit Values of Data
Fiscal Year 1998 Formula Grant Apportionments

			FY 1998 APPORTIONMENTS	*FY 1998 FUNDS AVAILABLE*
Section 5307 Urbanized Area Formula Program - Bus Tier				
Urbanized Areas Over 1,000,000:				
Population			$2.43741676	*$1.52825411*
Population x Density			$0.00062516	*$0.00039197*
Bus Revenue Vehicle Mile			$0.34472062	*$0.21613895*
Urbanized Areas Under 1,000,000:				
Population			$2.20274993	*$1.38111858*
Population x Density			$0.00097008	*$0.00060824*
Bus Revenue Vehicle Mile			$0.42276377	*$0.26507181*
Bus Incentive (PM denotes Passenger Mile):				
Bus PM x Bus PM = Operating Cost			$0.00412867	*$0.00258867*
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier				
Fixed Guideway Revenue Vehicle Mile			$0.46535454	*$0.29177611*
Fixed Guideway Route Mile			$26,427	*$16,569*
- Commuter Rail Floor	$4,986,111	*$3,126,279*		
Fixed Guideway Incentive:				
Fixed Guideway PM x Fixed Guideway PM = Operating Cost			$0.00039964	*$0.00025057*
- Commuter Rail Incentive Floor	$228,941	*$143,545*		
Section 5307 Urbanized Area Formula Program - Areas Under 200,000				
Population			$3.97701806	*$2.49358020*
Population x Density			$0.00198731	*$0.00124604*
Section 5311 Nonurbanized Area Formula Program				
Areas Under 50,000				
Population			$1.46340428	*$0.92061934*

Section 5309(m)(1)(A) Capital Program - Fixed Guideway Modernization

	Tier 3		Tier 4
Legislatively Specified Areas:		All Areas:	
Revenue Vehicle Mile	$0.02988368		$0.13418473
Route Mile	$2,093.71		$7,584.44
Other Areas:			
Revenue Vehicle Mile	$0.15951697		
Route Mile	$4,438.10		

[FR Doc. 97–31910 Filed 12–2–97; 1:48 pm]

BILLING CODE 4910–57–C

federal register

Friday
December 5, 1997

Part V

Environmental Protection Agency

40 CFR Part 268

Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[No. F–97–TV2F–FFFFF; FRL–5932–5]

Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today finalizing clarifying amendments to the rule authorizing treatment variances from the national Land Disposal Restrictions (LDR) treatment standards. The clarifying changes adopt EPA's longstanding interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, whether or not it is technically possible to treat the waste to that level or by that method. In response to comment, the Agency is indicating in the rule the circumstances when application of the national treatment standard could be found to be ''inappropriate'', specifically where the national treatment standard is unsuitable from a technical standpoint or where the national treatment standard could lead to environmentally counterproductive results by discouraging needed remediation.

In addition, EPA proposed to reissue the treatment variance granted to Citgo Petroleum under the clarified standard. The Agency is not taking further action on this part of the proposal because, due to changes in Citgo's remediation plans for its Lake Charles Louisiana facility, this particular variance has become moot. The Agency is consequently withdrawing the Citgo variance.

EFFECTIVE DATE: These final regulations are effective December 5, 1997.

ADDRESSES: The official record for this rulemaking is located at the RCRA Information Center at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RCRA Information Center is open from 9:00 a.m. to 4:00 EST p.m., Monday through Friday, except Federal holidays. The Docket Identification Number for today's action is F–97–TV2F–FFFFF. Appointments to review docket materials are recommended. Appointments may be made by calling (703) 603–9230. Individuals reviewing docket materials may copy a maximum of 100 pages from any one docket at no cost. Additional copies may be made at a cost of $0.15 per page. In addition, the docket index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing electronic information.

FOR FURTHER INFORMATION CONTACT: For general information on RCRA, land disposal treatment variances, and this rule contact the RCRA Hotline, between 9:00 a.m. and 6:00 p.m. EST, Monday through Friday, except Federal holidays. The RCRA Hotline can be reached toll free on (800) 424–9346 or, from the Washington D.C. area, on (703) 412–9810. Hearing impaired can reach the RCRA Hotline on TDD (800) 553–7672 or, in the Washington D.C. area, on TDD (703) 412–3323. For detailed information on specific aspects of this rulemaking, contact Elizabeth McManus on (703) 308–8657.

SUPPLEMENTARY INFORMATION:

Accessing Today's Rule and Supporting Information Electronically

Today's final rule, its docket index and the following supporting materials are available electronically and may be accessed through the Internet: To access these documents electronically: ''Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups'' U.S. EPA guidance memorandum from Michael Shapiro, Director EPA Office of Solid Waste and Steve Luftig, Director EPA Office of Emergency and Remedial Response, Jan. 8, 1997.

WWW: Http://www.epa.gov/epaoswer/hazwaste/ldr/ldr-rule.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address

Files are located in /pub/epaoswer/hazwaste/ldr/ldr-rule.htm.

Table of Contents

I. Background

The essential requirement of the Land Disposal Restrictions (LDR) statutory provisions is that hazardous wastes must not be land disposed until hazardous constituent concentrations in the wastes are at levels at which threats to human health and the environment are minimized, and land disposal is otherwise protective of human health and the environment. RCRA sections 3004 (d), (e), (g) and (m); 56 FR at 41168, August 19, 1991; 62 FR at 26062, May 12, 1997. These requirements normally are satisfied by prohibiting disposal of hazardous wastes until the wastes' hazardous constituent concentrations reflect the performance achievable by the Best Demonstrated Available Treatment technology (BDAT). 62 FR at 26062, May 12, 1997.

EPA recognized from the inception of the LDR program, however, that there would be circumstances when these technology-based treatment standards might not be either achievable or appropriate. Accordingly, EPA adopted a treatment variance provision (codified in 40 CFR 268.44; 51 FR at 40605–40606, Nov. 7, 1986) providing that:

> Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from the wastes analyzed in developing the treatment standard, the waste cannot be treated to [the] specified levels or by the specified methods.

A treatment variance takes the form of an alternative LDR treatment standard. Nationally applicable variances and site-specific variances that are approved using rulemaking procedures are codified in the Table to § 268.44, 40 CFR 268. 44(o). Site-specific variances that are approved using non-rulemaking procedures are not codified.

As set out in more detail in the May 12 notice, EPA has interpreted the first sentence of the treatment variance provision as creating two independent tests under which treatment variance applications can be considered: first, where the waste in question cannot be treated to levels or by the methods established in the rules; and second, where such treatment may be possible but is nevertheless ''not appropriate''. 62 FR at 26059, May 12, 1997. EPA has further viewed the second sentence of the treatment variance provision—which refers to a demonstration that the waste differs chemically or physically from those the Agency analyzed in developing the standard—as applying only to the technical infeasibility part of the standard. 62 FR at 26059, May 12,

1997. However, EPA now recognizes that the existing rule, as drafted, might be read to require a demonstration that a waste is physically or chemically different along with a showing that it cannot be treated to a specified level or by a particular method whenever a treatment variance is sought, including situations where the otherwise applicable treatment standard is technically possible but, nonetheless, inappropriate. This was not EPA's intent, and EPA initiated this rulemaking to remove any drafting ambiguity in the rule.

II. Clarified Standard for Granting Treatment Variances

EPA is finalizing the proposed amendment to the rule, with two changes. First, EPA is clarifying the situations under which treatment variances may be approved because the otherwise applicable LDR treatment standard is ''inappropriate.'' Second, the Agency is adding language that explicitly requires alternative LDR treatment standards approved through the treatment variance process to satisfy the requirement that treatment standards result in substantial treatment of hazardous constituents in the waste so that threats posed by the waste's land disposal are minimized, and also indicates that special considerations may arise in satisfying this standard if the waste is to be used in a manner constituting disposal.[1]

A. Clarification of ''Inappropriate'' Standard

The Agency proposed amended language simply stating that a treatment variance could be granted if it is ''inappropriate'' to require treatment to the level or by the method set out in the rules. 62 FR at 26081, May 12, 1997. In the preamble to the proposal, the Agency provided examples as to the situations when application of the otherwise applicable standard could be inappropriate. 62 FR at 26059–26060, May 12, 1997. In response to comment maintaining that the rule language was impermissibly open-ended, EPA has decided to include language codifying more particularly when a standard could be ''inappropriate''. These circumstances are drawn from EPA's practice in applying the existing rule and are consistent with the examples discussed in the preambles to the proposal and the HWIR-Media proposal. 61 FR at 18810, April 29, 1996.

The first circumstance is when imposition of BDAT treatment, while technically possible, remains unsuitable or impractical from a technical standpoint. The chief example is when a treatment standard would result in combustion of large amounts of mildly contaminated soil or wastewater. 55 FR at 8760 and 8761, March 8, 1990; 61 FR at 18806–18808, April 29, 1996 and other sources cited therein. The same reasoning could apply when media is contaminated with metal contaminants and also contains low levels of organic contaminants. In such a case, it may be inappropriate to require combustion treatment of the organic contaminants both because it may be inappropriate to combust media generally and because it may be inappropriate to combust wastes where metals are the chief hazardous constituent.[2] Another potential example of where treatment for organic contaminants may be technically inappropriate is when a waste contains low concentrations of non-volatile organic contaminants (for example, concentrations slightly exceeding a Universal Treatment Standard) and the waste, for legitimate reasons, has been stabilized. If the mobility of the non-volatile organic contaminants has been reduced, it might be inappropriate to require further treatment of the non-volatile organic contaminants. Cf. 61 FR at 55724, Oct. 28, 1996 where EPA made a similar finding. Still another example of a situation where the otherwise applicable LDR treatment standard is technically inappropriate could be a case where BDAT treatment could expose site workers to acute risks of fire or explosion and an alternative technology would not. 62 FR at 26060, May 12, 1997. In all these types of circumstances, notwithstanding that it is technically possible to achieve the standard by using the best demonstrated available technology, it could be inappropriate to do so.

The second set of circumstances where treatment to the limit of best demonstrated available technology might be inappropriate involves cases where imposition of the otherwise applicable treatment standard could result in a net environmental detriment by discouraging aggressive remediation. The example EPA and authorized states have encountered most often to date is where federal rules allow the option of leaving wastes in place,[3] and a facility then has the choice of pursuing the legal option of leaving the wastes in place or opting to excavate thereby triggering treatment to standards based on the performance of best demonstrated available technology, which can be very expensive. 62 FR at 26059, May 12, 1997, and other sources there cited.[4] In these circumstances, a treatment variance can provide an intermediate option of more aggressive remediation, which may include substantial treatment of the removed waste before disposal of that treatment residue—a net environmental benefit over leaving untreated waste in place. 61 FR at 55720–22, May 12, 1997. In EPA's experience, this situation often occurs when BDAT treatment would require that wastes be treated to achieve constituent concentrations that fall below protective site-specific cleanup levels, thus increasing remediation costs for treatment of excavated wastes. In these instances, EPA has indicated that consideration of a treatment variance is typically warranted (because imposition of the otherwise applicable treatment standard would discourage aggressive remediation and is, therefore, inappropriate) and that, if a variance is approved, protective, site-specific cleanup levels may be used as

[1] EPA is also restoring language to 40 CFR 268.44(a) and (h) that was inadvertently deleted when EPA proposed this clarification and redrafting the introductions to both provisions. These changes are made to restore the inadvertently deleted text and to make the difference between national and site-specific variances more clear, as follows. The 40 CFR 268.44(a) national variance is waste-specific—it could apply to the same type of waste at numerous sites. National variances are obtained by petitioning the Administrator and, as set out in 40 CFR 268.44(b), petitions are processed using the procedures set out in 40 CFR 260.20. The 40 CFR 268.44(h) variance is site-specific—it applies only to a certain waste generated at a particular site. Site-specific variances are obtained by petitioning the Administrator, or the Administrator's delegated representative, or an authorized state. Petitions for site-specific variances are processed on a site-by-site basis and are not required to be processed using the procedures set out in 40 CFR 260.20. Further explanation on this issue is included in the Response to Comments Document for today's action in the response to comments submitted by the Department of Energy. EPA regards the restoration of inadvertently deleted language and the associated clarifications as a technical correction and may, thus, make the changes immediately in this final rule.

[2] Although it should also be noted that it is often routine and obviously appropriate to combust organic-contaminated hazardous wastes and to stabilize the combustion residues to reduce metal mobility; see, e.g. treatment standards for F024 wastes in 40 CFR 268.40.

[3] Examples are where wastes can remain within an ''area of contamination'', where remedy selection requirements allow a balancing of treatment and containment strategies and where RCRA regulations allow the option of closing a regulated unit with wastes left in place.

[4] Another recent example of such a treatment variance was granted to Dow Chemical Co. by EPA Region V. In this case, the company could legally leave wastes within an area of contamination but requested instead that the wastes be exhumed for more secure disposal in a subtitle C landfill. Viewing this as a net environmental benefit, and further finding that no other treatment but combustion was available to reduce the relatively low levels of hazardous constituents (chlorinated dibenzo-dioxins and furans), the Region found the existing treatment requirement inappropriate and granted the variance. Treatment Variance for Dow Chemical Co., June 10, 1997, Response to Comment Document pp. 15–17.

alternative LDR treatment standards. See recent EPA guidance on LDR treatment variances: Jan 8, 1997 memorandum, ''Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups'' from Michael Shapiro, Director EPA Office of Solid Waste and Steve Luftig, Director EPA Office of Emergency and Remedial Response and information on compliance with statutory provisions for LDR treatment, below. In addition, see ''Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups'' U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

EPA is accordingly codifying qualifying language stating that treatment variances can be granted where the underlying standard is not appropriate either because it is technically inappropriate or because requiring LDR treatment is environmentally inappropriate in that it could discourage aggressive remediation.

Finally, it must be remembered that this amended rule does not command issuance of treatment variances any more than the existing rule does. Like the existing rules, the amended rules set out circumstances when treatment variances may be considered. The actual determination of whether an otherwise applicable LDR treatment standard is ''unachieveable'' or technically or environmentally ''inappropriate'' is a fact-specific determination depending largely on site-and waste-specific circumstances.

B. Compliance With Statutory Provisions for LDR Treatment

As stated in the proposal all treatment variances must be consistent with the root requirement of RCRA section 3004 (m): that treatment be sufficient to minimize threats to human health and the environment posed by land disposal of the waste. See 62 FR at 26060/1, May 12, 1997 (''alternative treatment standards [established by a treatment variance] must comply with the statutory standard of RCRA section 3004(m) by minimizing threats to human health and the environment''). In order to ensure that there is no ambiguity over application of this requirement in the context of alternative LDR treatment standards developed through the treatment variance process, EPA is adding regulatory language that explicitly requires the decision-maker to determine that a revised treatment standard is sufficient to minimize threats posed by land disposal. Cf. 61 FR at 55721, October 23, 1996 (finding that alternate standard in treatment variance does minimize threats posed by land disposal). In making this determination, however, EPA (or authorized State) may consider risks posed by land disposal not only of the treated residue, but also the risks posed by the continuation of any existing land disposal of the untreated waste, that is, the risks posed by leaving previously land disposed waste in place. Thus, for example, in a remediation setting, it is appropriate (and likely necessary) to consider risks posed by leaving previously land disposed waste in place as well as risks posed by land disposal of the waste after it is removed and treated. Cf. 61 FR at 55721, October 28, 1996 (fact-specific determination that threats posed by land disposal are adequately minimized when treatment variance will lead to clean closure of large surface impoundment, substantial treatment of removed waste, and disposal of treatment residue in a subtitle C landfill) and 61 FR at 18808, April 29, 1996, and other sources cited therein (determination that the policy considerations which argue for BDAT as the basis for technology-based standards for as-generated wastes do not always support a BDAT approach in the remediation context).

In addition, when making a determination as to whether the statutory provisions for LDR treatment have been satisfied, EPA may, of course, condition any particular variance to apply only in certain circumstances if the facts warrant. There is, at least, one potentially recurring circumstance when such conditioning may be warranted for treatment variances. Under current regulation, hazardous waste-derived products can be used in a manner constituting disposal provided the waste meets the LDR treatment standards. 40 CFR 266.23. The exemption was premised on findings that hazardous wastes would meet requirements reflecting rigorous treatment which typically destroys, removes, or immobilizes hazardous constituents to the limit of available technology. 53 FR at 31198, August 17, 1988. In order to ascertain whether this exemption is still justifiable for wastes which receive treatment variances on the ground that the treatment standard is inappropriate, EPA is noting that as part of a determination of whether threats are minimized under the circumstances, consideration should be given to whether this exemption should continue to apply.[5] This would entail a fact-specific determination, and notice as to how the determination might be made would have to accompany each such treatment variance. For example, in situations where the decision-maker determines that use of a product derived from hazardous waste in a manner constituting disposal would likely not be adequately protective even if that hazardous waste derived product complied with an alternative land disposal treatment standard established through a treatment variance, the treatment variance approval could include a condition that restricted use of the treated hazardous waste in a manner constituting disposal.

EPA also notes that the Subpart CC rules, relating to control of air emissions from tanks, containers, and surface impoundments managing hazardous waste, state that if a waste has met the LDR treatment standard set out in 40 CFR 268.40 (the generally-applicable treatment standards, normally the Universal Treatment Standards), the waste is not subject to further Subpart CC controls.[6] See 40 CFR 264.1082 (c) (4) and 265.1082 (c) (4)) and 61 FR at 59941, November 25, 1996. The limitation to wastes that have achieved the generally-applicable treatment standard in fact means that the exemption is unavailable to wastes receiving treatment variances that alter the generally-applicable standards for organic hazardous constituents. EPA is confirming here that this literal reading is intentional.

III. Responses to Comment

Most comments supported the Agency's proposal, or suggested that there was no need to clarify the standard in the existing rule. The main negative comment came from the Environmental Defense Fund, raising a number of points.

First, the commenter argued that the Agency's own closure rules for impoundments create the environmentally adverse incentive to leave wastes in place and thus create the dilemma to adopt alternative treatment standards. The comment urges

[5] As EPA explained in the May 12, 1997, **Federal Register** notice, however, remediation activities involving replacement of treated soils or other wastes onto the land is not a type of use constituting disposal. The activity is a type of supervised remediation, and is not the type of unsupervised recycling activity covered by the use constituting disposal provisions. 62 FR at 26063, May 12, 1997.

[6] It should be noted that the Subpart CC standards do not apply to waste management units used solely for on-site treatment or storage of hazardous waste that is generated as the result of remedial activities required by RCRA corrective action authorities, CERCLA authorities, or similar Federal or State authorities. See 40 CFR 264.1080 (b) (5) and 265.1080 (b) (5).

amendment of the closure standards for impoundments.

While it is correct that the closure rules for surface impoundments (and landfills) create more opportunities to close with wastes left in place than do closure standards for tanks, piles, containment buildings, and drip pads, EPA did not, and is not, reopening any of the closure standards in this proceeding.[7] In developing the standards for closure of surface impoundments, EPA allowed the option of leaving wastes in place because of the practical difficulties of removing large volumes of waste from impoundments, many of which had been operating over long periods of time, and the recognition that, when properly capped, some former surface impoundments can safely contain wastes during and after post-closure care. 47 FR at 32320 and 32321, July 26, 1982. EPA also required, in the closure performance standards, that releases must be minimized or controlled at units where waste is left in place. 47 FR at 32320 and 32321, July 26, 1982. In situations where such minimization or control is not achievable, the closure performance standard would not be met and closure with waste in place would not be available under the regulations. In these respects, EPA's closure regulations for surface impoundments are identical to those for landfills, where waste is purposefully disposed of in the land-based units. EPA is re-evaluating the relationship between requirements for closure of regulated units, including surface impoundments, and requirements for RCRA corrective action and will take this comment under consideration during the re-evaluation. In the meantime, the Agency nevertheless intends to act now in order to assure that the treatment variance option continues to provide a potential intermediate alternative between full removal of waste followed by treatment to the extent of best demonstrated technology on the one hand and no waste removal at all on the other.

Second, the commenter argued that the circumstances under which treatment variances could be approved based on the ''inappropriate'' standard were not adequately defined. The commenter then went on to note that most of the situations in which the Agency contemplated using the ''inappropriate'' standard occurred in the remediation setting and suggested that the Agency either wait until completion of the ongoing rulemaking relating to management of contaminated environmental media, or limit the scope of the variance to remediation situations.[8]

EPA has addressed the comments regarding the specificity of the ''inappropriate'' standard by adding clarifying language, based on discussion in May 12, 1997 proposal, to the final regulations as discussed above. Regarding the second part of this comment, EPA does not believe it should await the outcome of the HWIR-Media proceeding to finalize the clarifying amendment to the treatment variance rules. EPA also notes that nothing in this rule forecloses any of the actions proposed in the HWIR Media proposal, including further definition of situations where treatment variances are appropriate—for example, codification of the type of ''minimize threat'' variance determination discussed in the HWIR-Media proposal. 61 FR at 18810–18812, April 29, 1996. The Agency is continuing to evaluate and review comments on this part of the HWIR-Media proposal.

The Agency is persuaded by the commenter's observation regarding use of treatment variances in the context of remediation. Accordingly, in response to this comment, EPA has chosen to expressly limit approval of treatment variances using the ''environmentally inappropriate'' test to remediation wastes. In this context, remediation waste includes all solid and hazardous wastes and all media (including groundwater, surface water, soils and sediments) and debris, which contain listed hazardous waste or which themselves exhibit a hazardous waste characteristic when such wastes are generated during remediation, such as RCRA corrective action, CERCLA cleanup, and cleanup under a state program. This definition is consistent with the existing definition of remediation waste in 40 CFR 260.10 except that it is not limited to wastes generated for purposes of corrective action under 40 CFR 264.101 or RCRA Section 3008(h). Since site-specific land disposal restriction treatment variances will undergo review and approval by either EPA or an authorized state, EPA does not believe it is necessary to limit the eligible wastes to corrective action cleanups.

Finally, the commenter went on to argue that the open-ended proposal effectively reopened the question of whether site-specific treatment variances (40 CFR 268.44 (h)) could be issued without going through notice-and-comment rulemaking, the argument being that each such variance would establish a new criterion for what ''not appropriate'' means.

Site-specific treatment variances can be granted without using rulemaking procedures. 53 FR at 31199–31200, August 17, 1988. EPA did not reopen this issue in this proceeding, which just is adopting clarifying amendments which reflect EPA's longstanding practice and interpretation of the treatment variance rules. 62 FR at 26059, May 12, 1997. However, to ensure there is no ambiguity over the application of treatment variances, EPA is restoring language to 268.44(h) indicating that the alternative LDR treatment standards established through the treatment variance process are site-specific. This language has always been part of 268.44(h) and was inadvertently omitted in the proposal of this clarifying rule. In any case, the amendment adopted today contains explicit qualifying language so that whatever basis, if any, existed for the commenter's argument is no longer present.

The same commenter, in oral conversations with Agency officials as well as in public comments, maintained the importance of allowing opportunity for public participation whenever a site-specific treatment variance is being considered. These opportunities are already provided. The Agency stated in 1988, when adopting 40 CFR 268. 44(h), ''[t]he Agency agrees as a matter of policy to allow opportunity for public notice and comment prior to granting a nonrulemaking variance from the treatment standard. Because circumstances under which one might apply for a site-specific variance vary, vehicles for public comment will be specified on a case-by-case basis.'' 53 FR at 31200, August 17, 1988. In response to this commenter's concerns, however, EPA has decided to indicate in the rule that opportunity for public participation must be provided when granting or denying any site-specific treatment variance. In doing so, the Agency is simply repeating in the rule what it wrote in the August 1988 preamble. The Agency does not view this step as creating a new regulatory requirement or altering existing practice and, by adding the August 1988 preamble language to the rule, is not intending to

[7] The rules for most regulated units in essence require clean closure, with wastes being allowed to be left in place only after a showing that wastes remaining after initial removal and decontamination cannot be practically removed or decontaminated. See e.g., closure standards for piles in 40 CFR 265.258. The closure rules for impoundments and landfills do not contain these provisions, but rather provide alternative standards for closing with wastes in place or for clean closure. See, e.g., 40 CFR 265.228.

[8] EPA proposed regulations addressing contaminated media at 61 FR 18780, April 29, 1996 and has not yet taken final action on this proposal.

reopen the issue (settled in 1988) of whether site-specific treatment variances can be approved or denied without going through rulemaking procedures.

IV. Withdrawal of Citgo Treatment Variance

EPA granted a treatment variance to Citgo Petroleum on October 28, 1996 for wastes presently disposed in a large surface impoundment awaiting closure. 61 FR 55718, October 28, 1996. Because the company had the legal option of closing the impoundment with waste in place (assuming the technical standards for such closure could be justified), and was virtually certain to pursue that option if treatment of the waste to the limit of best demonstrated technology was required, EPA found that it was an environmentally superior result to assure clean closure and partial treatment. *Id.* at 55721. The variance was in essence used as an incentive to assure aggressive clean closure and the associated waste treatment. EPA, as part of the May 12 notice, proposed to reissue the variance under the clarified regulatory standard. 62 FR at 26062–26061, May 12, 1997.

Since the variance was granted, Citgo has chosen to pursue the legal option of seeking to close the impoundment with waste left in place. Because of Citgo's decision, EPA believes there is no longer any basis for the Citgo treatment variance. If the company's application for closure in place is granted, the variance is moot. If the application is not granted, then the company will have to clean close the impoundment and it will not be necessary to use the variance to create a voluntary incentive for them to do so. Thus, in either case, the basis for granting the variance no longer exists. Accordingly, EPA is withdrawing the Citgo treatment variance in today's Notice. Citgo is aware of the Agency's thinking, has discussed the issue with EPA, and agrees not to oppose withdrawal of the variance.

V. State Authorization

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Today's rule is being promulgated pursuant to section 3004(m) of RCRA (42 U.S.C. 6924(m)), a provision added by HSWA.[9] Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

EPA originally indicated that states could not be authorized to review and approve national treatment variances pursuant to 40 CFR 268.44(a) because such variances could result in nationally-applicable standards for a new waste treatability group. 52 FR at 25783, July 8, 1987. In the HWIR-Media proposal, EPA clarified that states could seek authorization to review and approve site-specific treatment variances pursuant to 40 CFR 268.44(h). 61 FR at 18828, April 29, 1996.

The site-specific variance provision is less stringent than the generally applicable LDR program (i.e., the underlying treatment standard from which a variance is sought). Since today's final rule clarifies the existing regulations, for authorization purposes it is considered as stringent as, but no more stringent than the existing site-specific variance regulations. Thus, states are not required to adopt regulations equivalent to 268.44(h) either in its current form or in the clarified form promulgated today. Although States are not required to adopt regulations for site-specific LDR treatment variances, EPA strongly encourages States to adopt and become authorized for the clarified standards established today and is committed to expediting the state authorization process for this rule. In the meantime, EPA will continue to review and approve (as appropriate) treatment variance applications in all States.

VI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that ''is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create 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; 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.''

The Agency considers today's final rule to be nonsignificant as defined by the Executive Order and therefore not subject to the requirement that a regulatory impact analysis has to be prepared. Today's rule clarifies and codifies, in regulatory language, existing EPA standards for the application of a treatability variance where the treatment standard is not appropriate for the restricted waste subject to the standard. Thus, because today's rule clarifies and codifies existing EPA interpretation of the treatability variance provision, no incremental costs are associated with this rulemaking.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 [SBREFA]) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

EPA has codified regulatory language in today's rule that petitioners of restricted wastes that wish to obtain a treatment variance do not have to show technical infeasibility when the treatment technology is not appropriate to the waste. This regulatory language clarifies long standing and current Agency interpretation of the 268.44 that the two tests of technical infeasibility and inappropriateness are independent.

[9] Under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed to carry out these requirements and prohibitions in all states, including the issuance of permits, until the state is granted authorization to do so.

(See above discussion and 61 FR 55718 at 55720–21, October 28, 1996; 53 FR at 31200, August 17, 1988; 55 FR 8666 and 8760, March 8, 1990; 61 FR 18780 and 18811, April 29, 1996.) Because this regulatory language codifies existing EPA interpretation of current regulations, it imposes no costs or economic impacts on small entities applying for treatability variances.

Because this clarification does not impose an adverse economic impact to any small entity that is either generator of restricted waste or an owner/operator of a treatment, storage or disposal facility managing such waste that is petitioning the Agency for a variance from the treatment standard, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

Because this regulatory language codifies current EPA interpretation of existing treatability variance language and thus imposes no costs, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. As stated above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 1, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended to revise paragraphs (a) and (h), add paragraph (m), and remove paragraph (p) as follows:

§ 268.44 Variance from a treatment standard.

(a) Based on a petition filed by a generator or treater of hazardous waste, the Administrator may approve a variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

*   *   *   *   *

(h) Based on a petition filed by a generator or treater of hazardous waste, the Administrator or his or her delegated representative may approve a site-specific variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(3) Public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.

*   *   *   *   *

(m) For all variances, the petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, EPA may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal pursuant to 40 CFR 266.20 through 266.23.

*   *   *   *   *

[FR Doc. 97–31914 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 62, No. 234

Friday, December 5, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

E-mail **info@fedreg.nara.gov**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 5, 1997

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
  Fuels and fuel additives—
    Gasoline deposit control additives; transferred gasoline; oxygenate content identification requirement removed; published 11-6-97
Air quality implementation plans; approval and promulgation; various States:
  Connecticut; published 10-6-97
Hazardous waste:
  Land disposal restrictions—
    Metal wastes and mineral processing wastes treatment standards, etc.; clarification; published 12-5-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  Fluorine compounds; published 12-5-97
  Maleic hydrazide; published 12-5-97

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:
  Private land mobile services—
    Automatic vehicle monitoring systems; published 10-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
  Emergency assistance, job opportunities and basic skills training, child care programs, etc.; regulations removed; published 12-5-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
  Home health agency physician certification regulations; published 11-5-97

INTERIOR DEPARTMENT

Land Management Bureau

Patent preparation and issuance; CFR subpart removed; published 11-5-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
  Callippe silverspot butterfly, etc.; published 12-5-97

LIBRARY OF CONGRESS

Special research facilities assignment; published 12-5-97

NATIONAL CREDIT UNION ADMINISTRATION

Organization and operations:
  Procedural rulings, notation voting, Board meetings, and agenda; clarification; published 12-5-97

POSTAL SERVICE

Freedom of Information Act; implementation:; published 12-5-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:
  Aged, blind, and disabled—
    U.S. residency, definition; religious record of birth or baptism as evidence of citizenship, etc.; published 11-5-97

TRANSPORTATION DEPARTMENT

Coast Guard

Vessels; small passenger vessel inspection and certification
  Correction; published 12-5-97

TRANSPORTATION DEPARTMENT

Computer reservation systems; carrier-owned:
  Contract clauses barring carriers from choosing participation level; adoption and enforcement; prohibition subject to exception; published 11-5-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
  Airbus; published 10-31-97
  Allied Signal, Inc.; published 12-5-97
  Avions Pierre Robin; published 11-13-97
  Dornier; published 10-29-97
  Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.; published 10-29-97
  Partenavia Costruzioni Aeronauticas, S.p.A; published 10-29-97
  Pilatus Aircraft, Ltd.; published 10-29-97
  Raytheon; published 10-31-97
  SIAI Marchetti, S.r.l.; published 10-29-97

TREASURY DEPARTMENT

Community Development Financial Institutions Fund

Bank enterprise award program; published 12-5-97

RULES GOING INTO EFFECT DECEMBER 6, 1997

OFFICE PERSONNEL MANAGEMENT

Family and medical leave; published 12-5-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:
  Peanuts; comments due by 12-9-97; published 12-2-97
Program regulations:
  Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
  Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
  Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
  Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
  Alaska; fisheries of Exclusive Economic Zone—
    IFQ survivorship transfer provisions; modification; comments due by 12-8-97; published 11-6-97
    Scallop; comments due by 12-9-97; published 11-24-97
  Caribbean, Gulf, and South Atlantic fisheries—
    Gulf of Mexico reef fish; comments due by 12-8-97; published 10-23-97
  Northeastern United States fisheries—
    Northeast multispecies; comments due by 12-12-97; published 11-12-97

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
  Practice rules; trademark trial and appeal board proceedings; comments due by 12-10-97; published 11-4-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
  Ohio; comments due by 12-10-97; published 8-12-97
  Pennsylvania; correction; comments due by 12-8-97; published 11-6-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  Glyphosate oxidoreductase; comments due by 12-8-97; published 10-8-97
Superfund program:
  National oil and hazardous substances contingency plan—
    National priorities list update; comments due by 12-8-97; published 11-6-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
  North American Numbering Plan administration—
    Carrier identification codes; comments due by 12-8-97; published 10-29-97

Common carriers:
Telecommunications carrier interceptions; comments due by 12-12-97; published 11-28-97
Television broadcasting:
Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation; comments due by 12-9-97; published 11-6-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Insured State banks and savings associations; activities; comments due by 12-11-97; published 9-12-97

FEDERAL ELECTION COMMISSION
Rulemaking petitions:
Bopp, James, Jr.; comments due by 12-8-97; published 11-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement program:
Quarterly wage and unemployment compensations claims reporting to National Directory of New Hires; comments due by 12-8-97; published 10-7-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Replacement housing factor in modernization funding; comments due by 12-9-97; published 9-10-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Illinois Cave amphipod; comments due by 12-8-97; published 10-9-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
Comprehensive Methamphetamine Control Act of 1996; implementation:
Pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products; transaction reporting requirements; comments due by 12-8-97; published 10-7-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Longshoring and marine terminals; piggybacking of two containers using twist locks; comments due by 12-8-97; published 10-9-97

OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Freedom of Information Act; implementation; comments due by 12-8-97; published 10-9-97

POSTAL SERVICE
Domestic Mail Manual:
Perishable contents; ancillary service endorsements; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
BellSouth Winterfest Boat Parade; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned; comments due by 12-9-97; published 10-30-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-8-97; published 11-6-97
Avions Pierre Robin; comments due by 12-8-97; published 11-7-97
Dornier; comments due by 12-8-97; published 11-7-97
Eurocopter Deutschland GmbH; comments due by 12-8-97; published 10-9-97
EXTRA Flugzeugbau GmbH; comments due by 12-8-97; published 11-5-97
HOAC Austria; comments due by 12-8-97; published 11-7-97
MT-Propeller Entwicklung GMBH; comments due by 12-8-97; published 10-7-97
Saab; comments due by 12-8-97; published 11-7-97
Teledyne Continental Motors; comments due by 12-9-97; published 10-10-97
Class E airspace; comments due by 12-8-97; published 11-6-97

TREASURY DEPARTMENT
Customs Service
Organization and functions; field oranization, ports of entry, etc.:
Orlando-Sanford Airport, FL; port of entry; comments due by 12-8-97; published 11-7-97

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Exemptions from currency transactions reporting; comments due by 12-8-97; published 9-8-97

VETERANS AFFAIRS DEPARTMENT
Health care professionals; reporting to State licensing boards; policy; comments due by 12-8-97; published 10-8-97
Loan guaranty:
Refinancing loans; interest rate reduction requirements; comments due by 12-8-97; published 10-8-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1254/P.L. 105–131
To designate the United States Post Office building located at 1919 West Bennett Street in Springfield, Missouri, as the ''John N. Griesemer Post Office Building''. (Dec. 2, 1997; 111 Stat. 2562)

S. 156/P.L. 105–132
Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Dec. 2, 1997; 111 Stat. 2563)

S. 476/P.L. 105–133
To provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000. (Dec. 2, 1997; 111 Stat. 2568)

S. 738/P.L. 105–134
Amtrak Reform and Accountability Act of 1997 (Dec. 2, 1997; 111 Stat. 2570)

S. 1139/P.L. 105–135
Small Business Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2592)

S. 1161/P.L. 105–136
To amend the Immigration and Nationality Act to authorize appropriations for refugee and entrant assistance for fiscal years 1998 and 1999. (Dec. 2, 1997; 111 Stat. 2639)

S. 1193/P.L. 105–137
Aviation Insurance Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2640)

S. 1559/P.L. 105–138
To provide for the design, construction, furnishing, and equipping of a Center for Historically Black Heritage within Florida A&M University. (Dec. 2, 1997; 111 Stat. 2642)

S. 1565/P.L. 105–139
To make technical corrections to the Nicaraguan Adjustment and Central American Relief Act. (Dec. 2, 1997; 111 Stat. 2644)

S.J. Res. 39/P.L. 105–140
To provide for the convening of the Second Session of the One Hundred Fifth Congress. (Dec. 2, 1997; 111 Stat. 2646)

Last List December 4, 1997