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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1962, 1965, and 1980

RIN 0560–AE92

Subordination of Direct Loan Basic Security To Secure a Guaranteed Line of Credit

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule revises Farm Service Agency (FSA) regulations regarding loan security servicing in two ways that are intended to increase the use of subordinations to move direct farm loan program borrowers to the private sector. First, the Agency will allow subordinations of direct loan basic chattel and real estate security if necessary to secure a guaranteed operating line of credit. Second, this rule revises FSA farm loan regulations to allow subordination of Agency loan security so another lender may refinance a borrower's debt. This change is needed because recent legislation places restrictions on the uses of direct loans for refinancing.

EFFECTIVE DATE: The effective date of this rule is May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, United States Department of Agriculture, Farm Service Agency, Farm Loan Programs Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250–0523. Telephone (202) 690–4012. Electronic mail: pelder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under E.O. 12866 and was determined to be not significant.

Executive Order 12372

1. For the reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with state and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O. 12372.

Federal Assistance Program

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

It is the determination of the issuing agency that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not involve a new or expanded program and new provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Although it is the intent of this rule to move direct loans to guaranteed loans, participation is voluntary and requires no action on the part of small entities. Large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to 7 CFR parts 1962, 1965 and 1980 set forth in this final rule require no revisions to the information collection requirements that were previously approved by OMB under the provisions of 44 U.S.C. chapter 35. A proposed rule containing an estimate of the burden impact of this rule was published on September 9, 1997 [62 FR 47384, 47385]. No comments on the burden estimate were received.

Discussion of Comments Received

The Agency received comments on the proposed rule (62 FR 47384–47388) from five parties, including FSA employees, employee organizations, a commercial bank, and the American Banker's Association. All comments received were in support of the

proposed changes and recommended their adoption with a few clarifications.

Two commenters suggested clarification of the excess security requirement proposed for § 1980.108(a)(1)(vi)(A) or removal of the requirement entirely. This comment was seriously considered but not adopted. The Agency proposed to change its regulations to allow a combination guaranteed loan and subordination of direct loan security because lenders in selected areas of the country were reluctant to provide farmers with a line of credit secured only by planned crop production, even when the loan was 90 percent guaranteed against loss by the government. We understand from industry advocates that this reluctance is due to the large annual fluctuations in crop income experienced in those areas. Because the risk of loss on these lines of credit is inordinately large, as evidenced by the policies of the local lenders, the Agency felt it was necessary to restrict these combination subordination and guarantees to those direct loan borrowers whose loans are well secured in order to protect the Government's interest. However, the Agency has clarified this paragraph to require that the total unpaid balance of the direct loan be less than or equal to 75 percent of the value of the security for the direct loan, excluding the value of growing crops and planned production at the time of the subordination. The Agency also clarified that a lender making the subject guaranteed loan is responsible for obtaining any appraisals necessary to document compliance with this provision.

Two commenters also indicated confusion about proposed § 1962.30(a)(3) and questioned the need for a separate provision for a subordination to purchase crop insurance. The Agency agrees. Since § 1962.30(a)(2) allows a subordination for any authorized direct loan purpose and the payment of crop insurance premiums is an allowable use of direct operating loan funds, the Agency agrees that paragraph (a)(3) was redundant and has removed it accordingly.

Another commenter pointed out that proposed § 1965.12 needed to be clarified as to the allowable uses of Single Family Housing (SFH) loan funds. Since the proposed rule was drafted, the Rural Housing Service (RHS) promulgated new program regulations and is no longer covered by part 1965, subpart A. Since FSA employees are not responsible for servicing RHS loans, § 1965.12(a)(9) has been removed. This regulation still allows a subordination to be made for the purpose of improving a farm residence in some instances under § 1965.12(a)(1) as an authorized direct loan purpose. FSA will consider RHS debt with regard to subordinations as it would any other lien.

The fourth comment received suggested that subordinations of direct loan basic real estate security to secure a guaranteed line of credit should be prohibited or very rare. This rule is being issued specifically to allow subordinations of real estate to secure a guaranteed loan. Regardless, the limitations included in § 1980.108(a) will allow subordinations of direct loan basic security in only those cases where the likelihood of a Government loss on the direct loan is small.

One commenter requested that the rule be revised to not require that the Agency loan be secured after the subordination, but rather to allow a subordination as long as the Agency's position is not damaged. This comment was not adopted. The condition mentioned by the commenter was not added as part of the proposed rule. Section 1965.12(a)(9) provides that the Agency loan must still be adequately secured after the subordination, or the value of the security will be increased by at least the amount of advances made under the subordination. Also, this requirement will not overly restrict the Agency's ability to make subordinations under the authorities provided in this rule.

Another commenter suggested that the Agency require a formal application for a subordination. The Agency currently requires borrowers to submit a ''Request for Subordination, Release or Consent,'' to be considered for a subordination. Therefore, this comment was not adopted. However, the Agency agrees with the concerns of the commenter that subordinations are not sufficiently recorded or monitored. The Agency is exploring methods to improve its data on subordinations and expects its internal records system to be revised soon.

Finally, a commenter suggested that the county committee not be required to make recommendations regarding subordinations. Proposed § 1965.12(a)(10) required, ''When the subordination will be used to acquire land, the FSA county committee has made a favorable recommendation.'' We agree with the commenter that county committee concurrence with this loan servicing action is not necessary; therefore, this provision has been removed.

In addition to these changes, the Agency has made several administrative changes to the proposed rule. First, the Agency has determined that in some instances an Agency subordination to allow the borrower to obtain a loan from the Rural Housing Service or the Commodity Credit Corporation may be prudent. Accordingly, the Agency has removed proposed § 1962.30(b)(6) which prohibited subordinations to other USDA Agencies. The Agency will treat USDA agencies like other Federal Agencies for subordination purposes.

Second, the Agency has removed proposed § 1965.12(a)(3). This section conditioned a subordination on it furthering the purpose of the loan. A subordination is limited to eligible loan purposes; thus, this provision was redundant. Taken together with the other conditions under § 1962.30 or 1965.12, any eligible loan purpose would further the objectives of the loan.

Third, proposed § 1965.12(a)(4) has been removed. The provision required FSA to obtain as security an assignment of the beneficial interest of any stock required in connection with a loan. This requirement was included in previous versions of this regulation because Farm Credit System (FCS) institutions required that a borrower purchase stock in the local association. Agency experience indicates that the assignment is unnecessary. The Farm Credit Administration (FCA) requires a minimum purchase of $1,000 or 1 percent of the loan amount. Local associations may require up to 5 percent of the loan amount, but most associations are requiring only the minimum stock purchase of $1,000. Consequently, the value of cooperative stock is negligible and does not impact the Agency's decision to grant a subordination. Besides, the treatment of the stock has no effect since it is invariably applied to the FCS loan when it is paid in full. Proceeds from the liquidation of a beneficial interest in a cooperative generally have not been applied to an Agency loan as a result of this requirement.

Fourth, proposed § 1965.12(e) has been added to clarify the appraisal requirements for a real estate security subordination.

Fifth, paragraphs (b)(6) and (7) and (e) and (f) were added to section 1962.30 to make the chattel provisions consistent with the real estate provisions in section 1965.12. Section 1962.20(f) requires a chattel appraisal if the existing appraisal is more than 2 years old or inadequate for the FSA official to make a subordination determination under that section. The 2 year standard is consistent with current chattel appraisal requirements under § 1941.25. Paragraphs (a)(10) and (11) were added

to section 1965.12 to make it consistent with section 1962.30.

Sixth, section 1962.30(b)(2) was clarified and 1965.12(a)(10) was added to clarify that a subordination is provided to secure a specific loan to be made and that the loan is to be made as soon as practical after the subordination is granted. This change will clarify that a subordination is approved only for a limited period. This limitation is on the subordination form but is not currently contained in the regulation.

Seventh, section 1980.108(a)(1)(iii) was revised to delete subordination provisions now covered by paragraph (a)(1)(v) of that section. The revision was inadvertently omitted from the proposed rule.

Finally, the Agency has revised proposed § 1980.108(a)(1)(v) to clarify that the conditions contained in §§ 1962.30 and 1965.12 as appropriate apply when the Agency subordinates its security interest in direct loan security when a guaranteed loan is being made. This change was made to allow removal of duplicative conditions under the guaranteed loan provision. Proposed § 1980.108 (a)(1)(vi)(K) has been removed as unnecessary because the notification requirements of §§ 1980.145 and 1980.146 of the same subpart require specific lender actions when a guaranteed loan becomes delinquent.

List of Subjects

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Real property—Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1980

General—Agriculture, Loan programs—Agriculture, EM.

Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.30 is revised to read as follows:

§ 1962.30 Subordination and waiver of liens on chattel security.

(a) *Purposes.* Subject to the limitations set out in paragraph (b) of this section, the Agency chattel liens may be subordinated to a lien of another creditor in either of the following situations:

(1) The prior lien will soon mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced. The relative lien position of the Agency must be maintained; and

(2) The subordination will permit another creditor to refinance other debt or lend for an authorized direct loan purpose.

(b) *Conditions.* Agency chattel liens may be subordinated to a lien of another creditor if all of the following conditions are met:

(1) If the lien is on basic chattel security, the amount of subordination is necessary to provide the lender with the security it requires to make the loan;

(2) Approval of a subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time;

(3) Only one subordination to one creditor may be outstanding at any one time in connection with the same security;

(4) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower'' for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. ''Controlled substance'' is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(5) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(6) The borrower can document the ability to repay the total amount due under the subordination and pay all other debt payments scheduled for the subject operating cycle; and

(7) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination.

(c) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations on chattel security to make a guaranteed loan will be approved in accordance with § 1980.108 of subpart B of part 1980 of this chapter.

(d) *Forms.* Subordinations will be requested and executed on Agency forms available in any Agency office or on any other form approved by the Agency.

(e) *Rescheduling of existing Agency debts.* The Agency may consent to rescheduling of an existing Agency debt when a subordination is granted to the debt of another lender. The rescheduling will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of subpart S of part 1951 of this chapter are met.

(f) *Appraisal.* The Agency will prepare a chattel appraisal report when the existing appraisal report is more than 2 years old or is inadequate to make the determination in this section. The Agency may use an appraisal submitted by the borrower if it is substantially similar to Form RD 440–21, ''Appraisal of Chattel Property,'' and prepared by a licensed appraiser.

PART 1965—REAL PROPERTY

3. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989 and 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

4. Section 1965.12 is revised to read as follows:

§ 1965.12 Subordination of an Agency mortgage.

(a) *Conditions.* A subordination may be granted if all of the following conditions are met:

(1) The subordination is to refinance debt or for an authorized direct loan purpose;

(2) The Agency debt cannot be refinanced without a subordination;

(3) The borrower can document the ability to repay the total amount due under subordination and pay all other debt payments scheduled for the subject operating cycle;

(4) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(5) Any planned development is performed in a manner directed by the creditor and agreed to by the Agency and reasonably attains the objectives of subpart A of part 1924 of this chapter;

(6) Funds to be used to develop or to acquire land will be deposited in a supervised bank account that is subject to signature by the Agency and the borrower, or in a similar arrangement, to ensure that funds will be spent for the planned purposes;

(7) In cases of land purchase or exchange of property, the Agency will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate;

(8) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower'' for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. ''Controlled substance'' is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(9) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination;

(10) The subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time; and

(11) Only one subordination to one creditor may be outstanding at any one time in connection with the same security.

(b) *Subordination on real estate owned by an entity member.* Notwithstanding the provisions of paragraph (a) of this section, when the borrower is an entity and the Agency has taken real estate as additional security on property owned by an entity member, a subordination for any authorized Farm Loan Programs loan purpose may be approved when it is needed for the entity member to finance a separate operation. The subordination, however, may be approved only if it does not cause the unpaid principal and accrued interest balance of the Agency loan to exceed the value of the loan security or otherwise adversely affect the security.

(c) *Request for subordination.* A borrower must complete an application provided by the Agency to receive consideration for a subordination.

(d) *Notice of foreclosure.* The lienholder requesting the subordination will agree to give notice of foreclosure as required by the Agency.

(e) *Appraisal.* The Agency will prepare a current appraisal report in accordance with part 1922, subpart E, of this chapter when property is to be purchased or exchanged, or when the existing appraisal report is more than 1 year old or is inadequate to make the determination required in this section. The Agency may use the appraisal report prepared for another lender if it complies with the requirements of subpart E of part 1922 of this chapter.

(f) *Reamortizing existing Agency debts.* The Agency may consent to a reamortization of an existing Agency debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of subpart S of part 1951 of this chapter are met.

(g) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations of liens on real estate security to make a guaranteed loan will be approved in accordance with § 1980.108 of this chapter.

PART 1980—GENERAL

5. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989 and 42 U.S.C. 1480

Subpart B—Farmer Programs Loans

6. Section 1980.108 is amended to add paragraphs (a)(1)(v) and (a)(1)(vi), and to revise paragraphs (a)(1)(iii) and (d) to read as follows:

§ 1980.108 General provisions.

(a) * * *

(1) * * *

(iii) When the Agency and the lender are involved in separate loans to the same borrower, separate collateral must be clearly identified for both the Agency's loan and the lender's loan. Different lien positions on real estate are considered separate collateral.

* * * * *

(v) The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if the requirements of § 1962.30 or § 1965.12 of this chapter, as appropriate, are met and only in any the following circumstances:

(A) To permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, or livestock products, (milk, eggs, wool, etc.);

(B) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring;

(C) When the lender requesting the guarantee is refinancing the debt of another lender, and the Agency's position on real estate security will not be adversely affected; or

(D) To permit a Contract of Guarantee—Line of Credit to be advanced for annual operating needs in accordance with § 1980.175(c)(2).

(vi) The Agency may subordinate its security in a direct loan under paragraph (a)(1)(v)(D) of this section only when both of the following additional conditions are met:

(A) The total unpaid balance of the direct loan is less than or equal to 75 percent of the value of the security for the direct loan, excluding the value of growing crops or planned production, at the time of the subordination. This direct loan security value shall be determined by an appraisal that complies with subpart E of part 1922 of this chapter. This appraisal will be provided by the lender requesting the guarantee. The lender may charge the applicant a reasonable fee for the appraisal.

(B) The applicant cannot obtain sufficient credit through a conventional guaranteed loan.

* * * * *

(d) *Relationship between Agency loans, direct and guaranteed.* A guaranteed FO or OL loan may be made to an insured borrower with the same type of direct loan provided:

(1) The outstanding combined direct and guaranteed FO or OL principal balance owed by the loan applicant or owed by anyone who will sign the note as cosigner may not exceed the authorized guaranteed loan limit for that type of loan; and

(2) Chattel and real estate collateral must be separate and identifiable so as to be discernible from the collateral pledged to the Agency for a direct loan. Different lien positions on real estate are considered separate and identifiable collateral.

7. Section 1980.175 is amended to add paragraph (h)(3) as follows:

§ 1980.175 Operating loans.

* * * * *

(h) * * *

(3) Subject to the requirements of this section, the Agency may approve a Contract of Guarantee for a line of credit to be secured by basic chattel or real estate security in which the Agency has subordinated its lien position in accordance with § 1980.108.

* * * * *

Signed in Washington, D.C., on April 10, 1998.

August Schumacher, Jr.,

Under Secretary, Farm and Foreign Agricultural Services.

Dated: April 10, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–10902 Filed 4–23–98; 8:45 am]

BILLING CODE 3410–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–263–AD; Amendment 39–10483; AD 98–09–04]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires a one-time high frequency eddy current inspection to detect cracking of the lower fuselage structure, and repair, if necessary. This amendment also requires modification of certain fastener holes in the lower fuselage structure. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the airplane due to fatigue cracking in the lower fuselage structure.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on February 5, 1998 (63 FR 5900). That action proposed to require a one-time high frequency eddy current inspection to detect cracking of the lower fuselage structure, and repair, if necessary. That action also proposed to require modification of certain fastener holes in the lower fuselage structure.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1022 will take approximately 80 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and required by this AD is estimated to be $4,800 per airplane.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1034 will take approximately 65 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and required by this AD is estimated to be $3,900 per airplane.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1053 will take approximately 65 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and required by this AD is estimated to be $3,900 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–04 Aerospatiale: Amendment 39–10483. Docket 97–NM–263–AD.

Applicability: Model ATR72 series airplanes on which Aerospatiale Modification 2879 or Modification 2628 has not been incorporated, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane due to fatigue cracking in the lower fuselage structure, accomplish the following:

(a) Prior to the accumulation of 17,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Except as provided in paragraph (b) of this AD, perform a one-time high frequency eddy current inspection to detect fatigue cracking around the fastener holes in the lower fuselage structure in the area of the side brace fitting near frame 25 on the left- and right-hand sides, and modify crack-free fastener holes, as required by paragraph (a)(1) and/or (a)(2) of this AD, as applicable.

(1) For airplanes on which Aerospatiale Modification 2879 has not been installed: Perform the inspection and modification in accordance with Aerospatiale Service Bulletin ATR72–53–1022, Revision 2, dated February 20, 1995.

(2) For airplanes on which Aerospatiale Modification 2628 has not been installed: Perform the inspection and modifications in accordance with Aerospatiale Service Bulletins ATR72–53–1034, Revision 1, and ATR72–53–1053, Revision 1, both dated March 28, 1995.

(b) If any crack or oversize hole is found during the accomplishment of paragraph (a) of this AD, and if any service bulletin listed in paragraph (a) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair the discrepancy in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The actions shall be done in accordance with the following Aerospatiale service bulletins, which contain the following list of effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
ATR72–53–1034, Revision 1, March 28, 1995	1, 7, 9, 11–17, 20, 21, 23–25, 29, 30	1	March 28, 1995.
	2–6, 8, 10, 18, 19, 22, 26–28	Original	November 4, 1994.
ATR72–53–1022, Revision 2, February 20, 1995	1, 11, 12, 16	2	February 20, 1995.
	2	1	November 10, 1994.
	3–10, 13–15, 17–24	Original	July 29, 1994.
ATR72–53–1053, Revision 1, March 28, 1995	1, 6–8, 16, 19	1	March 28, 1995.
	2–5, 9–15, 17, 18, 20	Original	November 7, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 94–191–022(B), dated August 17, 1994.

(f) This amendment becomes effective on May 29, 1998.

Issued in Renton, Washington, on April 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10478 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–226–AD; Amendment 39–10484; AD 98–09–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive inspections to detect corrosion of the brake hydraulic accumulators in the vicinity of the mounting straps; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion of the brake hydraulic accumulators, which could lead to loss of hydraulic pressure and consequent loss of braking capability of the airplane.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be

examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on February 10, 1998 (63 FR 6682). That action proposed to require repetitive inspections to detect corrosion of the brake hydraulic accumulators in the vicinity of the mounting straps; and corrective actions, if necessary.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–05 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10484. Docket 97–NM–226–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, equipped with brake hydraulic accumulators having APPH part number AIR 87342; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the brake hydraulic accumulators, which could lead to loss of hydraulic pressure and consequent loss of braking capability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform an inspection of the brake hydraulic accumulators for corrosion, in accordance with British Aerospace Service Bulletin ATP–32–80, Revision 1, dated July 9, 1997. If any discrepancy is found, prior to further flight, accomplish corrective actions, as applicable, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 2 years.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–32–80, Revision 1, dated July 9, 1997, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	1	July 9, 1997.
2, 4–7	Original	June 19, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–06–97 (undated).

(e) This amendment becomes effective on May 29, 1998.

Issued in Renton, Washington, on April 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10479 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–135–AD; Amendment 39–10485; AD 98–09–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires an inspection to determine the serviceability of the fire extinguisher of the forward lavatory waste bin, and corrective actions, if necessary. This amendment also requires installation of a placard adjacent to the fire extinguisher in the forward lavatory waste bin. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent leakage of the fire extinguishing agent, which could prevent proper distribution of the agent within the lavatory waste bin in the event of a fire.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on October 29, 1997 (62 FR 56137). That action proposed to require an inspection to determine the serviceability of the fire extinguisher of the forward lavatory waste bin, and corrective actions, if necessary. The action also proposed to require installation of a placard adjacent to the fire extinguisher in the forward lavatory waste bin.

Comments

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

The commenter supports the proposed AD. However, the commenter notes that unsafe condition addressed in this proposed AD may be more generally present in the transport airplane fleet, and proposes a number of requirements to address that problem:

—Since other installations with capillary tubes may be subject to the same type of failure, the suggests that some sort of protection from ''kinking'' of similar capillary tubes should be required.

—A feature should be added to the fire extinguisher bottle to enable more frequent inspection of lavatory fire extinguisher bottles and their contents.

—The fire bottle should be inspected in place for proper pressure at least every seven days and should be removed at least annually and weighed.

—Engine fire bottles that are low in pressure result in an indication to the flight crew; a similar indication may be needed for this installation.

—A pressure indicator on the fire bottle should be a required item; the commenter states that, currently, it has been removed on some airplanes.

The FAA acknowledges the concerns of the commenter. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are adequate in order to ensure the continued safety of the affected fleet. While there may be merit to the commenter's suggestions, this AD is not the appropriate context in which to evaluate those suggestions. Since the suggested changes would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 141 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,920, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–06 SAAB Aircraft AB: Amendment 39–10485. Docket 97–NM–135–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers –121, and –125 through –159 inclusive; and Model SAAB 340B series airplanes having serial numbers –160 through –360 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the fire extinguishing agent, which could prevent proper distribution of the agent within the lavatory waste bin in the event of a fire, accomplish the following:

(a) Within 3 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Saab Service Bulletin SAAB 340–25–235, dated December 11, 1996.

(1) Perform an inspection to determine the serviceability of the fire extinguisher in the forward lavatory waste bin, in accordance with the service bulletin. If any discrepancy is found, prior to further flight, accomplish the repair or replacement of the fire extinguisher, as specified in the service bulletin.

(2) Install a placard adjacent to the fire extinguisher in the forward lavatory waste bin in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, international Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Saab Service Bulletin SAAB 340–25–235, dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed issued Swedish airworthiness directive SAD No. 1–106, dated December 12, 1996.

(e) This amendment becomes effective on May 29, 1998.

Issued in Renton, Washington, on April 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10482 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–186–AD; Amendment 39–10486; AD 98–09–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires a modification of the lapjoint below the chine line at certain fuselage stations. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on February 12, 1998 (63 FR 7078). That action proposed to require a modification of the lapjoint below the chine line at certain fuselage stations.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD.

It will take approximately 140 work hours per airplane to accomplish the required modification (specified as Part 1 in the referenced service bulletin), at an average labor rate of $60 per work

hour. The cost of required parts will be nominal. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $8,400 per airplane.

It will take approximately 300 work hours per airplane to accomplish the modification (specified as Part 2 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $18,000 per airplane.

It will take approximately 210 work hours per airplane to accomplish the modification (specified as Part 3 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $12,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–07 Fokker: Amendment 39–10486. Docket 96–NM–186–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10102 through 10375 inclusive, that are operated or have been operated at a maximum cabin pressure differential of 5.5 pounds per square inch (psi); certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin F27/53–68, dated July 4, 1966, or Revision 1, dated July 19, 1967, has not been accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 1400 and station 5050, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (b) of this AD constitute terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 Structural Inspection Program (SIP), as required by AD 96–13–07, amendment 39–9675.

(b) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 5050 and station 12975, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (a) of this AD constitute terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 SIP, as required by AD 96–13–07.

(c) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 56,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 12975 and station 16660, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of item 53–30–04 of the Fokker Model F27 SIP, as required by AD 96–13–07.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) The modifications shall be done in accordance with Fokker Service Bulletin F27/53–116, dated April 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 94–092 (A), dated May 25, 1994.

(g) This amendment becomes effective on May 29, 1998.

Issued in Renton, Washington, on April 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10481 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–337–AD; Amendment 39–10482; AD 98–09–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires a one-time, detailed visual inspection for discrepancies of the electrical bundles in the power generation compartment, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing and consequent damage to the electrical generation wires in the 101VU panel, which could result in a loss of electrical generation channels.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on February 9, 1998 (63 FR 6501). That action proposed to require a one-time, detailed visual inspection for discrepancies of the electrical bundles in the power generation compartment, and corrective actions, if necessary.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 94 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,280, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–03 Airbus: Amendment 39–10482. Docket 97–NM–337–AD.

Applicability: Model A310 and A300–600 series airplanes on which any of the following Airbus service bulletins (or earlier versions) has been accomplished: A310–24–2067, Revision 01, dated March 18, 1997; A310–24–2072, Revision 01, dated February 4, 1997; A300–24–6058, Revision 01, dated January 23, 1997; or A300–24–6064, Revision 01, dated February 4, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent damage to the electrical generation wires in the 101VU panel, which could result in a loss of electrical generation channels, accomplish the following:

(a) Within 400 flight hours or 60 days after the effective date of this AD, whichever

occurs first, perform a one-time, detailed visual inspection of the 101VU panel electrical bundles installation for any discrepancy, in accordance with Airbus All Operator Telex (AOT) 24–08, dated April 17, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 24–08, dated April 17, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–152–225(B), dated July 16, 1997.

(e) This amendment becomes effective on May 29, 1998.

Issued in Renton, Washington, on April 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10484 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–97–AD; Amendment 39–10488; AD 98–09–08]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R3000/160 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin (Avions) Model R3000/160 airplanes. This action requires repetitively inspecting the flap control shaft and the welds of the flap levers for cracks; replacing the cracked part, if cracks are found; and adjusting the flap travel, if no cracks are found. Reports of cracked flap control shafts found during routine maintenance prompted this action. The actions specified by this AD are intended to prevent cracks on the flap control shaft and around the welds of the flap levers, which, if not detected and corrected, could result in loss of airplane control during flight.

DATES: Effective May 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–97–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–97–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avions Model R3000/160 airplanes. The DGAC reports that cracks were found on the flap control shaft during routine maintenance. These inspections also revealed cracks around the welding of the lever on the flap actuator. The DGAC investigation revealed that the cracks may be occurring because of fatigued welds.

Relevant Service Information

Avions has issued service bulletin (SB) No. 141, Rev. 1, dated November 6, 1995, which specifies procedures for repetitively inspecting the flap control shaft and the welds of the flap levers for cracks; replacing the cracked part, if cracks are found; and adjusting the flap travel, if no cracks are found.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent cracks on the flap control shaft and around the welds of the flap levers, which, if not detected and corrected, could result in loss of airplane control during flight.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Model R3000/160 airplanes of the same type design, this AD requires repetitively inspecting the flap control shaft and the welds of the flap levers for cracks; replacing the cracked part, if cracks are found; and adjusting the flap travel, if no cracks are found. The actions are to be done in accordance with the Accomplishment Instructions in Avions Service Bulletin No. 141, Rev. 1, dated November 6, 1995.

Cost Impact

None of the Avions Model R3000/160 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required replacement would take approximately 9 workhours at an average labor charge of $60 per workhour. Parts cost approximately $300 per airplane. Based on these

figures, the total cost impact of this AD would be $840 per airplane that would become registered in the United States.

The Effective Date of This AD

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

Comments Invited

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

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–08 Avions Pierre Robin: Amendment 39–10488; Docket No. 97–CE–97–AD.

Applicability: Model R3000/160 airplanes, all serial numbers, certificated in any category.

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

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

To prevent cracks on the flap control shaft and around the welds of the flap levers, which, if not detected and corrected, could result in loss of airplane control during flight, accomplish the following:

(a) Prior to further flight, inspect the flap control shaft and the welds on the flap levers for cracks in accordance with the Accomplishment Instructions section in Avions Pierre Robin (Avions) Service Bulletin (SB) No. 141, Rev. 1, dated November 6, 1995.

(1) If cracks are found, replace the cracked part in accordance with the Accomplishment Instructions section in Avions SB No. 141, Rev. 1, dated November 6, 1995.

(2) If no cracks are found, check the flap travel, and adjust if necessary, in accordance with the Accomplishment Instructions section in Avions SB No. 141, Rev. 1, dated November 6, 1995.

(b) At intervals not to exceed 500 hours time-in-service (TIS) after the inspection required in paragraph (a) of this AD, repeat paragraphs (a), and (a)(1) and (a)(2) of this, if applicable.

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

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

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

(e) Questions or technical information related to the Avions Pierre Robin Service Bulletin No. 141, Rev. 1, dated November 6, 1995, should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections and replacements required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 141, Rev. 1, dated November 6, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 96–285(A), dated December 4, 1996.

(g) This amendment becomes effective on May 22, 1998.

Issued in Kansas City, Missouri, on April 15, 1998.

James A. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10595 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–118–AD; Amendment 39–10489; AD 98–09–09]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH Segelflugzeugbau Model ASH–26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher GmbH Segelflugzeugbau (Alexander Schleicher) Model ASH–26E sailplanes. This AD requires replacing the internal cooling air fan with a fan that incorporates a certain modification. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure.

DATES: Effective June 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 1, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–118–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Alexander Schleicher Model ASH–26E sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5322). The NPRM proposed to require replacing the internal cooling air fan with a fan that incorporates a certain modification. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 1, dated October 31, 1996; and Mid-West Engines Ltd. Service Bulletin No. 001, dated October 5, 1996.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 13 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $380 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $9,280, or $1,160 per sailplane.

Differences Between the Service Bulletin, German AD, and This AD

Alexander Schleicher Technical Note No. 1, dated October 31, 1996, specifies in-flight temperature checks of the internal cooling air fan during each flight until the modification is accomplished. German AD No. 97–009, dated January 30, 1997, also requires these in-flight checks until accomplishment of the modification.

The FAA does not have justification to require in-flight checks during each flight through AD action. The FAA suggests that the affected sailplane owners/operators have these checks accomplished, and the FAA is adding a note to the AD to recommend such action.

Compliance Time of this AD

The unsafe condition described in this AD can happen at any time and is not based on the number of hours the sailplane is in operation. With this in mind, the compliance of this AD is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–09 Alexander Schleicher Segelflugzeugbau: Amendment 39–10489; Docket No. 97–CE–118–AD.

Applicability: Model ASH–26E sailplanes, all serial numbers, certificated in any category.

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

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure, accomplish the following:

(a) Replace the internal cooling air fan with a fan that incorporates Modification Kit R1K555A in accordance with Mid-West Engines Ltd. Service Bulletin No. 001, dated October 5, 1996, as referenced in Alexander Schleicher Technical Note No. 1, dated October 31, 1996.

Note 2: Modification Kit R1K555A includes the following provisions:

—A positive lock between the fan and spindle;
—A cable tie wrap for fan delivery duct sealing; and
—A smaller driven pulley on the fan spindle.

Note 3: Although not required by this AD, the FAA recommends accomplishing in-flight temperature checks of the internal cooling air fan during each flight until the modification required by paragraph (a) of this AD is incorporated. These in-flight temperature checks are specified in Alexander Schleicher Technical Note No. 1, dated October 31, 1996, and are required by German AD No. 97–009, dated January 30, 1997, for sailplanes on the German registry.

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

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 1, dated October 31, 1996; and Mid-West Engines Ltd. Service Bulletin No. 001, dated October 5, 1996, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement and modification required by this AD shall be done in accordance with Mid-West Engines Ltd. Service Bulletin No. 001, dated October 5, 1996, as referenced in Alexander Schleicher Technical Note No. 1, dated October 31, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in German AD No. 97–009, dated January 30, 1997.

(f) This amendment becomes effective on June 1, 1998.

Issued in Kansas City, Missouri, on April 15, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10593 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–91–AD; Amendment 39–10490; AD 98–09–10]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300 and EA–300S airplanes. This AD requires inspecting the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables, and replacing any cable assembly where correctly swaged Nicopress® type sleeves are not installed. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent a control cable from pulling through an incorrectly swaged sleeve, which could result in loss of rudder control with consequent loss of control of the airplane.

DATES: Effective June 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–4224 Hünxe, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all EXTRA Models EA–300 and EA–300S airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 10, 1998 (63 FR 6689). The NPRM proposed to require inspecting the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables, and replacing any cable assembly where correctly swaged Nicopress® type sleeves are not installed. Accomplishment of the proposed action as specified in the NPRM would be in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and Advisory Circular (AC) 43.13–1A, Acceptable Methods, Techniques and Practices. The proposed replacement would be required in accordance with the maintenance manual.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 23 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the actions required by this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $19,780, or $860 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–10 Extra Flugzeugbau GMBH: Amendment 39–10490; Docket No. 97–CE–91–AD.

Applicability: Models EA–300 and EA–300S airplanes, all serial numbers, certificated in any category.

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

Compliance: To prevent a control cable from pulling through an incorrectly swaged sleeve, which could result in loss of rudder control with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables. Accomplish this inspection in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and Advisory Circular (AC) 43.13–1A, Acceptable Methods, Techniques and Practices.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, replace any cable assembly, where correctly swaged Nicopress® type sleeves are not installed, with cable assemblies that have correctly swaged Nicopress® type sleeves installed.

(1) Accomplish the replacement in accordance with the maintenance manual.

(2) Accomplish the installation in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and AC 43.13–1A, Acceptable Methods, Techniques and Practices.

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

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

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

(e) Questions or technical information related to EXTRA Service Bulletin No. 300–1–93 dated February 9, 1993, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–4224 Hünxe, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspection and installation(s) required by this AD shall be done in accordance with EXTRA Service Bulletin No. 300–1–93 dated February 9, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–4224 Hünxe, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E.

12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 93–081, dated March 15, 1993.

(g) This amendment becomes effective on June 7, 1998.

Issued in Kansas City, Missouri on April 15, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10594 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–127–AD; Amendment 39–10498; AD 98–09–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–200F and –200C series airplanes. This action requires repetitive inspections or a one-time inspection to detect cracking of certain areas of the upper deck floor beams; and corrective actions, if necessary. This amendment is prompted by reports indicating that fatigue cracks were found in the upper chord and web of upper deck floor beams. The actions specified in this AD are intended to prevent such fatigue cracking and the resultant failure of such floor beams. Failure of the floor beam could result in damage to critical flight control cables and wire bundles that pass through the floor beam, and consequent reduced controllability of the airplane; failure of the floor beam also could result in the failure of the adjacent fuselage frames and skin, and consequent rapid decompression of the airplane.

DATES: Effective May 11, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 1998.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received two reports indicating that, during modification of Boeing Model 747–200F series airplanes, fatigue cracking was found in the upper chord and web of the upper deck floor beams at body stations (BS) 340, 360, 380, and 400. One of these airplanes had accumulated approximately 19,100 total flight cycles, and the other approximately 18,500 total flight cycles. In addition, cracks were found at BS 380 on a 747–200F series airplane that had accumulated 11,586 total flight cycles.

The subject cracking was found in the upper chord of the upper deck floor beams, at the fastener location common to the fuselage frame inner chord. Cracks in this location are not detectable by visual inspection until the crack propagates to the horizontal flange of the chord. Analysis has demonstrated that, when a crack of the upper chord reaches the horizontal flange, the crack would propagate extremely rapidly, allowing little time to detect the crack prior to complete failure of the upper chord.

The upper deck floor beams are attached to the adjacent fuselage frames and provide a significant contribution to the structural integrity of the flat-sided fuselage. These floor beams also contain critical flight control cables and wire bundles that originate from the flight deck and flight engineer's control panel. The subject upper deck floor beams are made from 7075-T6511 aluminum, which is less durable and more susceptible to fatigue cracking than 2024 aluminum, which is used on passenger airplanes.

Unsafe Conditions

Fatigue cracking of the upper chord and web, if not corrected could result in failure of the upper deck floor beams and consequent damage to critical flight control cables and wire bundles that pass through the floor beams. Such damage could lead to uncommanded input to flight controls and reduced controllability of the airplane.

In addition, because the subject fatigue cracking has been found at multiple adjacent floor beam locations, failure of one floor beam could precipitate the failure of adjacent floor beams. Failure of these floor beams could cause the failure of the adjacent fuselage frames and skin, which could result in rapid decompression of the airplane.

Similar Models

Boeing Model 747–200C series airplanes have the same upper deck floor beam configuration to that on the affected Model 747–200F series airplanes. Therefore, both of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998, which describes procedures for performing repetitive detailed visual inspections to detect cracks of the upper chord, web, and strap of the upper deck floor beams at BS 340 through BS 520 inclusive; and repair, if necessary. The alert service bulletin also describes procedures for a one-time open hole high frequency eddy current (HFEC) inspection to detect cracking at BS 340 through BS 420 inclusive, which would eliminate the need for the repetitive detailed visual inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent reduced controllability of the airplane and/or rapid decompression of the airplane due to fatigue cracking in the upper deck floor beams. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as provided below.

Differences Between Rule and Alert Service Bulletin

This AD differs from the alert service bulletin in the following three respects:

1. The alert service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions. However, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

2. The alert service bulletin requires a visual inspection of the upper deck floor beams at BS 460 and BS 480. This AD does not require inspection of this area because the upper chords of these floor beams are made from a 2024 material, which is more durable than the other upper deck floor beams and is less susceptible to the same type of fatigue cracking.

3. The alert service bulletin does not require repeat detailed visual inspections or any open hole eddy current inspection of the upper deck floor beams at BS 440 through BS 520. For this area, this AD requires that the detailed visual inspection, if accomplished, be repetitively performed; and also requires that an open hole HFEC inspection eventually be accomplished. The floor beams at BS 440 through BS 520 (with the exception of floor beams at BS 460 and BS 480) are made from the same, less durable 7075–T6511 material and are subjected to the same operational loads as the floor beams with reported fatigue cracking; therefore, these beams are subject to the same type of fatigue cracking. Operators should note that procedures specified in Figures 2 and 4 of the alert service bulletin are identical.

Interim Action

This is considered to be interim action. The manufacturer advises that it currently is developing a preventive modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–17 Boeing: Amendment 39–10498. Docket 98–NM–127–AD.

Applicability: All Model 747–200F and –200C series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane and/or rapid decompression of the airplane due to fatigue cracking in the upper deck floor beams, accomplish the following:

Note 2: For this AD, ''flight cycles'' are considered to be flight cycles with a cabin pressure differential greater than 2.0 pounds per square inch.

(a) For airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 15,000 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later, inspect the upper chord, web, and strap of the upper deck floor beams at body station (BS) 340 through BS 440 inclusive, and the upper deck floor beams at BS 500 and BS 520, on the right and left sides of the airplane, in accordance with paragraph (a)(1) or (a)(2) of this AD. The inspections shall be

accomplished in accordance with Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998.

(1) Perform a detailed visual inspection to detect cracks in accordance with Figure 2 of the alert service bulletin.

(i) Repeat the detailed visual inspection thereafter at intervals not to exceed 25 flight cycles, until the requirements of paragraph (a)(1)(ii) are accomplished.

(ii) Within 500 flight cycles after accomplishment of the initial detailed visual inspection, accomplish paragraph (a)(2) of this AD.

(2) Perform a one-time open hole high frequency eddy current (HFEC) inspection to detect cracks in accordance with Figure 3 of the alert service bulletin.

Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD.

(b) For airplanes that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Within 25 flight cycles after the effective date of this AD, inspect the upper chord, web, and strap of the upper deck floor beams at BS 340 through BS 440 inclusive, and the upper deck floor beams at BS 500 and BS 520, on the right and left sides of the airplane, in accordance with paragraph (b)(1) or (b)(2) of this AD. The inspections shall be accomplished in accordance with Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998.

(1) Perform a detailed visual inspection to detect cracks in accordance with Figure 2 of the alert service bulletin.

(i) Repeat the detailed visual inspection thereafter at intervals not to exceed 25 flight cycles, until the requirements of paragraph (b)(1)(ii) are accomplished.

(ii) Within 250 flight cycles after accomplishment of the initial detailed visual inspection, accomplish paragraph (b)(2) of this AD.

(2) Perform a one-time open hole HFEC inspection to detect cracks in accordance with Figure 3 of the alert service bulletin. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(f) The inspections shall be done in accordance with Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 11, 1998.

Issued in Renton, Washington, on April 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10919 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F–0290]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(*p*-oxyphenylene *p*-oxyphenylene *p*-carboxyphenylene) resins as a component of food-contact articles intended for repeated use. This action responds to a petition filed by ICI Americas, Inc.

DATES: This regulation is effective April 24, 1998; written objections and requests for a hearing by May 26, 1998.

ADDRESS: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of August 27, 1992 (57 FR 38840), FDA announced that a food additive petition (FAP 2B4333) had been filed by ICI Americas, Inc., Concord Pike and Murphy Rd., Wilmington, DE 19897 (now Victrex USA, Inc., 601 Willowbrook Lane, West Chester, PA 19382). The petition proposed to amend the food additive regulations to provide for the safe use of polyetheretherketone resins as articles or components of articles intended to contact food. Polyetheretherketone resins are also known by the chemical name poly(*p*-oxyphenylene *p*-oxyphenylene *p*-carboxyphenylene). The petition stated that the subject resins are intended only for repeated use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of hydroquinone as a byproduct impurity of its production. Hydroquinone has been shown to cause cancer in test animals. Residual amounts of reactants and byproduct impurities, such as hydroquinone, are commonly found as contaminants in chemical products, including food additives.

II. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called ''general safety clause,'' a food additive cannot be approved for a particular use unless a fair evaluation of the evidence establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause (section 409(c)(3)(A)) further of the act (21 U.S.C. 348(c)(3)(A)) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d. 322 (6th Cir. 1984)).

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, poly(*p*-oxyphenylene *p*-oxyphenylene *p*-carboxyphenylene), will result in exposure to no greater than 0.75 parts per billion of oligomers derived from the additive in the daily diet (3 kilograms) or an estimated daily intake (EDI) of 2.3 micrograms per person per day (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by hydroquinone, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of hydroquinone has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. Hydroquinone

FDA has estimated the exposure to hydroquinone from the petitioned use of the additive as a component of repeated-use articles intended to contact food to be no more than 0.4 part per trillion in the daily diet, or 1.2 nanograms (ng)/person/day (Ref. 1). The agency used data from 1989 National Toxicology Program rodent bioassays on hydroquinone (Ref. 3), and a 1991 publication by Shibata et al. summarizing results of rodent bioassays on hydroquinone (Ref. 4), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The agency has made an assumption that the results of these studies demonstrate that hydroquinone produced tumors in male and female rats and mice following oral administration for 2 years.

Based on the agency's estimate that exposure to hydroquinone will not exceed 1.2 ng/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is $1x10^{-10}$, or 1 in 10 billion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to hydroquinone is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to hydroquinone would result from the petitioned use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of hydroquinone present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which hydroquinone may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to the impurity is very low (1 in 10 billion).

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a component of repeated-use articles intended for contact with food is safe, and that it will achieve its intended technical effect. The agency has also determined, with the petitioner's concurrence, that the additive should be listed by the chemical name, poly(*p*-oxyphenylene *p*-oxyphenylene *p*-carboxyphenylene). Therefore, the agency concludes that a new § 177.2415 (21 CFR 177.2415) should be added to 21 CFR part 177 as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

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

VI. References

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

1. Memorandum dated January 30,1997, from the Chemistry and Environmental Review Team (HFS–207) to the Indirect Additive Branch (HFS–216) entitled ''FAP 2B4333 (MATS# 659, M2.5)—Victrex USA, Inc., Polyetheretherketone (PEEK) as a component of food-contact articles intended for repeat-use. Submission dated 8/9/96.''

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, pp 24–33, 1985.

3. ''Toxicology and Carcinogenesis Studies of Hydroquinone (CAS No. 123–31–9) in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)'' National Toxicology Program, Technical Report Series, No. 366.

4. Shibata, M. A., M. Hirose, H. Tanaka, E. Asakawa, T. Shirai, and M. Ito, ''Induction of renal cell tumors in rats and mice, and the enhancement of hepatocellular tumor development in mice after long-term hydroquinone treatment'' *Japanese Journal of Cancer Research*, 82:1211–1219, 1991.

5. Memorandum dated November 18, 1997, from Division of Health Effects Evaluation (HFS–225), to the Chairman of the Quantitative Risk Assessment Committee (HFS–308) entitled ''Worst-case cancer risk assessment for hydroquinone.''

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 26, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in

support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.2415 is added to subpart C to read as follows:

§ 177.2415 Poly(aryletherketone) resins.

Poly(aryletherketone) resins identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated use in contact with food subject to the provisions of this section.

(a) *Identity*. For the purposes of this section, poly(aryletherketone) resins are poly(*p*-oxyphenylene *p*-oxyphenylene *p*-carboxyphenylene) resins (CAS Reg. No. 29658–26–2) produced by the polymerization of hydroquinone and 4,4′-difluorobenzophenone, and have a minimum weight-average molecular weight of 12,000, as determined by gel permeation chromatography in comparison with polystyrene standards, and a minimum mid-point glass transition temperature of 142 °C, as determined by differential scanning calorimetry.

(b) *Optional adjuvant substances*. The basic resins identified in paragraph (a) may contain optional adjuvant substances used in their production. These adjuvants may include substances described in § 174.5(d) of this chapter and the following:

Substance	Limitations
Diphenyl sulfone	Not to exceed 0.2 percent by weight as a residual solvent in the finished basic resin.

(c) *Extractive limitations*. The finished food contact article, when extracted at reflux temperatures for 2 hours with the following four solvents, yields in each extracting solvent net chloroform soluble extractives not to exceed 0.05 milligrams per square inch of food contact surface: Distilled water, 50 percent (by volume) ethanol in distilled water, 3 percent acetic acid in distilled water, and *n*-heptane. In testing the final food contact article, a separate test sample shall be used for each extracting solvent.

Dated: April 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10969 Filed 4–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 50

[Public Notice 2780]

Nationality Procedures

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations published in the **Federal Register** of Wednesday, June 12, 1996 (61 FR 29651). The regulations related to State Department Nationality Procedures. A misprint occurred which omitted part of one sentence. This correction adds the omitted language. This correction also updates the citation of authorities for Part 50.

DATES: Effective upon April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Edward A. Betancourt, or Michael Meszaros, Overseas Citizens Services, Department of State, 202–647–3666.

SUPPLEMENTARY INFORMATION: In the final rule published on June 12, 1996, the Department revised its procedures concerning loss of nationality. 22 CFR 50.40 describes certain acts for which citizens need not submit evidence of intent to retain U.S. nationality. Because of an error, the last part of the second sentence in 22 CFR 50.40 was omitted. This correction adds the missing sentence. In addition, in the authorities, citations to current sections of the United States Code replace original citations.

PART 50—NATIONALITY PROCEDURES

Accordingly, 22 CFR Part 50 is corrected as follows:

1. The authority section for 22 CFR Part 50 is revised to read as follows:

Authority: 22 U.S.C. 211a, 22 U.S.C. 2051a, 2705, 8 U.S.C. 1104, 1503.

2. In § 50.40(a), add the following in the second sentence after the first occurrence of the word ''U.S.'': ''citizens who naturalize in a foreign country; take a routine oath of allegiance; or accept non-policy level employment with a foreign government need not submit''.

Dated: April 15, 1998.

Donna Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–10904 Filed 4–23–98; 8:45 am]

BILLING CODE 4710–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT18–1–7204a; A–1–FRL–5999–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Alternative Reasonably Available Control Technology for Volatile Organic Compounds at Risdon Corporation in Danbury

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision allows an alternative reasonably available control technology (RACT) determination for volatile organic compound (VOC) emissions at Risdon Corporation's Danbury facility which are subject to Connecticut's miscellaneous metal parts and products VOC RACT regulations. The intended effect of this action is to approve the

source-specific RACT determination made by the State in accordance with the Clean Air Act. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This rule is effective on June 23, 1998, without further notice unless the Agency receives relevant adverse comments by May 26, 1998. Should the Agency receive such comments, it will publish a timely document withdrawal of this rule in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, as well as the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–2211; (617) 565–2773; or by E-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

A. VOC RACT Requirement

Risdon Corporation (Risdon) operates metal surface coating equipment at its Danbury facility, including chain-on-edge spray painting lines and a dip coating tank, for purposes of coating miscellaneous metal parts (''metal coating lines''). These metal coating lines are subject to the volatile organic compound (VOC) emission limits of Section 22a–174–20(s) of the Regulations of Connecticut State Agencies, which was approved into the Connecticut SIP on February 17, 1982. Section 22a–174–20(s) sets limits on the quantity of VOC (e.g., solvents, thinners, etc.) per gallon of coating (e.g., paints) that certain types of industrial facilities may use.

B. Emissions Bubble

Risdon was unable to meet the emission limits of Section 22a–174–20(s) on a coating by coating basis at the Danbury facility. Pursuant to Section 22a–174–20(cc), Risdon applied for an alternative emission reduction plan (AERP) to reduce the total emissions from the metal coating lines which would be equivalent to the reduction which would have been achieved by having the metal coating lines comply with Section 22a–174–20(s) on a coating by coating basis. This kind of AERP is known as an emissions average, or ''bubble,'' and is allowed under EPA's Economic Incentive Program (EIP) rules (59 FR 16690, April 7, 1994) and Emissions Trading Policy Statement (51 FR 43814, December 4, 1986). These policies, as well as the technical support document, located at the addresses provided in the ''addresses'' section of this notice, should be referred to for more information regarding bubbles.

Risdon originally submitted an application for the AERP to the Connecticut Department of Environmental Protection (CT DEP) on May 31, 1991 and revisions to the application on June 3, 1992, and January 27, 1993. Initially, the AERP proposal included the use of VOC emission reduction credits (ERCs) from the shutdown of coating lines at Eyelet Specialty Company, Incorporated in Wallingford, Connecticut. Risdon owned Eyelet and they were seeking to use the VOC ERCs from Eyelet in a daily VOC bubble at the Danbury facility. The Eyelet VOC emissions were included in Connecticut's 1990 emissions inventory, which serves as the baseline for Connecticut's reasonable further progress (RFP) and attainment planning. After adjusting the emissions to account for the coating operations which were shifted to Risdon's Danbury facility (i.e., the shift in demand), as well as the control requirements to which Eyelet's processes would have been subject (e.g., VOC RACT), CT DEP and EPA determined that a portion of the shutdown emissions were surplus to Connecticut's SIP requirements.

C. Long-Term Average

Subsequently, Risdon made a number of changes at the Danbury facility which allowed them to comply with the limits of Section 22a–174–20(s) on a coating by coating basis, except for a few coatings used on a few days per year. Risdon then proposed a different AERP which involved averaging the coatings at the Danbury facility on a weekly, rather than daily, basis. This meant that although they would record their coating usage each day, they would demonstrate their total VOC emissions from the coating lines was less than the total emissions allowed by the regulations each week. Additionally, although they proposed to demonstrate this without the aid of the Eyelet credits, Risdon also agreed in the AERP to retire the Eyelet credits.

Under the EPA's EIP rules, extended averaging periods are allowed provided that the State makes a showing that such long term averaging is consistent with the RACT, RFP, and the short-term national ambient air quality standard (NAAQS). The policy states that such a showing should take into account the extent to which the statistical variations from an individual source are random or systematic, as well as whether they are independent of RACT, RFP, and the NAAQS. Furthermore, the policy requires that the showing demonstrate that the pattern of emission resulting from the relaxed averaging period approximate the patterns that occur without the longer term average (see 59 FR 16706).

On January 17, 1996, Connecticut submitted a statistical showing which they received from Risdon which demonstrated that the pattern of emissions based on a weekly averaging period approximates the pattern of daily emissions at the plant on a daily averaging basis (see Attachment A of the technical support document (TSD) for more information). The coating lines at Risdon coat metal parts (e.g., cosmetic cases) on an as-ordered basis. The variations in emissions from Risdon are seasonally random, meaning that similar batches may be run at any time of the year without regard to season. Therefore, the few days per year when the daily emission limits cannot be met are not predictable. Given this randomness, the facility is expected to run in the same manner as before they were allowed the longer averaging time.

Additionally, the consent order No. 8036 also requires Risdon to retire the 7,587.66 pounds (3.79 tons) of VOC per year from the Eyelet facility. This means that even though the bubble allows weekly averaging, there is a daily emissions mitigating effect from the retired ERCs which is 2 to 3 times greater than any of the peak data points shown on Attachment A of the TSD. Given the statistical showing and the retired Eyelet credits, EPA has determined that the weekly average does not interfere with RACT, RFP, or the NAAQS and therefore, the weekly average can be approved.

On February 20, 1996, CT DEP formally proposed Order No. 8036 for public comment and on April 24, 1996, a public hearing was held. EPA submitted written comments on the proposal on April 9, 1996. The final Order No. 8036 was issued by CT DEP on May 6, 1996 and submitted to EPA on June 3, 1996. EPA deemed the submittal technically and administratively complete on July 3, 1996.

I. Final Action

As described in the **SUPPLEMENTARY INFORMATION** section of this notice, EPA review of the submittal for Risdon Corporation, including State Order No. 8036 and supporting documentation, indicates that Connecticut has defined an approvable emissions average for compliance with metal coating VOC RACT requirements at the Danbury facility. Therefore, EPA is approving State Order No. 8036 into the Connecticut SIP at this time.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should relevant adverse comments be filed. This rule will become effective on June 23, 1998 without further notice unless the Agency receives relevant adverse comment by May 26, 1998. Should the Agency receive such comments, it will publish a document in the **Federal Register** withdrawing the final rule and informing the public that this rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 23, 1998,and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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 businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

To reduce the burden of Federal regulations on States and small governments, President Clinton issued Executive Order 12875 on October 26, 1993, entitled ''Enhancing the Intergovernmental Partnership.'' Under Executive Order 12875, EPA may not issue a regulation which is not required by statute unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State and small governments or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of State and small governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected and other representatives of State and small governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The present action satisfies the requirements of Executive Order 12875 because it is required by statute and because it does not contain a significant unfunded mandate. Section 110(k) of the Clean Air Act requires that EPA act on implementation plans submitted by states. This rulemaking implements that statutory command. In addition, this rule approves pre-existing state requirements and does not impose new federal mandates binding on State or small governments.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 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 the 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.

EPA has determined that the approval action promulgated 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 approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Small governments are not significantly or uniquely affected because this rule imposes no requirements on such entities.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. This rule only affects two specifically-named entities, Risdon Corporation's Danbury, Connecticut facility and Eyelet Specialty Company, Incorporated, of Wallingford, Connecticut.

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 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). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 2, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(73) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on June 3, 1996.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated June 3, 1996, submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8036, dated May 6, 1996, for Risdon Corporation, effective on that date. The State order define and impose alternative RACT on certain VOC emissions at Risdon Corporation in Danbury, Connecticut.

3. In § 52.3854, Table 52.385 is amended by adding a new entry to existing state citations for Section 22a–174–20, ''Control of Organic Compound Emissions'' to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED RULES AND REGULATIONS

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by state	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–20 ...	Control of organic compound emissions.	June 3, 1996	April 24, 1998	[Insert FR citation from published date].	(c)(73)	Alternative VOC RACT for Risdon Corporation in Danbury.
*	*	*	*	*	*	*

[FR Doc. 98–10975 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 046–1046; FRL–6001–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions to Missouri Rule 10 CSR 10–2.330, ''Control of Gasoline Reid Vapor Pressure,'' submitted by the Missouri Department of Natural Resources (MDNR) on November 13, 1997. This revision sets a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Clay, Platte, and Jackson Counties in Missouri. This revision is necessary to ensure that the area continues to maintain the National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This rule is effective on May 26, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 1997 (62 FR 13849), the EPA proposed to approve the incorporation of Missouri Rule 10 CSR 10–2.330 into the State Implementation Plan (SIP). This revision, which limits the RVP of gasoline sold in the Missouri portion of the Kansas City metropolitan area, is necessary to help the Kansas City area maintain the NAAQS for ozone.

The state emergency rule was adopted and approved by the Missouri Air Conservation Commission (MACC) after proper public notice and hearing procedures. The emergency rule became effective on May 1, 1997, and expired on October 27, 1997. The state's permanent rule has undergone proper public notice and hearing and was adopted at the June 26, 1997, public hearing by the MACC, and became effective on October 30, 1997.

The EPA proposed approval of the state's permanent rule using parallel processing procedures. Under these procedures, the EPA proposed to approve Missouri's rule based on adoption of a comparable final permanent rule. The EPA received no comments on its proposed approval.

On October 9, 1997, the EPA gave final conditional approval to Missouri rule 10 CSR 10–2.330. Full approval was contingent upon Missouri submitting the final permanent rule by November 30, 1997. Missouri has since completed its rule adoption procedures for the permanent rule and submitted the rule on November 13, 1997. Therefore, the EPA is taking final action to approve this revision to Missouri's SIP.

In accord with section 211(c)(4)(C), the EPA is able to approve this fuel control measure because the state of Missouri demonstrated that the measure is necessary to achieve the national primary and secondary ambient air quality standard. The EPA also approves the state fuel requirement as necessary because no other measures would bring about timely attainment or, if other measures exist, they are unreasonable or impracticable.

For additional background on this action and the EPA's detailed rationale for approval, please refer to the technical support document (TSD) for the aforementioned notice of proposed rulemaking (62 FR 13849) and the TSD for this final rulemaking.

II. Final Action

The EPA is taking final action to give full approval to the SIP revision concerning Missouri Rule 10 CSR 10–2.330, ''Control of Gasoline Reid Vapor Pressure,'' submitted by MDNR.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Full approval was contingent upon Missouri completing its rule adoption procedures prior to expiration of the emergency rule, and submitting the permanent rule by November 30, 1997. Missouri submitted the permanent rule on November 13, 1997, thus meeting the aforementioned condition.

III. Administrative Requirements

A. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs 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)).

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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, the 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 the 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 the approval action promulgated 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 approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. § 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 2, 1998.

William Rice,

Acting Regional Administrator, Region VII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(105) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(105) Revision to the Missouri SIP submitted by the Missouri Department of Natural Resources on November 13, 1997.

(i) Incorporation by reference.

(A) Missouri Rule, 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, effective October 30, 1997.

3. Section 52.1323 is amended by adding paragraph (m) to read as follows:

§ 52.1323 Approval status.

* * * * *

(m) The Administrator approves Missouri rule 10 CSR 10–2.330 under § 52.1320(c)(105). This fulfills the requirements of the conditional approval granted effective November 10, 1997, as published on October 9, 1997.

[FR Doc. 98–10974 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 053–1053a; FRL–6003–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Missouri; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Missouri plan for implementing the municipal solid waste (MSW) landfill emission guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on January 26, 1998, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective June 23, 1998 unless by May 26, 1998 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which national ambient air quality standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding state implementation plan approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes emissions guidelines (EG) in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOC), other organic compounds, methane, and hazardous air pollutants (HAP). To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction, or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, sections 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross-references to the MSW landfill EG.

On January 26, 1998, the state of Missouri submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Missouri plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Missouri's submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available on request.

The Missouri plan cross referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Missouri rules 10 CSR 10–5.490 and 10 CSR 10–6.310 contain the applicable requirements.

Missouri demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Missouri's January 26, 1998, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills. Since there is no Indian Country in Missouri, this approval encompasses the entire state.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the state plan revision should relevant adverse

comments be filed. This rule will be effective June 23, 1998 without further notice unless the Agency receives relevant adverse comments by May 26, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 23, 1998, and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state plan. Each request for revision to the state plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning state plans on such grounds. See *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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, the 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 the 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 the approval action promulgated 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 approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 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).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: April 9, 1998.

Dennis Grams,

Regional Administrator, Region VII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart AA—Missouri

2. Subpart AA is amended by adding an undesignated heading and § 62.6357 to read as follows:

* * * * *

Air Emissions From Existing Municipal Solid Waste Landfills

§ 62.6357 Identification of plan.

(a) *Identification of plan.* Missouri plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on January 26, 1998.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is June 23, 1998.

[FR Doc. 98–10977 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5995–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the Coalinga Asbestos Mine site (EPA ID# CAD980817217) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces the deletion of the Coalinga Asbestos Mine Site in Coalinga, California from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California Department of Toxic Substances Control have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Procunier, Remedial Project Manager, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, Mail Code SFD–7–2, San Francisco, California 94105, (415) 744–2219 or toll free number (800) 231–3075.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Coalinga Asbestos Mine Site, Coalinga, California.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. In accordance with the NCP § 300.424(e)(3), any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

A Notice of Intent to Delete for this site was published November 19, 1997 (62 FR 61715). The closing date for comments on the Notice of Intent to Delete was December 19, 1997. EPA received one comment.

Responsiveness Summary

Comment: Request for EPA to define clear and simple procedures for gaining access to the Pine Canyon area for scientific study.

Response: EPA notes that removing the Site from the NPL does not affect public access to the site, just as placing a site on the NPL does not, in and of itself, affect public access. The Pine Canyon area includes the Johns Manville Unit of the Coalinga Asbestos Mine Site. The Johns Manville Unit is privately owned. Requests for access to this area should be directed to the current owner, the Pine Canyon Land Company.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(e).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Felicia Marcus,

Regional Administrator, U.S. EPA Region 9.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for Coalinga Asbestos Mine, Coalinga, California.

[FR Doc. 98–10723 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7686]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be

available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Alabama:				
Gurley, town of, Madison County	010152	February 12, 1991, Emerg., March 1, 1995, Reg., April 20, 1998, Susp.	April 20, 1998	April 20, 1998.
Huntsville, city of, Madison County	010153	March 8, 1974, Emerg., November 1, 1979, Reg., April 20, 1998, Susp.	do	Do.
New Hope, city of, Madison County	010154	August 7, 1975, Emerg., November 24, 1978, Reg., April 20, 1998, Susp.	do	Do.
Owens Cross Roads, town of, Madison County.	010218	August 6, 1974, Emerg., March 3, 1981, Reg., April 20, 1998, Susp.	do	Do.
Triana, town of, Madison County	010155	July 21, 1980, Emerg., September 29, 1986, Reg., April 20, 1998, Susp.	do	Do.
Region V				
Minnesota:				
Cambridge, city of, Isanti County	270198	September 19, 1974, Emerg., June 8, 1984, Reg., April 20, 1998, Susp.	do	Do.
Isanti County, unincorporated areas	270197	April 4, 1972, Emerg., May 19, 1981, Reg., April 20, 1998, Susp.	do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Lakeville, city of, Dakota County	270107	February 12, 1974, Emerg., May 1, 1979, Reg., April 20, 1998, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

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

Issued: April 15, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–10942 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7687]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia:			
Banks County, unincorporated areas	130560	March 4, 1998.	
Morgan County, unincorporated areas	130559	.....do.	

State/location	Community No.	Effective date of eligibility	Current effective map date
Washington: Anacortes, city of, Skagit County	530317	March 6, 1998.	
Wyoming: Johnson County, unincorporated areas	560099	March 12, 1998.	
Florida: Hilliard, town of, Nassau County	120573	March 16, 1998	December 23, 1977.
Tennessee: Huntland, town of, Franklin County	470055	March 24, 1998	January 28, 1977.
Illinois: Reynolds, village of, Rock Island and Mercer Counties.	170883	.....do	April 18, 1975.
Texas: Lone Star, city of, Morris County	480944	.....do	August 6, 1976.
Alabama:			
Conecuh County, unincorporated areas	010319	March 31, 1998	July 7, 1978.
Escambia County, unincorporated areas	010251	.....do	October 27, 1978.
New Eligibles—Regular Program			
Florida: Astatula, town of, Lake County	120581	March 4, 1998	August 15, 1994.
Tennessee: Obion County, unincorporated areas	470361	.....do	June 17, 1991.
South Carolina: Rockville, town of, Charleston County.[1].	450249	March 7, 1998	November 4, 1992.
Florida: Lawtey, city of, Bradford County	120628	March 19, 1998	November 15, 1989.
Louisiana: Springfield, town of, Livingston Parish	220120	March 24, 1998	NSFHA.
Texas:			
Bear Creek, village of, Hays County.[2]	481679	.....do	February 18, 1998.
Bulverde East, city of, Comal County.[3]	481681	.....do	July 17, 1995.
Center Point, city of, Kerr County.[4]	481680	.....do	May 1, 1979.
Florida: Wausau, town of, Washington County	120632	March 30, 1998	June 17, 1991.
Reinstatements			
Georgia: North High Shoals, town of, Oconee County.	130368	October 28, 1983 Emerg; September 1, 1986 Reg; May 16, 1995 Susp; March 5, 1998 Rein.	May 16, 1995.
Pennsylvania: Bolivar, borough of, Westmoreland County.	420873	August 13, 1976 Emerg; August 10, 1979 Reg; August 5, 1997 Susp; March 30, 1998 Rein.	August 5, 1997.
Alabama: Flomaton, town of, Escambia County	010251	August 26, 1975 Emerg; December 17, 1987 Reg; December 17, 1987 Susp; March 31, 1998 Rein.	December 17, 1987.
Regular Program Conversions			
Region II			
New York:			
Andover, town of, Allegany County	361094	March 2, 1998, Suspension Withdrawn	March 2, 1998.
Vestal, town of, Broome County	360057	.....do	Do.
Region IV			
North Carolina:			
Brevard, city of, Transylvania County	370231	.....do	Do.
Rosman, town of, Transylvania County	375358	.....do	Do.
Transylvania County, unincorporated areas	370230	.....do	Do.
Region V			
Indiana:			
Allen County, unincorporated areas	180302	.....do	Do.
Peru, city of, Miami County	180168	.....do	Do.
Michigan: Buchanan, township of, Berrien County.	260555	.....do	Do.
Region VIII			
South Dakota:			
Custer, city of, Custer County	460019	.....do	Do.
Custer County, unincorporated areas	460018	.....do	Do.
Region X			
Oregon: Gold Beach, city of, Curry County	410054	.....do	Do.
Washington:			
Selah, city of, Yakima County	530226	.....do	Do.
Union Gap, city of, Yakima County	530229	.....do	Do.
Yakima, city of, Yakima County	530311	.....do	Do.
Yakima County, unincorporated areas	530217	.....do	Do.
Region I			
Maine: Saco, city of, York County	230155	March 16, 1998, Suspension Withdrawn	March 16, 1998.
Region III			
Pennsylvania:			
Franklin Park, borough of, Allegheny County	420037	.....do	Do.
Hampton, township of, Allegheny County	420978	.....do	Do.
McCandless, township of, Allegheny County	421081	.....do	Do.
O'Hara, township of, Allegheny County.	421088	.....do	Do.
Shaler, township of, Allegheny County	421101	.....do	Do.
Sharpsburg, borough of, Allegheny County	420073	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region IV			
North Carolina: Wayne County, unincorporated areas.	370254	.....do	Do.
Region VI			
Arkansas: Sebastian County, unincorporated areas ..	050462	.....do	Do.
Region VI			
Stuttgart, city of, Arkansas County	050002	.....do	Do.
Region VIII			
Wyoming: Sheridan County, unincorporated areas ...	560047	March 30, 1998, Suspension Withdrawn	March 30, 1998.
Region IX			
California:			
Palmdale, city of, Los Angeles County	060144	.....do	Do.
Los Angeles County, unincorporated areas	065043	.....do	Do.
Region X			
Washington:			
Issaquah, city of, King County	530079	.....do	Do.
King County, unincorporated areas	530071	.....do	Do.
Redmond, city of, King County	530087	.....do	Do.
Skykomish, town of, King County	530236	.....do	Do.

[1]The Town of Rockville has adopted the Charleston County (CID #455413) Flood Insurance Rate Map dated November 4, 1992.
[2]The Village of Bear Creek has adopted the Hays County (CID #480321) Flood Insurance Rate Map dated February 18, 1998.
[3]The City of Bulverde East has adopted the Comal County (CID #485463) Flood Insurance Rate Map dated July 17, 1995.
[4]The City of Center Point has adopted the Kerr County (CID #480419) Flood Insurance Rate Map dated May 1, 1979.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

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

Issued: April 15, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–10941 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; FCC 98–27]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order (Order) released February 26, 1998 promulgates regulations to implement the statutory obligations of section 222 of the Telecommunications Act of 1996 relating to telecommunications carriers' use of Customer Proprietary Network Information (CPNI) and other customer information. The Order resolves CPNI issues raised in other proceedings that have been deferred to this proceeding, including obligations in connection with sections 272 and 274 of the 1996 Act.

EFFECTIVE DATE: May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted February 19, 1998, and released February 26, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98–27.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis which is set forth in the Order. A brief description of the analysis follows.

Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the

factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due July 6, 1998. Comments should address: (1) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (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.

OMB Control Number: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of customer proprietary Network Information and Other Customer Information.

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approximately)	Annual hour burden per response	Total annual burden
Customer Approval (47 CFR 64.2007)	4,832	78 hours	376,896 hours.
Customer Approval Documentation and Recordkeeping (47 CFR 64.2007(e) and 64.2009)	4,832	30 minutes	2,416 hours.
Notification of CPNI Rights (47 CFR 64.2007(f))	4,832	78 hours	376,896 hours.
Notification Recordkeeping (47 CFR 64.2007(e))	4,832	30 minutes	2,416 hours.
Audit Mechanism (47 CFR 64.2009)	4,832	30 minutes	2,416 hours.
Event Histories Recordkeeping (47 CFR 64.2009(d))	4,832	30 minutes	2,416 hours.
Corporate Compliance Certification (47 CFR 64.2009(e))	4,832	1 hour	4,832 hours.
Aggregate customer Information Disclosure Requirements for LECs	1,400	1 hour	1,400 hours.
Subscriber List Information Disclosure Requirement for Providers of Telephone Exchange Service*.	1,400	4 hours	5,600 hours.
CPNI Disclosure to Third Parties*	500	5 hours	2,500 hours.

*These requirements are imposed pursuant to statute. See 47 U.S.C. 222.

Total Annual Burden: 777,788 burden hours.

Estimated Costs Per Respondents: $47,500 (avg.); Total cost to industry: $229,520,000.

Needs and Uses: The Second Report and Order implements the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use CPNI, without customer aproval, to market offerings that are related to, but limited by, the customer's existing service relationship with their carrier. Carriers must obtain express customer approval to use CPNI to market service outside the customer's existing service relationship. Carriers must provide a one-time notification of customers' CPNI rights prior to any solicitation for approval. All of the collections would be used to ensure that telecommunications carriers comply with the CPNI requirements the Commission promulgates in the Order and to implement section 222 of the statute.

Synopsis of Second Report and Order

I. Commission Authority

1. We conclude that we have authority to promulgate regulations implementing section 222.

II. Carrier's Right to Use CPNI Without Customer Approval

A. Scope of a Carrier's Right Pursuant to Section 222(c)(1)(A): the ''Total Service Approach''

2. The statutory language makes clear that Congress did not intend for the implied customer approval to use, disclose, or permit access to CPNI under section 222(c)(1)(A) to extend to all of the categories of telecommunications services offered by the carrier, as proposed by advocates of the single category approach. First, Congress' repeated use of the singular ''telecommunications *service*'' must be given meaning. Section 222(c)(1) prohibits a carrier from using CPNI obtained from the provision of ''*a* telecommunications *service*'' for any purpose other than to provide ''*the* telecommunications *service* from which such information is derived'' or services necessary to, or used in, provision of ''*such* telecommunications *service.*'' We agree with many commenters that this language plainly indicates that Congress both contemplated the possible existence of more than one carrier service and made a deliberate decision that section 222(c)(1)(A) not extend to all. Indeed, Congress' reference to plural ''telecommunications services'' in sections 222(a) and 222(d)(1) demonstrates a clear distinction between the singular and plural forms of the term. Under well-established principles of statutory construction, ''where Congress has chosen different language in proximate subsections of the same statute,'' we are ''obligated to give that choice effect.'' Consistent with this, section 222(c)(1)'s explicit restriction of a carrier's ''use'' of CPNI ''in the provision of'' service further evidences Congress' intent that carriers' *own* use of CPNI be limited to the service *provided to* the particular customer, and not be expanded to all the categories of telecommunications services *available from* the carrier.

3. We therefore reject the single category approach as contrary to the statutory language.

4. We likewise reject parties' suggestions that we interpret section 222(c)(1)(A) based on prior Commission decisions, including the *McCaw* orders, various *Computer III* orders, as well as the Common Carrier Bureau's opinion in *BankAmerica* v. *AT&T,* which permitted the sharing of customer information among affiliated companies based on the existing business relationship and the perceived benefits

of integrated marketing. We similarly reject parties' reliance on other statutes, particularly the *Cable Television Consumer Protection and Competition Act* (1992 Cable Act) and the *Telephone Consumer Protection Act of 1991 (TCPA),* as well as the Commission's implementation of those Acts. Neither of these statutes contains the specific and unique language of section 222 which expressly limits a carrier's ''use'' of customer information. Again, to the extent other provisions are probative, they indicate that Congress was clear when it intended to exempt information sharing within the context of the existing business relationship from general consumer protection provisions, but chose not to in section 222.

5. We also conclude, contrary to the suggestion of its proponents, that the discrete offering approach is not required by the language of section 222(c)(1)(A).

Our rejection of the discrete category approach, and support for the total service approach, is also informed by our understanding of the relationship between sections 222(c)(1)(A) and (d)(1). Had Congress intended to permit carriers to use CPNI only for ''rendering'' service, as suggested under the discrete offering approach, and as explicitly provided in section 222(d)(1), it would not have needed to create the exception in section 222(c)(1)(A). In contrast, by interpreting section 222(c)(1)(A) as we do, to permit some use of CPNI for marketing purposes, we give meaning to both statutory provisions. Indeed, in contrast with the various parties' views concerning the scope of section 222(c)(1)(A), commenters that addressed the meaning of section 222(d)(1) uniformly suggest that it does not extend to a carrier's use of CPNI for marketing purposes.

6. The legislative history confirms our view that in section 222 Congress intended neither to allow carriers unlimited use of CPNI for marketing purposes as they moved into new service avenues opened through the 1996 Act, nor to restrict carrier use of CPNI for marketing purposes altogether.

7. Finally, we also reject the various arguments advanced by GTE, PacTel, USTA, and U S WEST that our adoption of an interpretation more limited than the single or two category approaches raises Constitutional concern.

8. We reject the Constitutional takings arguments because, to the extent CPNI is property, we agree that it is better understood as belonging to the customer, not the carrier.

9. We likewise reject parties' Equal Protection challenges based on section 222's limitation to telecommunications carriers alone.

10. *Non-Telecommunications Offerings.* Several carriers argue that certain non-telecommunications offerings, in addition to being covered by section 222(c)(1)(B), also should be included within any service distinctions we adopt pursuant to section 222(c)(1)(A), including inside wiring, customer premises equipment (CPE), and certain information services. Based on the statutory language, however, we conclude that inside wiring, CPE, and information services do not fall within the scope of section 222(c)(1)(A) because they are not ''telecommunications services.'' More specifically, section 222(c)(1)(A) refers expressly to carrier use of CPNI in the provision of a ''telecommunications service.''

11. We conclude that carriers may not use CPNI derived from the provision of a telecommunications service for the provision or marketing of information services pursuant to section 222(c)(1)(A). We likewise conclude that inside wiring and CPE do not fall within the definition of ''telecommunications service,'' and thus do not fall within the scope of section 222(c)(1)(A).

12. We also conclude that, to the extent that services formerly described as adjunct-to-basic are offered by CMRS providers, these should be considered either within the provision of CMRS under section 222(c)(1)(A), or as services necessary to, or used in, CMRS under section 222(c)(1)(B). In addition, we agree with the result advocated by WTR, and conclude that a reasonable interpretation of section 222(c)(1)(A) permits carriers to use, disclose, or permit access to CPNI for the limited purpose of conducting research on the health effects of their service.

13. *Special Treatment for Certain Carriers.* We conclude that Congress did not intend to, and we should not at this time, distinguish among carriers for the purpose of applying section 222(c)(1). Based on the statutory language, it is clear that section 222 applies to all carriers equally and, with few exceptions, does not distinguish among classes of carriers.

14. We also decline to forbear from applying section 222(c)(1), or any of our associated rules, to small or competitive carriers, as SBT requests.

15. We also agree with a number of parties that there should be no restriction on the sharing of CPNI among a carrier's various telecommunications-related entities that provide different service offerings to the same customer.

16. In addition to finding that the total service approach is most consistent with the statutory language and legislative history, we are persuaded that, as a policy matter, the total service approach also best advances the principles of customer control and convenience implicitly embodied in sections 222(c)(1) and (c)(2).

17. *Customers do not expect that carriers will need their approval to use CPNI for offerings within the existing total service to which they subscribe.* We believe it reasonable to conclude that, where a customer subscribes to a diverse service offering—a mixture of local, long distance, and CMRS—from the same carrier or its subsidiary or affiliated companies, the customer views its telecommunications service as the total service offering that it has purchased, and can be presumed to have given implied consent to its carrier to use its CPNI for all aspects of that service.

18. By contrast, neither the discrete offering approach nor the three category approach serves the statutory principle of customer convenience or reasonably reflects customers' expectations of what constitutes their telecommunications service.

19. We also reject the discrete offering and three category approaches because we share the concern expressed by many parties that such restrictive interpretations may be difficult to implement as service distinctions, and corresponding customer subscriptions, become blurred with market and technological advances.

20. *Customers do not expect that carriers will use CPNI to market offerings outside the total service to which they subscribe.*

21. Second, even if the Westin survey accurately shows that customers desire ''one-stop shopping,'' and would permit carriers to share information in order to offer improved service, our interpretation of section 222(c)(1) does not foreclose carriers' ability to offer integrated packages nor the beneficial marketing uses to which CPNI can be made.

22. To be sure, under the total service approach carriers may not use CPNI without prior customer approval to target customers they believe would be receptive to new categories of service.

23. Finally, we reject the claim put forth by several proponents of the single category approach that narrower interpretations of section 222(c)(1)(A) would result in significant administrative burdens for carriers. On the contrary, we conclude that the total service approach is the least onerous administratively.

B. Scope of Carrier's Right Pursuant to Section 222(c)(1)(B)

24. As a threshold matter, given the wide range of views on the interpretation of section 222(c)(1)(B), we reject U S WEST's assertion that we simply craft rules repeating, verbatim, the statutory language. We clarify, however, that we do not attempt here to catalogue every service included within the scope of section 222(c)(1)(B), but rather address the specific offerings that have been proposed in the record as falling within that section, in particular, CPE, certain information services, and installation, maintenance, and repair services. We likewise believe that section 222(c)(1)(B) most appropriately is interpreted as recognizing that customers impliedly approve their carrier's use of CPNI in connection with certain *non*-telecommunications services. This implied approval, however, is expressly limited to those services ''necessary to, or used in, the *provision* of *such* telecommunications service.'' Through this limiting language, we believe carriers' CPNI use is confined only to certain non-telecommunications services (*i.e.* those ''services'' either ''necessary to'' or ''used in''), as well as to those services that comprise the customer's total service offering (*i.e.* ''such [section 222(c)(1)(A)] telecommunications service'').

25. *CPE and Certain Information Services.* Based on the statutory language we conclude that, contrary to the position advanced by several parties, a carrier may not use, disclose, or permit access to CPNI, without customer approval, for the provision of CPE and most information services because, as other commenters assert, they are not ''services necessary to, or used in, the provision of such telecommunications service'' under section 222(c)(1)(B).

26. Contrary to NYNEX's argument, we conclude that Congress' designation of the publishing of directories as ''necessary to, or used in'' the provision of a telecommunications service does not require a broad reading of section 222(c)(1)(B) that encompasses all information services. We are persuaded that section 222(c)(1)(B) covers services like those formerly characterized as ''adjunct-to-basic,'' in contrast to the information services such as call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services, that the parties identified in the record.

27. Our interpretation is supported by Congress' example of the publishing of directories. The publishing of directories, like those services formerly described as adjunct-to-basic, can appropriately be viewed as necessary to and used in the provision of complete and adequate telecommunication service.

28. As a matter of statutory construction, we find that the language of section 222(c)(1)(B) is clear and unambiguous, and does not permit the interpretation that CPE and most information services are ''services necessary to, or used in, the provision of such telecommunications service.'' But even if that language is ambiguous, we are unpersuaded by parties' contrary arguments based on the legislative history and policy considerations.

29. We also reject suggestions that restrictions on CPNI sharing in the context of CPE and information services would be contrary to customer expectations, as well as detrimental to the goals of customer convenience and one-stop shopping. As ITAA notes, CPNI is not required for one-stop shopping.

30. Finally, we reject parties' contentions that we should permit carriers to use CPNI in connection with CPE and information services because the Commission in the past permitted more information sharing.

31. *Installation, Maintenance, and Repair Service.* We conclude that, pursuant to section 222(c)(1)(B), a carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

32. Specifically, we are persuaded that installation, maintenance, and repair of inside wiring is a service both ''necessary to'' and ''used in'' a carrier's provision of wireline telecommunications service. As such, carriers may use, without customer approval, CPNI derived from wireline service for the provision of inside wiring installation, maintenance, and repair services.

33. We further believe that our conclusion is fully consistent with customer expectation, and thereby furthers the statutory principles of customer control and convenience embodied in section 222.

C. Scope of Carrier's Right Pursuant to Section 222(d)(1)

34. In the context of installation, maintenance, and repair of inside wiring, we conclude that section 222(d)(1), as well as section 222(c)(1)(B), permit carrier use of CPNI without customer approval for the provision of such services. We agree with virtually all commenters that section 222(d)(1)'s permission for carriers to use CPNI ''to initiate, render, bill, and collect for telecommunications services'' includes the actual installation, maintenance, and repair of inside wiring.

35. Our conclusion is consistent with Equifax's concerns that we not interpret sections 222(d)(1) as well as 222(d)(2) in a manner that impedes carriers' access to information for the purpose of billing, fraud prevention, and related services, as well as the carriers' ability to provide the required information.

36. Contrary to the claims of AT&T and MCI, we further conclude, however, that the term ''initiate'' in section 222(d)(1) does not require that CPNI be disclosed by carriers when competing carriers have ''won'' the customer. We agree with GTE that section 222(d)(1) applies only to carriers already possessing the CPNI, within the context of the existing service relationship, and not to carriers seeking access to CPNI.

37. Furthermore, a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to a customer that wishes to subscribe to the competing carrier's service, may well, depending upon the circumstances, constitute an unreasonable practice in violation of section 201(b). We also do not believe, contrary to the position suggested by AT&T, that section 222(d)(1) permits the former (or soon-to-be former) carrier to use the CPNI of its former customer (*i.e.*, a customer that has placed an order for service from a competing provider) for ''customer retention'' purposes.

III. ''Approval'' Under Section 222(c)(1)

A. Express Versus Notice and Opt-Out

38. We conclude, contrary to the position of a number of parties, that an express approval mechanism is the best means to implement this provision because it will minimize any unwanted or unknowing disclosure of CPNI. In addition, such a mechanism will limit the potential for untoward competitive advantages by incumbent carriers. In contrast, under an opt-out approach, as even its proponents admit, because customers may not read their CPNI notices, there is no assurance that any implied consent would be truly informed.

39. We are not persuaded by the statutory argument raised by the BOCs, AT&T, and GTE that Congress' requirement of an ''affirmative written request'' in section 222(c)(2) means that Congress intended to permit notice and opt-out when it required only ''approval'' in section 222(c)(1).

40. We likewise reject U S WEST's claim that the earliest versions of what became H.R. 1555 requires that we interpret ''approval'' to permit notice and opt-out.

41. We believe that, although the legislative history offers no specific guidance on the meaning of ''approval'' in section 222(c)(1), the language in the Conference Report, explaining that section 222 strives to ''balance both competitive and consumer privacy interests with regard to CPNI,'' strongly supports our conclusion that express approval is the better reading of the statutory language.

42. We also reject the arguments that Congress' express provision for a notice and opt-out mechanism in section 551 of the Act somehow compels that result here even though the language of section 222 contains no similar express reference to such a mechanism. To the contrary, section 551 confirms that Congress knew how to draft a notice and opt-out provision when it determined that such an approach was appropriate. For all these reasons we reject commenters' arguments that notice and opt-out is in some manner required by the language of section 222, or other precedent.

43. We reject PacTel's and U S WEST's contention that customers do not expect carriers to seek affirmative approval for the use of information to market services to which they do not subscribe, and that to do so would confuse them. To the contrary, based on the results of U S WEST's affirmative approval market trial, as well as those of a similar trial reported by Ameritech, we believe that, when customers wish to do so, they have no problem understanding a carrier's solicitation for approval and granting consent for the use of CPNI outside the scope of their total service offering.

44. We reject the argument that imposing an express approval requirement will ''effectively eliminate integrated marketing'' and thwart the development of one stop shopping. While section 222 precludes carriers from jointly marketing certain services through the use of CPNI, nothing in section 222 prevents carriers from jointly marketing services without relying on CPNI, as CPI and Cox point out. Moreover, while the use of CPNI may facilitate the marketing of telecommunications services to which a customer does not subscribe, such use is not necessary for carriers to engage in joint marketing. We thus reject PacTel's contention that an express approval requirement would vitiate section 601(d) of the 1996 Act, which allows carriers to market CMRS services jointly with other telecommunications services, and section 272(g) of the Act, which permits BOC joint marketing of telephone exchange service and in-region interLATA service, under certain conditions. To the contrary, carriers are free to market jointly telecommunications services without using CPNI to the extent such marketing is otherwise permissible under other provisions. In addition, as TRA points out, a customer desiring an integrated telecommunications service offering tailored to its needs simply may give approval to allow its carrier to access CPNI for purposes outside of sections 222(c)(1)(A) and (B).

45. We reject U S WEST's argument that an express approval requirement under section 222(c)(1) would impermissibly infringe upon a carrier's First Amendment rights. At the outset, we think there is a substantial question as to whether CPNI restrictions even implicate constitutionally protected ''speech.'' Carriers remain free to communicate with present or potential customers about the full range of services that they offer, and section 222 therefore does not prevent a carrier from engaging in protected speech with customers regarding its business or its products. What carriers cannot do is use confidential CPNI in a manner that is not permitted by the statute. While section 222 may constrain carriers' ability to more easily ''target'' certain customers for marketing by limiting in some circumstances their internal use of confidential customer information, we question whether that of itself constitutes a restriction on protected ''speech'' within the purview of the First Amendment. Nevertheless, to the extent that it were concluded that CPNI restrictions under section 222 did affect carrier communications with their customers or unrelated third parties in such a way as to implicate the First Amendment, at most commercial speech would be at issue since any limitations under section 222 relate solely to the economic interests of the speaker and its audience. But any governmental restrictions on commercial speech will be upheld where, as here, the government asserts a substantial interest in support of the regulation, the regulation advances that interest, and the regulation is narrowly drawn. As the Supreme Court has observed, it has never deemed it an abridgement of freedom of speech to make a course of conduct illegal merely because the conduct was initiated or conducted in part through language; to the contrary, similar regulation of business activity has been held not to violate the first Amendment.

46. We further conclude that an express approval requirement would not violate the free speech rights of customers. To the extent a customer wishes to receive information on offerings outside the scope of its total service offering, it simply may grant approval under section 222(c)(1). As we previously noted, to the extent customers are engaged in communications with their carrier regarding the servicing of their account, they are more likely to grant approval.

B. Written, Oral and/or Electronic Approval

47. We conclude that carriers should be permitted to obtain such approval through written, oral, or electronic means, as several commenters contend.

48. We disagree with parties arguing that section 222 mandates written approval. We find nothing in the language or design of section 222 that limits carriers to obtaining only written approval, despite arguments advanced by some of these commenters.

49. We also reject the contention that section 222(d)(3) of the Act supports a written approval requirement. While section 222(d)(3) contemplates oral approval in creating an exception for CPNI use during an inbound call, section 222(d)(3) also may be interpreted simply to permit a carrier to use CPNI to provide a customer with information for the duration of an inbound call, based on oral approval, even if the customer otherwise has restricted the carrier's use of its CPNI, as Ameritech points out.

50. We conclude that a carrier relying on oral customer approval should be required to notify customers of their CPNI rights, and should bear the burden of demonstrating that a customer has granted approval subsequent to such notification pursuant to the rules we adopt in this order.

C. Duration, Frequency, and Scope of Approval

51. We conclude that approval obtained by a carrier for the use of CPNI outside of section 222(c)(1), whether oral, written, or electronic, should remain in effect until the customer revokes or limits such approval, as some parties suggest. We do not require carriers to renew customer approval periodically, for example, annually or semi-annually, or to presume that customer approval is valid only for the duration of the transaction, if the customer has not otherwise specified the time period during which the approval remains valid.

52. We decline to establish at this time a restriction on the number of times a carrier may contact a customer to obtain approval for the use of CPNI outside of section 222(c)(1), despite arguments raised by some parties.

53. We conclude that allowing a customer to grant partial use of CPNI is consistent with one of the underlying principles of section 222 to ensure that customers maintain control over CPNI. A carrier could obtain partial use by virtue of its ability to view customer records for a limited duration, notwithstanding the customer's restriction of CPNI use.

D. Verification of Approval

54. We conclude that a carrier relying on oral approval under section 222(c)(1) should bear the burden of demonstrating that such approval has been given in compliance with the rules we adopt in this order, as a number of parties contend.

55. Because carriers must bear the burden of demonstrating that they have obtained oral approval under section 222(c)(1), we find it unnecessary to mandate specific verification mechanisms at this time. In general, we agree with those commenters arguing that a carrier relying on oral approval should be able to meet its burden by, for example, audiotaping customer conversations, or by demonstrating that a qualified independent third party operating in a location physically separate from the carrier's telemarketing representative has obtained customer approval under section 222(c)(1) subsequent to adequate notification of its CPNI rights, and has confirmed the appropriate verification data, *e.g.*, the customer's date of birth or social security number. In contrast, we would likely not consider the mere absence of any CPNI restriction in the customer's database or other account record sufficient to verify that a customer has given express approval in accordance with section 222(c)(1), despite SBC's suggestion. In addition, because carriers are required under our rules to notify customers of their CPNI rights prior to soliciting approval, we do not require them to send follow-up letters to customers confirming approval, contrary to some parties' contentions.

56. Finally, we require that carriers maintain records of notification and approval, whether written, oral, or electronic, and be capable of producing them if the sufficiency of a customer's notification and approval is challenged. Maintenance of such records will facilitate the disposition of individual complaint proceedings. We thus require that carriers maintain such records for a period of at least one year in order to ensure a sufficient evidentiary record for CPNI compliance and verification purposes.

E. Informed Approval Through Notification

57. We require carriers to provide their customers notification if the carrier wishes to use, disclose or permit access to CPNI beyond the purposes specified in sections 222(c)(1)(A) and (B); at this time, however, we make no decision on whether notice is required for use of CPNI within the scope of sections 222(c)(1)(A) and (B).

58. We agree with the majority of commenters that customers must be made aware of their CPNI rights before they can be deemed to have ''waived'' those rights.

59. We reject BellSouth's contention that customers reasonably expect businesses with whom they have a pre-existing relationship to use CPNI to offer new services, and that therefore carrier use of CPNI for the development and marketing of services should be deemed to be permitted or invited, in the absence of specific notification to the customer. Specific notification of the customer's CPNI rights, as a component of informed ''approval'' under section 222(c)(1), is warranted for uses of CPNI outside the customer's total service offering.

F. Form and Content of Notification

60. *Form of Notification.* We conclude that a carrier should be permitted to provide either written or oral notification, as a number of parties contend. Such notification, for example, may take the form of a bill insert, an individual letter, or an oral presentation that advises the customer of his or her right to restrict carrier access to CPNI.

61. We are not persuaded by parties' assertions that oral notification is necessarily less verifiable than written, will result in abuses, create greater disputes and confuse customers, is too difficult to accomplish successfully, or could be used to dissuade customers from releasing CPNI to a competitor. We therefore conclude that a carrier providing verbal notification of a customer's CPNI rights must carry the burden of showing that such notice has been given, in compliance with the requirements we adopt in this order. We further find that carriers may use any reasonable method for verifying oral notification that adequately confirms that such notification has been given, including, but not limited to, audiotaping customer conversations or using an independent third party verification process.

62. We find no reason to impose different notification requirements on large and small carriers, as some commenters suggest.

63. *Content of Notification.* At a minimum, customer notification, whether oral or written, must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to CPNI. If a carrier intends to share CPNI with an affiliate (or non-affiliate) outside the scope of section 222(c)(1), the notice must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI. In addition, the notice must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which the CPNI will be used, and inform the customer of his or her right to disapprove those uses, and to deny or withdraw access to CPNI at any time. The notification also must advise customers of the precise steps they must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. Any notification that does not provide the customer the option of denying access, or implies that approval is necessary to ensure the continuation of services to which the customer subscribes, or the proper servicing of the customer's account, would violate our notification requirements.

64. We also require that any notification provided by a carrier for uses of CPNI outside of section 222(c)(1) be reasonably comprehensible and non-misleading. In this regard, a notification that uses, for example, legal or technical jargon could be deemed not to be ''reasonably comprehensible'' under our requirements. If written notice is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer. Finally, we require that, if any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

65. We agree with CWI that a carrier should not be prohibited from stating in the notice that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. We also do not preclude a carrier from addressing the rights of unaffiliated third parties to obtain access to the customer's CPNI. Consequently, a carrier would not be prohibited from,

for example, informing a customer that it may direct the carrier to disclose CPNI to unaffiliated third parties upon submission to the carrier of an affirmative written request, pursuant to section 222(c)(2) of the Act. However, a carrier would be prohibited from including any statement attempting to encourage a customer to freeze third party access to CPNI.

66. We also conclude that carriers must provide notification of a customer's CPNI rights, whether oral or written, prior to any solicitation for approval. A customer must be fully informed of its right to restrict carrier access to sensitive information before it can waive that right. Any notification that is provided subsequent to a solicitation for customer approval under section 222(c)(1) is inadequate to inform a customer of such right. The notification may be in the same conversation or document as the solicitation for approval, as long as the customer would hear or read the notification prior to the solicitation for approval. Finally, we conclude that the solicitation for approval to use CPNI, whether in the form of a signature line, check-off box or other form, should be proximate to the written or oral notification, rather than at the end of a long document that the customer might sign for other purposes, or at the conclusion of a lengthy conversation with the customer, for example. Similarly, the solicitation for approval, if written, should not be on a document separate from the notification, even if such document is included within the same envelope or package. The notice should state that any customer approval, or denial of approval, for the use of CPNI outside of section 222(c)(1) is valid until the customer affirmatively revokes or limits such approval or denial.

67. We conclude that carriers need only provide one-time notification to customers of their CPNI rights, as suggested by some parties.

IV. Aggregate Customer Information

68. We reject the claim that our interpretation of sections 222(c)(1) and 222(c)(3) would constitute an unlawful taking. Even assuming carriers have a property interest in either CPNI or aggregate customer information, our interpretation of sections 222(c)(1) and 222(c)(3) does not ''deny all economically beneficial'' use of property, as it must, to establish a successful claim.

69. Although LECs face certain obligations when they use aggregate customer information under section 222(c)(3), Congress did not require that LECs give aggregate customer information to their competitors upon request in all circumstances. Rather, when LECs use this aggregate information only to tailor their service offering to better suit the needs of their existing customers—that is, within the scope of sections 222(c)(1)(A) and (B), LECs do not need to disclose the aggregate information. Moreover, LECs are *permitted* to use the aggregate information when targeting new service customers—that is, for purposes beyond the scope of section 222(c)(1)(A) and (B). When they do so, LECs simply must give that information to others upon request.

70. We also reject parties' Equal Protection challenge. In order to sustain an equal protection challenge, parties challenging the law must prove that the law has no rational relation to any conceivable legitimate legislative purpose. Making LEC aggregate customer information available on nondiscriminatory terms, when used for purposes beyond those in sections 222(c)(1)(A) and (B), is reasonably related to the legitimate goal of promoting open competition in telecommunications markets.

71. Finally, regarding the LECs' notice obligations, the nondiscrimination requirement in section 222(c)(3) protects competitors from anticompetitive behavior by requiring that LECs make aggregate customer information available ''upon reasonable request.'' We interpret these terms to permit a requirement that LECs honor standing requests for disclosure of aggregate customer information at the same time and same price as when disclosed to, or used on behalf of, their affiliates.

V. Section 222 and Other Act Provisions

72. We recognize an apparent conflict between sections 222 and 272. Because Congress did not make its intent clear, our resolution of the apparent conflict must therefore be guided by the interpretation that, in our judgment, best furthers the policies of these two provisions, and thereby, best reflects the statutory design. On this policy basis, we believe that interpreting section 272 to impose no additional obligations on the BOCs when they share CPNI with their statutory affiliates according to the requirements of section 222, as implemented in this order, most reasonably reconciles the goals of these two provisions.

73. We are persuaded here that we should interpret section 274 to impose no additional CPNI requirements regarding the BOCs' use of CPNI in connection with their provision of electronic publishing. Thus, as in the case of section 272, where section 222 appropriately balances the potentially competing interests in the specific context of carriers' use and disclosure of CPNI, we conclude that we should not upset the balance by ''superimposing'' nondiscrimination standards in section 274.

VI. Commission's Existing CPNI Regulations

74. We conclude that retaining the *Computer III* CPNI requirements, applicable solely to the BOCs, AT&T and GTE, would produce no discernable competitive protection, and would be confusing to both carriers and customers.

A. BOC Cellular CPNI Rule 22.903(f) and *Computer II* Rule 64.702(d)(3)

75. We conclude that we should eliminate both rules 22.903(f) and 64.702(d)(3).

B. Safeguards Under Section 222

76. We confirm our tentative conclusion that the *Computer III* safeguards, as they currently operate, should not be applied to other carriers. Insofar as the statutory scheme we implement in this order fully supplants our *Computer III* CPNI framework, we are further persuaded that we should likewise not retain the CPNI safeguards designed to ensure compliance within the *Computer III* framework. The record nevertheless supports the need to specify safeguards to prevent unapproved use, disclosure, and access to customer CPNI by carrier personnel and unaffiliated entities under the new scheme.

77. Although we believe different rules are not generally necessary for small or rural carriers, we note that such carriers may seek a waiver of our new CPNI rules if they can show that our rules would be unduly burdensome, and propose alternative methods for safeguarding the privacy of their customers, consistent with section 222.

78. *Access Restrictions.* We decline to require restrictions that would prohibit carrier personnel from accessing CPNI of customers who have either failed, or expressly declined, to give requisite approval for carrier use of CPNI for marketing purposes.

79. *Use Restrictions and Personnel Training.* We specifically require that carriers develop and implement software systems that ''flag'' customer service records in connection with CPNI. Carriers have indicated that their systems could be modified relatively easily to accommodate such CPNI ''flags.'' The flag must be conspicuously displayed within a box or comment

field within the first few lines of the first computer screen. The flag must indicate whether the customer has approved the marketing use of his or her CPNI, and reference the existing service subscription. In conjunction with such software systems, we require that all employees with access to customer records be trained as to when they can and cannot access the customer's CPNI. Carriers must also maintain internal procedures to handle employees that misuse CPNI contrary to the carriers' stated policy. These requirements represent minimum guidelines that we believe most carriers can readily implement and that are not overly burdensome.

80. *Access Documentation.* We require that carriers maintain an electronic audit mechanism that tracks access to customer accounts. The system must be capable of recording whenever customer records are opened, by whom, and for what purpose. We believe awareness of this ''audit trail'' will discourage unauthorized, ''casual'' perusal of customer accounts, as well as afford a means of documentation that would either support or refute claimed deliberate carrier CPNI violations. We further require that carriers maintain such contact histories for a period of at least one year to ensure a sufficient evidentiary record for CPNI compliance and verification purposes.

81. *Supervisory Review for Outbound Marketing Campaigns.* We require carriers to establish a supervisory review process that ensures compliance with CPNI restrictions when conducting outbound marketing. Although supervisory review would neither be convenient nor practical when customers initiate a service call (*i.e.*, in the inbound marketing context), we believe that such review is fully warranted in connection with outbound marketing campaigns. There is both less likelihood that customers will detect CPNI violations and greater incentive for sales employees to misuse CPNI when the dialogue with the customer is initiated by the carrier. Indeed, a major focus of outbound sales representatives is on the acquisition of new customers rather than on the retention of, and service to, current customers. Accordingly, we require that sales personnel obtain supervisory review of any proposed request to use CPNI for outbound marketing purposes. We require carriers to maintain a record of the ''event histories'' (like contact histories) for at least one year from the date of the marketing campaign.

82. *Corporate Certification.* We require each carrier to submit a certification signed by a current corporate officer, as an agent of the corporation, attesting that he or she has personal knowledge that the carrier is in compliance with our CPNI requirements on an annual basis. This certification must be made publicly available, and be accompanied by a statement explaining how the carrier is implementing our CPNI rules and safeguards.

83. *Additional requirements.* The Commission will enforce all rules announced in this order upon their effective date. Because carriers may need time to conform their data systems and operations to comply with the software flags and electronic audit mechanisms required under this order, however, we will not seek enforcement of these specific safeguard rules for a period of eight months from the date these rules become effective. After that time, we authorize the Chief of the Common Carrier Bureau to undertake enforcement actions when necessary and appropriate, and, to the extent that carrier behavior justifies requirements beyond those outlined herein, to establish additional safeguards. This delegation to the Common Carrier Bureau will facilitate the handling of CPNI compliance issues in an expedited manner.

VII. Procedural Issues

A. Second Report and Order

1. Final Regulatory Flexibility Analysis

84. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice.* The Commission sought written public comment on the proposals in the *Notice*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Second Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).

a. Need for and Objectives of the Proposed Rules

85. The Commission, in compliance with section 222 of the 1996 Act, promulgates rules in this order to reflect Congress' directive to balance the competitive and customer privacy interests associated with the use and protection of customer proprietary network information (CPNI), while fully considering the impact of these requirements on small carriers. This order reflects the statutory principle that customers must have the opportunity to protect the information they view as sensitive and personal from use and disclosure by carriers. As a general matter, we find that customer approval for carriers to use, disclose, or permit access to CPNI is inferred from the existing customer-carrier relationship; therefore, we conclude that such consent should be limited to the ''total service offering'' to which the customer subscribes from a carrier. To preserve the customer's control over the dissemination of sensitive information, we require an express approval requirement for the use of CPNI beyond the total service offering to which the customer subscribes from a carrier. While these rules permit customers to decide whether and to what extent their CPNI is used, they also restrict carriers' anticompetitive use of CPNI.

b. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

86. In the IRFA, the Commission generally stated that any rule changes that might occur as a result of this proceeding could impact small business entities. Specifically, in the IRFA, the Commission indicated there were no reporting, recordkeeping, or other compliance requirements. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. In response we received no comments specifically directed to the IRFA. As noted *infra* Part X.A.1.e of this FRFA, in making the determinations reflected in this order, we have given consideration to those comments of the parties that addressed the impact of our proposed rules on small entities.

c. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

87. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' For the purposes of this order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard

Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

88. Although affected incumbent local exchange carriers (ILECs) may have no more than 1,500 employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they either are dominant in their field of operations or are not independently owned and operated, and are therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by SBA as ''small business concerns.''

89. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this order.

90. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small entity telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by this order.

91. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 small providers of local exchange service are small entities or small ILECs that may be affected by this order.

92. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by this order.

93. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by this order.

94. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 27 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or

have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by this order.

95. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 441 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by this order.

96. *Wireless Carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by this order.

97. *Cellular Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 804 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small entity cellular service carriers that may be affected by this order.

98. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 172 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that there are fewer than 172 small entity mobile service carriers that may be affected by this order.

99. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined small entity in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining small entity in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

100. *Narrowband PCS Licensees.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 or fewer employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

101. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity''

in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by this order.

102. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Thus, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. Moreover, there is no basis on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by this order.

103. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by this order.

d. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. In this *Second Report and Order,* if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to (1) obtain customer approval; (2) provide their customers a one-time notification of their CPNI rights prior to any solicitation for approval; and (3) maintain records of customer notification and approval, whether oral, written, or electronic.

105. We require carriers to develop and implement software systems that ''flag'' customer service records in connection with CPNI. The flag must be conspicuously displayed within a box or comment field within the first few lines of the first computer screen, and the flag must indicate whether the customer has approved the marketing use of his or her CPNI, and reference the existing service subscription.

Also in connection with the software systems, carriers must implement internal standards and procedures informing employees when they are authorized to utilize CPNI. In addition, they must develop standards and procedures to handle employees who misuse CPNI.

106. We further require that carriers maintain an electronic audit mechanism that tracks access to customer accounts and is capable of recording whenever customer records are opened, by whom, and for what purpose. Carriers must maintain these ''contact histories'' for a period of at least one year to ensure a sufficient evidentiary record for CPNI compliance and verification purposes. Additionally, sales personnel must obtain supervisory review of any proposed request to use CPNI for outbound marketing purposes, to ensure compliance with CPNI restrictions when conducting such campaigns.

107. Finally, carriers must submit on an annual basis a certification signed by a current corporate officer, as an agent of the corporation, attesting that he or she has personal knowledge that the carrier has complied with the rules adopted in this order. The certification must be made publicly available, and be accompanied by a statement explaining how the carrier is implementing our CPNI rules and safeguards.

e. Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

108. After consideration of possible alternatives, we have concluded that our rules should apply equally to all carriers. Several parties in their comments address the impact of possible changes in our CPNI rules on small entities. As a general matter, various small entities express concern that, having never been required to comply with CPNI regulations in the past, any regulation that extends to them will impose immediate costs. Specifically, SBT argues that we should forbear from applying section 222(c)(1) to small businesses, and thereby permit their use of CPNI for all marketing purposes, because small entities need more flexibility to use CPNI to be competitive in the marketplace. SBT likewise opposes a three category approach, claiming it gives large carriers flexibility to develop and meet customers' needs, but may unnecessarily limit small business as competition grows. SBT maintains that small carriers could be competitively disadvantaged by any interpretation of section 222(c)(1)(A) other than the single category approach because a large carrier can base the design of a new offering on statistical customer data and market widely, while a small business can best meet specialized subscriber needs if it offers local, interexchange, and CMRS tailored to the specific subscriber. ALLTEL and SBC agree with USTA that a multiple category definition of telecommunications service would specifically burden small companies.

109. As we discussed in this order, we decline to forbear from applying section 222(c)(1) to small carriers because we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI. We believe that the total service approach furthers the balance of privacy and competitive considerations for all carriers and provides all carriers with flexibility in marketing their telecommunications products and services. Indeed, if SBT is accurate in its claim that small businesses typically have closer personal relationships with their customers, then small businesses likely would have less difficulty in obtaining customer approval to market services outside of a customer's existing service. Under the total service approach, carriers are able to use the customer's entire customer record in the course of providing the customer service, and no

business is prohibited from meeting customer needs by offering tailored packages of local, interexchange, and CMRS with customer approval. Moreover, to the extent carriers do not choose to use CPNI for marketing purposes, or do not want to market new service categories, they do not need to comply with our approval or notice requirements. Finally, given our decisions to permit oral, written, or electronic approval under section 222(c)(1), and impose use rather than access restrictions, the total service approach addresses any concern that CPNI restrictions will disrupt the customer-carrier dialogue or the carriers' ability to provide full customer service.

110. Some commenters urge the Commission to adopt notification rules which would require dominant carriers to give their customers written notification of their CPNI rights, while smaller carriers or carriers in competitive markets would be permitted to give oral notification to its customers. We find no reason to impose a written notification requirement only on incumbent carriers. While competitive concerns may justify different regulatory treatment for certain carriers, we believe all customers, despite the size or identity of their carrier, have similar and important privacy concerns.

111. We also reject the suggestion by Arch, LDDS WorldCom, MCI, Sprint, and TCG that our rules in connection with CPNI safeguards be limited to large or incumbent carriers, as they had been previously. Rather, we maintain that Congress intended for all carriers to safeguard customer information, and that the safeguards we adopt today do not impose a greater administrative burden on small carriers. We remain unconvinced that the burdens of section 222 are so great on small carriers that they cannot comply with reasonable restrictions. Indeed, the mechanisms we require expressly factor commercial feasibility and practice into an appropriate regulatory framework, and represent minimum general requirements. We also find that the use of an electronic audit mechanism to track access to customer accounts is not overly burdensome because many carriers already maintain such capabilities for a variety of business purposes unrelated to CPNI. Carriers have indicated that such capabilities are important, for example, to track employee use of company resources, including computers and databases, as well as for personnel disciplinary purposes. The contact histories that we require carriers to maintain for a period of at least one year also should not be burdensome to carriers because carriers routinely evaluate these contact histories to determine the success of marketing campaigns. As we discuss in this order, we believe the safeguards we adopt in this order will afford carriers the flexibility in conforming their systems, operations, and procedures to assure compliance with our rules. Furthermore, in an effort to reduce, for all carriers, the administrative burden of compliance with our rules, we specifically decline to impose a password access restriction on carrier use of CPNI. We also conclude that use restrictions are less burdensome to all carriers, including medium and small sized carriers. We decline at this time to impose a requirement of separate marketing personnel on the basis that such a rule may produce inefficiencies particularly for small carriers, and thereby may dampen competition by increasing the costs of entry into telecommunications markets.

2. Paperwork Reduction Act Analysis

112. This *Second Report and Order* contains several new information collections. We describe our collections as follows:

113. In this order, if carriers choose to use CPNI to market service offerings outside the customer's existing service, we obligate these carriers to obtain customer approval and document such approval through software ''flags'' on customer service records indicating whether the customer has approved or declined the marketing use of his or her CPNI when solicited. These requirements constitute new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

114. Additionally, we require all telecommunications carriers that choose to solicit customer approval to provide their customers a one-time notification of their CPNI rights prior to any such solicitation. Pursuant to this one-time notification requirement, these carriers must maintain a record of such notifications. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

115. All carriers must record whenever customer records are opened, by whom, and for what purpose, and maintain these contact histories for a period of at least one year. These requirements constitute new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of this requirement is subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

116. Finally, we have adopted rules in this order requiring all telecommunications carriers to submit on an annual basis a certification signed by a current corporate officer attesting that he or she has personal knowledge that the carrier is in compliance with the rules we promulgated in this order, and to create an accompanying statement explaining how the carriers are implementing our rules and safeguards. Pursuant to this recordkeeping requirement, all telecommunications carriers must maintain in a publicly available file the compliance certificates and accompanying statements. This requirement constitutes a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Implementation of all of these recordkeeping requirements are subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

VIII. Ordering Clauses

117. Accordingly, *It Is Ordered* that pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), a *Report and Order* is hereby *Adopted*.

118. *It is further ordered* that, pursuant to our own motion, paragraph 222 of *In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96–149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), is hereby *Overruled*.

119. *It Is Further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this *Second Report and Order,* including the associated Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

120. *It Is Further Ordered* that part 22 of the Commission's rules, 47 CFR 22.903 and part 64 of the Commission's

rules, 47 CFR 64.702(d)(3) are *Removed* as set forth in the Rule Changes.

121. *It Is Further Ordered* that part 64 of the Commission's rules, 47 CFR part 64 is *Amended* as set forth in Rule Changes, effective 30 days after publication of the text thereof in the **Federal Register**.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set out in the preamble, 47 CFR parts 22 and 64 are amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 is revised to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.903 [Removed].

2. Remove § 22.903.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 222, 254(k).

§ 64.702 [Amended]

4. In § 64.702 remove and reserve paragraph (d)(3).

5. Subpart U is added to part 64 to read as follows:

Subpart U—Customer Proprietary Network Information

Sec.
64.2001 Basis and purpose.
64.2003 Definitions.
64.2005 Use of customer proprietary network information without customer approval.
64.2007 Notice and approval required for use of customer proprietary network information.
64.2009 Safeguards required for use of customer proprietary network information.

Subpart U—Customer Proprietary Network Information

§ 64.2001 Basis and purpose.

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this subpart is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

§ 64.2003 Definitions.

Terms used in this subpart have the following meanings:

(a) *Affiliate.* An affiliate is an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

(b) *Customer.* A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(c) *Customer proprietary network information (CPNI).*

(1) Customer proprietary network information (CPNI) is:

(i) Information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship; and

(ii) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

(2) Customer proprietary network information does not include subscriber list information.

(d) *Customer premises equipment* (CPE). Customer premises equipment (CPE) is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(e) *Information service.* Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(f) *Local exchange carrier (LEC).* A local exchange carrier (LEC) is any person that is engaged in the provision of telephone exchange service or exchange access. For purposes of this subpart, such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under 47 U.S.C. 332(c).

(g) *Subscriber list information (SLI).* Subscriber list information (SLI) is any information:

(1) Identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(2) That the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(h) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

§ 64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) already subscribed to by the customer from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI among the carrier's affiliated entities.

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the customer does not already subscribe to from that carrier, unless the carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A telecommunications carrier may not use, disclose, or permit access to CPNI derived from its provision of local service, interexchange service, or CMRS, without customer approval, for the

provision of CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services. For example, a carrier may not use its local exchange service CPNI to identify customers for the purpose of marketing to those customers related CPE or voice mail service.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(3) A telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

§ 64.2007 Notice and approval required for use of customer proprietary network information.

(a) A telecommunications carrier must obtain customer approval to use, disclose, or permit access to CPNI to market to a customer service to which the customer does not already subscribe to from that carrier.

(b) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(c) A telecommunications carrier relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(d) Approval obtained by a telecommunications carrier for the use of CPNI outside of the customer's total service relationship with the carrier must remain in effect until the customer revokes or limits such approval.

(e) A telecommunications carrier must maintain records of notification and approval, whether oral, written or electronic, for at least one year.

(f) Prior to any solicitation for customer approval, a telecommunications carrier must provide a one-time notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(1) A telecommunications carrier may provide notification through oral or written methods.

(2) Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose or permit access to, the customer's CPNI.

(i) The notification must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI.

(ii) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(iii) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.

(iv) The notification must be comprehensible and not be misleading.

(v) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(vi) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(vii) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(viii) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

(ix) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(3) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(4) A telecommunications carrier's solicitation for approval, if written, must not be on a document separate from the notification, even if such document is included within the same envelope or package.

§ 64.2009 Safeguards required for use of customer proprietary network information.

(a) Telecommunications carriers must develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription.

(b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.

(c) Telecommunications carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Carriers must maintain these contact histories for a minimum period of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.

(e) A telecommunications carrier must have a corporate officer, as an agent of the carrier, sign a compliance certificate on an annual basis that the officer has personal knowledge that the carrier is in compliance with the rules in this subpart. A statement explaining how the carrier is in compliance with the rules in this subpart must accompany the certificate.

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Proposed Rules

Federal Register
Vol. 63, No. 79
Friday, April 24, 1998

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM98–4–000]

Revised Filing Requirements (April 16, 1998)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise 18 CFR part 33 to update the filing requirements for applications under part 33, including public utility mergers. The Commission expects that, by providing applicants more detailed guidance for preparing applications, the proposed filing requirements will assist the Commission in determining whether applications under section 203 of the Federal Power Act are consistent with the public interest and will provide more certainty and expedition in the Commission's handling of such applications.

DATES: Interested entities may file comments no later than August 24, 1998.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:
Kimberly D. Bose (Legal Matters) Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–2284
Wilbur Earley (Technical Matters) Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–0023
Michael A. Coleman (Technical Matters) Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–1236

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. CIPS also may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at (202) 208–2474.

I. Overview

In this notice of proposed rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) is proposing to revise 18 CFR Part 33 by specifying clear and succinct filing requirements for applications submitted pursuant to § 203 of the Federal Power Act (FPA),[1] including public utility mergers.[2] Following issuance of the Merger Policy Statement in 1996,[3] § 203 applications have varied widely in the quantity and quality of information they have included, particularly with respect to competitive market power analyses and the supporting data. The proposed filing requirements address this problem by providing detailed guidance to applicants. This rulemaking proceeding is intended to provide greater certainty as to what is needed in § 203 applications, thereby helping applicants to organize and prepare their applications more quickly and efficiently and also to better predict the outcome of the Commission's evaluation of their applications. In providing more certainty, the filing requirements are also intended to facilitate a prompt, procedurally efficient and substantively accurate decision making process by the Commission to ensure that mergers and other jurisdictional transactions under § 203 are consistent with the public interest in rapidly changing electric power markets. In addition, the NOPR is intended to lessen regulatory burdens on the industry by eliminating outdated and unnecessary filing requirements, streamlining the filing requirements for mergers that do not raise competitive concerns, and proposing the use of a computer simulation model to facilitate a prompt and highly accurate method of market power analysis by both applicants and the Commission. The Commission expects that, by assisting the Commission and applicants in determining whether applications under § 203 are consistent with the public interest and providing more certainty and expedition in applicants' preparation and the Commission's handling of such applications, the proposed filing requirements can lessen overall the regulatory burden associated with the § 203 application process.

The Policy Statement set forth procedures, criteria and policies for evaluating proposed mergers. The Policy Statement set out the three factors the Commission will consider when analyzing a merger proposal: effect on competition; effect on rates; and effect on regulation. The Commission also stated its intention to issue a NOPR to set out specific filing

[1] 16 U.S.C. 824b.

[2] When the Commission refers to a ''merger'' in this document, it also includes ''consolidations.'' Section 203 of the FPA requires Commission authorization for mergers or consolidations involving the jurisdictional facilities of a public utility. It also requires Commission authorization for the sale, lease or other disposition of jurisdiction facilities with a value in excess of $50,000, and for the purchase by a public utility of the securities of another public utility.

[3] Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, 78 FERC ¶ 61,321 (1997) (Policy Statement).

requirements consistent with the Policy Statement.[4] That is the primary purpose of the NOPR we are issuing today.

In the period since the issuance of the Policy Statement, the Commission has gained valuable experience evaluating various types of mergers using the guidelines in the Policy Statement as the framework for our analysis. We have acted on 15 significant merger applications since the Policy Statement was issued. Some of these were mergers of adjacent vertically-integrated electric companies. Others involved utilities that were not currently interconnected, but planned to integrate their electric systems post-merger. Yet others involved mergers of electric companies with natural gas companies. The Commission has devoted substantial resources to considering whether a proposed merger would significantly increase horizontal or vertical market power, thereby indicating potential competitive concerns. As we have gained experience in reviewing the issues related to competition presented by these mergers, we have fine-tuned the horizontal market power analysis set out in the Policy Statement and have adopted a vertical market power analysis.[5] From this experience, we propose filing requirements that will enable all parties to more efficiently address the types of issues that have arisen in the applications filed since the issuance of the Policy Statement, as well as issues that will undoubtedly arise as the industry continues to make the transition to a more competitive marketplace.

Specifically, the NOPR addresses five areas of merger policy and the processing of applications: (1) it reaffirms the Commission's horizontal market power analysis and proposes specific filing requirements for horizontal mergers consistent with the Policy Statement's Appendix A analysis; [6] (2) it proposes a vertical market power analysis and accompanying filing requirements for mergers that raise vertical market power concerns that are consistent with our existing approach to examining vertical mergers; [7] (3) it proposes streamlined filing requirements and lesser information burden for mergers that raise no competitive concerns; (4) it sets out a specific computer simulation model for debate and discussion, and asks for industry comment on this particular model and on the use of modeling in general; and (5) it proposes to eliminate certain filing requirements in Part 33 that are outdated or no longer useful to the Commission in analyzing mergers. In the course of addressing these five areas, the NOPR proposes to reorganize Part 33 so that users of the regulations can quickly find those specific requirements that apply to the merger in which they are interested.

II. Background

Part 33 of the Commission's regulations specifies the filing requirements for applications under § 203 of the FPA.[8] Pursuant to § 203, Commission authorization is required for public utility mergers and consolidations and for public utilities' acquisition or disposition of jurisdictional facilities. Section 203(a) of the FPA provides, in pertinent part, that:

> No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.

Section 203 provides that the Commission shall approve such transactions if they are consistent with the public interest. The Commission's Part 33 filing requirements specify the information that is necessary for the Commission to determine whether a proposed transaction involving the disposition of jurisdictional facilities by a public utility satisfies this statutory criterion.

As a general matter, Part 33 requires a description of the corporate attributes of the party or parties to the proposed transaction (a purchase, sale, lease, or other disposition, merger, or consolidation of jurisdictional facilities, or purchase or other acquisition of the securities of a public utility) and the facilities or other property involved in the transaction. Additional information required includes the applicants' proposed accounting treatment of the transaction, statements as to the effect of the transaction on current energy contracts, and the applicants' showing that the transaction will be consistent with the public interest.

As noted previously, one of the factors the Commission considers when analyzing whether a merger proposal is consistent with the public interest is the effect on competition. The Policy Statement adopts the Department of Justice (DOJ)/Federal Trade Commission (FTC) 1992 Horizontal Merger Guidelines (Guidelines) [9] as the analytical framework for examining horizontal market power concerns. The Guidelines set forth a five-step merger analysis: (1) define markets likely to be affected by the merger and measure the concentration and the increase in concentration in those markets; (2) assess whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects; (3) assess whether entry could mitigate the adverse effects of the merger; (4) assess whether the merger results in efficiency gains not achievable by other means; and (5) assess whether, absent the merger, either party to the merger would likely fail, causing its assets to exit the market.[10]

The Policy Statement also describes an analytical screen that is intended to allow early identification of mergers that do not raise competitive concerns. The Commission believes the screen produces a reliable, conservative analysis of the competitive effects of proposed mergers. As part of the screen analysis, the Policy Statement requires generally that the applicants define product and geographic markets that are likely to be affected by the proposed merger and measure the concentration in those markets. The Policy Statement suggests a way of defining geographic markets based on identifying feasible alternative suppliers to the merged firm—the delivered price test. The concentration of potential suppliers included in the market is then measured by the Herfindahl-Hirschman Index (HHI) and used as an indicator of the potential for market power.[11] We describe the Policy Statement's

[4] Policy Statement at 30,111 n.3.

[5] *See*, Enova Corporation and Pacific Enterprises, 79 FERC ¶ 61,372 (1997) (*Enova*).

[6] Policy Statement at 30,128.

[7] PG&E Corporation and Valero Energy Corporation, 80 FERC ¶ 61,041 (1997) (*PG&E/Valero*); and Enron Corporation, 78 FERC ¶ 61,179 (1997) (*Enron*).

[8] 16 U.S.C. 824b.

[9] U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, 57 FR 41,552 (1992), *revised*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (April 8, 1997).

[10] Policy Statement at 30,118.

[11] The Policy Statement addresses three ranges of market concentration: (1) an unconcentrated post-merger market—if the post-merger HHI is below 1000, regardless of the change in HHI the merger is unlikely to have adverse competitive effects; (2) a moderately concentrated post-merger market—if the post-merger HHI ranges from 1000 to 1800 and the change in HHI is greater than 100, the merger potentially raises significant competitive concerns; and (3) a highly concentrated post-merger market—if the post-merger HHI exceeds 1800 and the change in the HHI exceeds 50, the merger potentially raises significant competitive concerns; if the change in HHI exceeds 100, it is presumed that the merger is likely to create or enhance market power.

approach to analyzing the effect on competition in more detail below.

The Policy Statement states that the Commission will examine the second factor, the effect on rates, by focusing on ratepayer protections designed to insulate consumers from any harm resulting from the merger. We directed merger applicants to attempt to negotiate such measures with their customers before filing merger applications.

Finally, the Policy Statement sets forth a third factor for examination, the effect on regulation, as it relates both to state regulation and to the potential shift in regulation from the Commission to the Securities and Exchange Commission (SEC), the latter as the result of a merger creating a registered public utility holding company. With respect to a merger's effect on state regulation, we stated in the Policy Statement that where the state commissions have authority to act on the merger, the Commission intends to rely on them to exercise their authority to protect state interests. With respect to shifts of regulatory authority from this Commission to the SEC, the Policy Statement explains that, unless applicants commit themselves to abide by this Commission's policies with regard to affiliate transactions, we will set the issue for hearing.

Below, we propose filing requirements that are consistent with the Policy Statement. We also propose ways to update and streamline our current filing requirements that will help to expedite and better focus applications and our review processes.

III. Discussion

A. General

As stated earlier, the Commission is examining its filing requirements for transactions requiring our authorization under § 203 of the FPA in light of the fundamental changes occurring in the electric utility industry and the regulation of the industry. First, the Commission believes that a portion of the information that has historically been required for all § 203 applications is no longer needed for those applications that involve routine dispositions of jurisdictional facilities, and, accordingly, we propose to eliminate certain filing requirements. Second, because of the proliferation of utility mergers and the growing importance of analyzing the competitive effects of such mergers on emerging competitive markets, the Commission believes that more descriptive filing requirements are needed. Finally, we propose to reorganize and clarify certain of our regulations under Part 33 in order to enhance the usefulness of those regulations. The goal of each of these measures is to streamline and clarify our filing requirements, make our processing of § 203 applications more efficient and timely, and provide greater certainty to the industry regarding the Commission's probable action on applications.

B. Proposed Revisions to Part 33—Basic Information Requirements

Part 33 currently contains twelve basic information requirements (§ 33.2(a) through (l)) and nine exhibits (§ 33.3 Exhibits A through I) that an applicant must file. Some of these requirements overlap. For example, §§ 33.2(I) and 33.3 Exhibit G both concern applications filed with state commissions and can be consolidated. Other information requirements are no longer relevant to our review of applications filed under this part. An example is § 33.3 Exhibit A, which concerns resolutions by applicants' directors authorizing the transaction for which Commission approval is requested. We do not believe we need this information in order to determine whether a transaction is consistent with the public interest. Also, a number of public utilities are exempt from the record-keeping requirements of the Commission's Uniform System of Accounts at the current §§ 33.2(g) and 33.3 Exhibits C, D, E and F, which relate to financial statements and account balances. Accordingly, we are proposing to streamline our Part 33 regulations to eliminate these unnecessary or inapplicable information requirements, combine sections that request duplicative information and direct our accounting requirements only to those applicants subject to the Commission's Uniform System of Accounts.

We are further proposing to eliminate entirely the current § 33.10. The 45 day time limit set forth in that section for Commission action, which is not a requirement under the statute, is no longer feasible in light of the increasing complexity of § 203 applications being filed, especially merger and other industry restructuring transactions.[12] In addition, proposed § 33.6 incorporates the requirement of the current § 33.2(l) to file a form of notice and would require submission of the notice in electronic format. In addition to these modifications, discussed below are other proposed basic information requirements under Part 33 that reflect our current way of analyzing § 203 applications.[13]

Proposed § 33.1—applicability—revises the current § 33.1 to state succinctly that the requirements of Part 33 apply to public utilities seeking authority for any transaction requiring Commission authorization under § 203.

No change is proposed in § 33.2(b)—authorized representative—except that the phone and fax numbers of the person authorized to receive communications regarding the application, which are already voluntarily provided by nearly all applicants, would be required. This subsection also proposes that E-mail addresses be provided.

Proposed § 33.2(c)—description of the applicant—incorporates the requirements of current § 33.2(c) and (k) and Exhibit B and requires a description of the applicant's business activities, corporate affiliations, common officers with other parties to the transaction, and jurisdictional customers. Organizational charts are not specifically required under our current regulations; the narrative descriptions currently required to be filed generally are more clearly depicted in chart form. As a result, we propose that organizational charts be filed.

Proposed § 33.2(d)—description of the jurisdictional facilities—requires a general description of the applicant's jurisdictional facilities.

Proposed § 33.2(e)—description of the proposed transaction—incorporates the requirements of current § 33.2(d), (e), (f) and (h) requiring a description of the proposed transaction for which Commission authorization is sought, including all parties to the transaction, the jurisdictional facilities involved or affected by the transaction, the consideration for the transaction,[14] and the effect of the transaction on the applicant's jurisdictional facilities.

Proposed § 33.2(f)—contracts related to the proposed transaction—incorporates the requirements of current Exhibit H. No other change is proposed.

Proposed § 33.2(g)—the applicant's public interest statement—includes the requirements for applicants to address the factors that the Commission considers in determining whether a

[12] Although we are proposing to eliminate this section of our Part 33 regulations, the Commission intends to continue to process § 203 applications as expeditiously as practicable. As stated in the Policy Statement, the Commission continues to believe that, for most mergers, we can issue an initial order within 150 days of a completed application.

[13] In this preamble, we will not note the sections that do not have proposed revisions. However, these sections are set forth in the attached regulatory text.

[14] Policy Statement at 30,125–26 (we no longer consider the reasonableness of purchase price as a factor and consider it subsumed by the effect on rates factor).

transaction is consistent with the public interest, as set forth in the Policy Statement.

Proposed § 33.2(h)—maps—incorporates the requirements of current Exhibit I and would be applicable only if the proposed transaction involves a disposition of physical facilities.

Proposed § 33.2(I)—other regulatory approvals—incorporates the requirements of current § 33.2(I) and Exhibit G. In addition, copies of relevant orders, if any, obtained by the applicant from other regulatory bodies would be required. However, we are proposing to eliminate a requirement that copies of the applications filed with those bodies be filed with the Commission, as this information largely duplicates the information required in our Part 33 regulations.

Proposed § 33.8—number of copies—includes the information required in the current § 33.6 and also would require that the applicant file electronic as well as paper copies of any competitive screen analysis filed pursuant to proposed §§ 33.3 and 33.4.

Proposed § 33.9—protective orders—would require an applicant to include a proposed protective order if it seeks privileged treatment for any information submitted. The protective order would enable the parties to review any of the data, information, analysis or other documentation relied upon by the applicant to support its application and for which privileged treatment is sought.

C. Proposed Filing Requirements Applicable to Merger Filings

1. Applicability

The following filing requirements apply to merger applicants which are defined as any public utility that either: (a) Would have control of the jurisdictional facilities transferred to another entity, whether the transfer of control is effectuated, directly or indirectly, by merger, consolidation or other means; or (b) would acquire control over facilities of another entity, whether the transfer of control is effectuated, directly or indirectly, by merger, consolidation or other means.[15] We are proposing that for any corporate transaction that results in a direct or indirect merger of public utilities, the applicant must file certain additional information. If the merger transaction involves a horizontal combination of facilities which results in a single corporate entity obtaining ownership or control over generating facilities of unaffiliated parties, the applicant must file the information set forth in § 33.3. If the merger transaction involves a vertical combination of facilities resulting in a single corporate entity obtaining ownership or control over businesses that provide inputs to electric generation and electric generation products that were previously unaffiliated, the applicant must file the information set forth in § 33.4.[16]

2. Effect on Competition

The Commission's competitive concern in any type of merger involving jurisdictional electric utilities is whether the merger will result in higher prices or reduced output in electricity markets. This may occur if the merged firm is able to exercise market power, either alone or in coordination with other firms. Therefore, we are now proposing filing requirements, consistent with Appendix A to our Policy Statement, that will address this concern in a predictable and expedited fashion.

a. Proposed Analytic Requirements. In Appendix A to our Policy Statement, we outlined a standard analytic framework for evaluating mergers as well as a competitive screen analysis and data specifications to allow the Commission to quickly identify proposed mergers that are unlikely to present competitive concerns. Since the Policy Statement was issued, we have gained valuable experience analyzing mergers and are now proposing filing requirements regarding the screen and the data needed for it.

The Commission emphasizes that the screen is not meant to be a definitive test of the competitive effects of a proposed merger. Instead, it is intended to provide a standard, conservative check to allow the Commission and potential applicants to identify mergers that are unlikely to present competitive problems. A standardized screen approach allows applicants, intervenors and the Commission to have a common starting point from which to evaluate proposed mergers. A conservative screen also allows us to quickly approve mergers that pass if they are otherwise consistent with the public interest. Failing the initial screen does not necessarily mean that the Commission will not eventually approve the merger. Rather, it means only that the Commission must take a closer look at the competitive impacts of the proposed merger.

When a proposed merger fails the screen and further evaluation is necessary, the Commission will determine what procedures are appropriate. The Commission recognizes that these procedures, whether trial-type evidentiary hearings or paper hearings, should not delay the processing of mergers unnecessarily and should address the competitive impact of the proposed merger. We solicit comments on alternative procedures for investigating mergers that do not pass the initial screen.[17]

As we propose these filing requirements, the Commission recognizes the tension between the need for providing standardization regarding how proposed mergers will be evaluated and the need for flexibility, given the changing nature of the electric power industry and the likely evolution of analytic techniques and capabilities. The competitive screen analysis that we require provides for standardization. However, applicants are free to provide an alternative analysis, if they believe the additional information would aid the Commission's decision making.[18] The Commission solicits comment on whether the proposed approach strikes the proper balance between standardization and flexibility.

Finally, we recognize that some types of data, or data for some market participants, may not be available to the applicants. Where that is the case, we propose that applicants make their best efforts to provide accurate substitute data.[19] Applicants would have to identify such instances, and explain how specific data deficiencies are addressed and the effect on their analysis. We also encourage applicants to provide corroborating data and to explain how such additional data corroborates the results of the screen analysis. Corroborating information and analysis will provide the Commission with confidence that the results of the

[15] Policy Statement at 30,113. *See also,* Duke Power Company and PanEnergy Corporation, 79 FERC ¶ 61,236 (1997) (*Duke*); Noram Energy Services, Inc., 80 FERC ¶ 61,120 at 61,379 and n.13 (1997)(*NORAM*); Morgan Stanley Capital Group Inc., *et al.,* 79 FERC ¶ 61,109 at 61,503–04 (1997)(*Morgan Stanley*); and Boston Edison Company and BEC Energy, 80 FERC ¶ 61,274 (1997).

[16] We noted in *Enova* that a merger of jurisdictional facilities can be effected by a change in control over a public utility's facilities. Public utilities (or their parent companies) can effect a merger by combining their businesses through the formation of a new holding company that will own or control, either directly or indirectly, previously unaffiliated entities. *See Enova,* 79 FERC ❙ 61,107 at 61,491–96 (1997).

[17] In the Policy Statement, we stated that we would request public comment in this rulemaking on merger processing procedures and how they can be better tailored to meet the specific needs of participants in merger proceedings. Policy Statement at 30,125.

[18] *See* § 33.3(b)(2) of the proposed regulations.

[19] The specific filing requirements are set forth in § 33.3(b)(1) of the proposed regulations.

analysis would not change materially if certain assumptions or input data were changed in reasonable ways.

i. *Data and format.* If circumstances warrant, the Commission must have the ability to perform, within a reasonable time, an independent verification of the screen analysis presented in the application. To do so, we (and intervenors) must have the basic input data in a useful format. Thus, the proposed rule would require that the data needed to complete the competitive screen analysis, and any additional data that are used, be filed electronically.[20] Specific proposed data requirements for the various components of the competitive screen analysis are discussed below.

ii. *Horizontal Screen Analysis.* As noted earlier, the Guidelines set out five steps for merger analysis: Assess (1) whether the merger would significantly increase concentration; (2) whether the merger would result in adverse competitive effects; (3) whether entry would mitigate the adverse effects of the merger; (4) whether the merger would result in efficiency gains not achievable by other means; and (5) whether, absent the merger, either party would likely fail, causing its assets to exit the market.[21]

The competitive screen analysis[22] focuses on the first step: whether the merger would significantly increase concentration. Concentration statistics indicate that a merger may have adverse competitive effects, but they are not the end of the analysis. If the applicants' competitive screen analysis indicates that the merger would significantly increase concentration, the applicants must either address the other steps in the Guidelines or propose measures that would mitigate the adverse competitive effects of the proposed merger.[23] If applicants propose mitigation measures, the screen analysis should also take into account the effect of the remedy on market concentration to the extent possible.

The competitive screen analysis is made up of four steps: (1) Identify the products sold by the merging firms; (2) Identify the customers affected by the merger; (3) identify the suppliers in the market; and (4) analyze the merger's effect on concentration. Below we discuss the proposed filing requirements for each step.

a. Products. Applicants must identify the wholesale electricity products sold by the merging firms. At a minimum, such products would include non-firm energy, short-term capacity (or firm energy) and long-term capacity. Products should be grouped together when they are reasonable substitutes for each other from the buyer's perspective. The supply and demand conditions for particular electricity products may vary substantially over time and, if so, the market analysis should take this into account. Periods with similar supply and demand conditions should be aggregated. Thus, applicants must define and describe all products sold by the firms, explain and support the market conditions and groupings, and provide all data relied upon for product definition. The specific proposed filing requirements are set out in § 33.3(c)(1) of the proposed regulations.

As restructuring in the wholesale and retail electricity markets progresses, short-term markets appear to be growing in importance. The role of long-term capacity markets appears to be diminishing. We seek comments on the assessment of long-term capacity markets in merger analysis.

The delivered price test, which we require applicants use to identify suppliers in a market, addresses the ability of suppliers to deliver energy to relevant markets as measured by their short-term variable costs. However, there is no good measure for long-term capacity prices *per se.* Therefore, we seek comment on the appropriate analytic framework for evaluating long-term capacity products.

b. Geographic markets: Customers (Destination Markets). As discussed in the Policy Statement, identifying the customers likely to be affected by a merger is one part of defining the geographic scope of the relevant market. At this time, we believe that, at a minimum, affected customers would include all entities that are directly interconnected to any of the applicants or that have purchased wholesale electricity from any of the applicants in the past two years. The Commission solicits comment on whether two years is the appropriate period of purchases for deciding to include purchasers as affected customers.[24] Customers considered to be affected by the merger and included in the analysis are referred to as ''destination markets.'' To simplify the analysis, customers that have the same supply alternatives, as identified in the competitive screen analysis, could be aggregated into a single destination market.

Applicants would be required to provide all data used in determining the affected customers. The specific proposed filing requirements associated with identifying affected customers are set out in § 33.3(c)(2) of the proposed regulations.

c. Geographic markets: Suppliers. Defining the relevant geographic market also requires identifying the sellers that can compete to supply a relevant product. Suppliers must be able to reach the destination market both economically and physically.

In some cases, potential suppliers may be parties to mergers that have been announced but not yet consummated. Without presupposition, the Commission seeks comments on whether those suppliers should be treated in the competitive screen analysis as if their merger has been consummated or whether they should be treated as independent rivals.[25]

(1) Delivered Price Test

To determine the suppliers that can economically supply a destination market, applicants must conduct a delivered price test.[26] In the delivered price test, a supplier is considered to be able to economically serve destination markets only to the extent it has generating capacity that can be supplied and delivered to the market at a price, including paying for transmission and ancillary services needed to deliver power to a destination market, that is no more than 5 percent above the pre-merger market price.[27] Applicants must then adjust, if necessary, the capacity of each supplier identified in the delivered price test consistent with the physical transmission capacity available to reach the destination market.

The Commission proposes to require that a supplier's ability to economically serve a destination market be measured by the generating capacity controlled by the supplier rather than historical sales data. Since merger analysis should, to the extent possible, be forward-looking, capacity is a better indicator of future market supply alternatives. Information about current or past sellers may not identify those participants whose generation capacity could discipline

[20] The specific filing requirements are set forth in § 33.8 of the proposed regulations.

[21] Policy Statement at 30,118.

[22] These specific filing requirements are set forth in § 33.3 of the proposed regulations.

[23] The specific filing requirements for applicants addressing other factors and mitigative measures are set forth in § 33.2(g)(4) and § 33.2(g)(3), respectively.

[24] The Policy Statement states that entities in addition to those directly interconnected with applicants would be included if historical transaction data indicate that they recently have been trading partners with any of the applicants. Policy Statement at 30,130.

[25] The specific filing requirements are set out in § 33.3(c)(3) of the proposed regulations.

[26] The specific filing requirements are set forth in § 33.3(c)(3)(i) of the proposed regulations.

[27] Policy Statement at 30,130–31.

future price increases. Moreover, data on sales made in a past environment that was characterized by monopoly and cost-based rates may not be a good indicator of how firms will behave in an environment that is increasingly characterized by generation competition and open access transmission.[28]

In the Policy Statement, we discussed two generating capacity measures that are appropriate for the competitive screen analysis: economic capacity and available economic capacity. We propose that the competitive screen analysis filed by applicants use both measures to gauge supplier presence. The starting point for calculating economic capacity is the supplier's own generation capacity with low enough variable costs that energy from it could be delivered to a market, after paying all necessary transmission and ancillary service costs (including losses), at a price that is 5 percent or less above the pre-merger market price. This capacity must be decreased to reflect the capacity committed to long-term firm sales and increased to reflect the capacity acquired by long-term firm purchases.[29] Capacity that is under the operational control of a party other than the owner should be attributed to the party for whose economic benefit the unit is operated. The resulting amount is the capacity that should be counted as a supplier's economic capacity.

The other measure of supplier presence relevant to the competitive screen analysis is available economic capacity. Available economic capacity is calculated as economic capacity less the capacity needed to serve native load customers.[30] We propose that applicants include this measure in their screen analysis for all suppliers that have native load commitments. This measure presumes that the lowest-cost capacity is used to serve native load and is thus not available to compete in wholesale power markets. However, restructuring in the electricity industry, including regional independent systems operators (ISO) and bid-based power exchanges and retail access, may well affect this presumption. The Commission seeks comments on the role of native load and the weight that the available economic capacity measure should be given, in market analyses.

Applicants may include additional capacity measures, such as total capacity and uncommitted capacity, as they see fit.[31]

Determining which suppliers may economically serve the relevant destination markets requires data regarding generation costs, transmission prices, and transmission limitations. To facilitate the Commission's analysis, these data should be filed electronically and presented in a standard format. Discussed below are the proposed general data requirements that we believe are needed to determine the suppliers in the relevant market for a competitive screen analysis.

Generating capacity and variable cost: The basic determinants of a supplier's presence in a market are the generating capacity that the supplier controls and the variable costs associated with that capacity. For each potential supplier to a relevant market, applicants must file the publicly available generation capability and variable cost data for each generating plant or unit. Aggregate plant level data from plants with units that burn different fuels can result in average plant variable costs that inaccurately state the units' economic ability to sell into a market.[32] For such plants, cost data at the unit level are preferable to cost data at the plant level, and applicants should file disaggregated plant data to the extent it is publicly available. The specific filing requirements for generating unit data are set out in § 33.3(d)(1) of the proposed regulations.

Purchase and sales data adjustments: Data regarding the long-term purchases and sales of suppliers should be filed with the application. These data would, to the extent available, include the buyer, the seller, the contract duration, the degree of interruptibility, the quantity (MW), the capacity and energy charge. Applicants must show the adjustments made to suppliers' capacity due to the long-term contracts. The specific filing requirements for purchase and sales data are set out in § 33.3(d)(2) of the proposed regulations.

Native load commitment adjustments: If applicants use the available economic capacity measure in the competitive screen analysis, they must file historical data regarding hourly native load commitments for the most recent two years, if such data are publicly available.[33] The Commission seeks comment on whether two years is the appropriate period for requiring native load data. The specific filing requirements for reporting native load commitments are set out in § 33.3(d)(3) of the proposed regulations.

Other adjustments to supplier capacity: Other adjustments to reflect a supplier's competitive ability to serve a destination market may be appropriate. Applicants must support any such adjustments with adequate analyses and set out all data and assumptions used. The specific filing requirements are set forth in § 33.3(c)(3)(ii) of the proposed regulations.

There may be instances where a generation supplier's ability to participate in markets is limited by statutory restrictions. For example, the tax-exempt status of municipal generators can be jeopardized if they sell more than a certain percentage of their tax-exempt financed generation to private utilities. Another example is the geographic limitations placed on the Tennessee Valley Authority's wholesale sales activities. Failing to recognize such restrictions could overstate the ability of such generation suppliers to compete and thereby to discipline prices in a market. Applicants must describe any statutory restrictions that may apply to generation suppliers included in their competitive screen analyses.

Another adjustment that may be needed to accurately represent a supplier's ability to sell into markets is reserve requirements for reliability or other reasons. Generation capacity that must be held in reserve is not available to be sold into markets on a firm basis to respond to price increases, and therefore should not be attributed to the supplier in the competitive screen analysis. Applicants must describe reserve requirements and discuss how those requirements affect the availability of each unit included in the competitive analysis.

Finally, we note that one type of adjustment that applicants have proposed is to limit a supplier's

[28] Baltimore Gas & Electric Company and Potomac Electric Power Company, Opinion No. 412, 76 FERC ¶ 61,111 (1996), 79 FERC ¶ 61,027 at 61,120–21 (1997) (*BG&E/PEPCO*). This is not to say, however, that sales data are irrelevant to market analysis. If sales data indicate that certain participants actually have been able to reach the market in the past, it is appropriate to consider whether they are likely candidates to be included in the market in the future. *BG&E/PEPCO* at n.72. It is for this reason that we propose to require a ''trade data check'' as part of the competitive screen analysis.

[29] Long-term firm contracts are those with a remaining commitment of more than one year.

[30] Native Load Customers are defined as the wholesale and retail power customers on whose behalf a utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate the system to meet the reliable electric needs of such customers.

[31] Uncommitted capacity is total capacity less the capacity needed to serve native load and contractual commitments and to cover reserve margins. In contrast to economic capacity, this measure, as well as total capacity, does not take into account whether the capacity can economically serve a market.

[32] We have noted such inaccuracies in our analysis in a prior case. See *B&GE/PEPCO* at 61,119–120.

[33] Hourly data are available in electronic format from the FERC Form 714, Annual Electric Control and Planning Area Report.

capacity, for purposes of calculating market shares, to the demand of individual destination markets. The Commission found that such an adjustment is not appropriate because it is inconsistent with the Commission's concern with the relative ability of suppliers to dominate a market.[34] We seek comments on this approach.

Transmission prices and loss factors: An important factor in determining whether capacity can serve a destination market is the transmission costs that would be incurred in delivering generation services to a destination market. The Policy Statement recognizes that prices paid for transmission and ancillary services should be added to the variable costs of a supplier's capacity.[35] For purposes of the competitive screen analysis, applicants must use the maximum tariff rates in public utilities' open access tariffs on file with the Commission. Where a non-public utility's transmission system is involved, the maximum tariff rates under its non-jurisdictional (NJ) open access reciprocity tariff would be used. If an NJ tariff for an entity has not been submitted to the Commission, applicants should use their best efforts to obtain or estimate transmission and ancillary services rates.[36] Transmission and ancillary service prices used in a competitive screen analysis, that are not found in publicly-available tariffs or rate schedules, would have to be adequately supported.

Consistent with the conservative nature of the competitive screen analysis, the Commission proposes to require that the transmission prices used be the maximum tariff rates in the open access tariffs. Applicants could present, in addition to the required screen analysis, a separate analysis using lower discounted transmission rates if applicants can demonstrate that discounted lower rates have been generally available and that discounting is likely to be available in the future.[37]

Restructuring efforts in some regions may result in transmission pricing regimes that depart from traditional system-specific, average cost prices. We propose to require that the transmission pricing used in the competitive screen analysis and the data presented in the filing reflect the transmission pricing regime in effect in the relevant geographic markets.

For each transmission system that a supplier must use to deliver energy to a relevant destination market, applicants must provide specific data, including the transmission provider's name, the firm and non-firm point-to-point rates as well as the ancillary services rates, loss factors and an estimate of the cost of supplying energy losses. Where tariff rates that are expressed as $/MW are converted to $/MWH, applicants would have to explain the conversion. Applicants must also explain how suppliers are assigned transmission contract paths to the destination markets. The specific filing requirements for transmission rate and loss factor data are set out in § 33.3(d)(4) of the proposed regulations.

Market price: As discussed in the Policy Statement, a supplier's capacity may be included in a relevant market, for purposes of the competitive screen analysis, if it can be delivered into the market at a price that is no more than 5 percent above the pre-merger market price.[38] We therefore propose that the application present and support market prices for each relevant destination market under various significant market conditions. Significant market conditions include, for example, those characterized by periods of high (peak) or low (off-peak) demand and by transmission constraints.[39]

As discussed in the Policy Statement, the Commission does not believe that all electricity markets have matured sufficiently to exhibit single market-clearing prices for various products. Therefore, applicants may estimate market prices using surrogate measures. The Commission seeks comments on whether there are appropriate criteria for determining when surrogate price measures are needed. We do not propose at this time a specific method for estimating market prices. However, the results must be supported and consistent with what one would expect in a competitive market. For example, we would expect prices to vary little from customer to customer in the same region during similar demand conditions (if there are no transmission constraints), but we would expect prices to vary between peak and off-peak periods.[40] Where results that are at odds with those that would be expected under competitive market conditions are shown, applicants would explain such results. We also encourage applicants to use more than one approach to estimating market prices in order to demonstrate that the market price estimates are valid.

To support the market price estimates, applicants must file any cost or sales data relied upon in estimating the price, as well as an explanation of how the data were used to determine the estimates. The specific filing requirements for market price data are set out in § 33.3(d)(5) of the proposed regulations.

(2) Transmission Capability

The capacity of suppliers that is determined to be economic in a relevant destination market (that is, capacity that can be delivered at a cost that is no more than 5 percent above the pre-merger market price) may be included in a relevant market, for purposes of the competitive screen analysis, only to the extent that transmission capability is available to the supplier. Such capacity is calculated as the sum of available transmission capability (ATC) and any firm transmission rights held by the supplier that are not committed to long-term transactions. Thus, the extent of transmission capability and the allocation of the rights to use that capability are the important factors in determining a supplier's ability to physically reach a market. This section discusses the data and analyses that we propose to require to allow us independently to estimate each economic supplier's ability to reach a market.

Physical capability: For those suppliers determined to be able to economically serve a relevant destination market, applicants must present data on transmission capability for each transmission system a supplier must use to deliver energy to relevant destination markets. To the extent available, these data would include total transfer capability (TTC) and firm ATC, and must be consistent with values posted on the OASIS. We are, however, concerned that the sum of transfer capabilities reported on OASIS sites could exceed the simultaneous transfer capability. We therefore propose that the transmission capability be reported as simultaneous transfer capability to avoid attributing more generating capacity to a market than could actually reach it under actual operating conditions. The Commission understands, however, that simultaneous transfer capability data may not be generally available. Where that is the case, applicants must use the

[34] Ohio Edison Company, *et al.*, 80 FERC ¶ 61,039 at 61,104 (1997) (*FirstEnergy*).

[35] Policy Statement at 30,131.

[36] Non-public utilities that are members of Regional Transmission Groups (RTGs) are required to file transmission tariffs with the RTG. Maximum rates may be found in the RTG tariffs. Such information also may be available on a non-public utility's OASIS.

[37] For public utilities (and non-public utilities with OASIS), evidence should be available from OASIS archives. OASIS database transaction data must be retained and made available upon request for three years after they were first posted. *See* 18 CFR 37.7.

[38] Policy Statement at 30,131.

[39] *Delmarva* at 61,408.

[40] *FirstEnergy*, 80 FERC at 61,105–106.

best data available to avoid overestimating transfer capability. For example, the analysis should not add together the capabilities of several interfaces if the transfer capability into a market is limited by the same facility.[41]

Applicants must also identify the hours when transmission constraints have been binding and the levels at which they were binding. The application would also present data regarding whether and how the proposed merger would change line loadings and the consequent effect on transfer capability. To the extent possible, applicants would provide maps showing the location of transmission facilities where binding constraints currently occur or are expected to occur as a result of the merger. The Commission seeks comment regarding the parameters that determine when a binding constraint is significant enough to cause competitive concern. For example, is there a minimum number of hours that a constraint must last to be of concern?

The Commission understands that applicants must depend on publicly-available information regarding transmission capability for systems other than their own, and that some of the information discussed above may not be generally available for all systems. Applicants should file the best available data regarding systems other than their own. However, all of the data discussed in this section regarding applicants' systems is available to the applicants, and such data must be filed, even if it is not available for all other systems. An accurate representation of transmission conditions on or close to the applicants' systems, where the merger's effects are likely to be greatest, is important. The specific filing requirements for transmission capability data are set out in § 33.3(d)(7) of the proposed regulations.

Firm transmission rights: Transmission capacity along transmission paths between suppliers and destination markets that is reserved under a long-term firm transmission contract by suppliers should be presumed to be available to other suppliers unless the capacity is committed to a long-term power transaction. Applicants must identify such transmission capability and provide supporting information, including the FERC rate schedule numbers if the transmission provider is a public utility. The specific filing requirements for firm transmission rights data are set out in § 33.3(d)(8) of the proposed regulations.

Allocation of transmission capability: Transmission capability that is not subject to existing firm reservations by others may be presumed for purposes of the competitive screen analysis to be available to economic suppliers to reach the relevant markets. However, this would not be the case for transmission capability on interfaces that would become internal to the merged firm after the merger. If, after a merger, the merged firm would have either generating resources or load on both sides of the interface, and would have ownership or entitlement interests in the interface on both sides, the transmission capability on that interface could be used to serve native load. Since native load generally would have a higher reservation priority than most third party uses, it could preclude access by other suppliers to that interface.[42] Consistent with past decisions, the Commission proposes that, for purposes of the competitive screen analysis, it would be inappropriate to allocate to competing sellers unreserved capability over interfaces internal to the merged company unless the applicants demonstrate that: (a) the merged company would not have adequate economic generating capacity to use the interface capability fully, (b) the applicants have committed that the portion of the interface capability allocated to third parties actually will in fact be available to such parties, or (c) alternate suppliers have purchased the transmission capability on a long-term basis.[43] Any allocation of internal transfer capability to third parties consistent with the above guidance must be adequately explained and supported.

In many cases, multiple suppliers could be subject to the same transmission path limitation to reach the same market, and the sum of their economic generation capacity could exceed the transmission capability available to them. Where this situation arises, the competitive screen analysis would have to allocate the transmission capability among the suppliers' generating capacity. There are a number of methods for accomplishing this. Applicants must describe and support the method used and show the resulting transfer capability allocation. The Commission is not proposing a single method at this time, but we invite comments on the merits of various approaches to allocating transmission capability in the competitive screen analysis.

Summary of supplier presence. The Commission proposes to require that applicants provide a table summarizing supplier presence in each of the relevant destination markets. The table would include the market designation, the product, the name of each supplier, and the amount of generation capacity that each supplier can economically deliver to the market after accounting for available transmission capability. The specific filing requirements for this summary of supplier presence are set out in § 33.3(d)(9) of the proposed regulations.

(3) Historical Data

The Commission proposes that applicants file certain historical data that can be used to corroborate the results of the competitive screen analysis. We understand that applicants must depend on publicly-available information for the vast majority of the screen analysis and that some detailed data may not be generally available for all market participants. However, certain important data regarding applicants' transactions and transmission systems are available to the applicants and should be filed.

Trade data. The Commission proposes to require that applicants file actual trade data regarding sales and purchases in which applicants participated for the most recent two years for which data are available. These data will be used to corroborate the suppliers identified as participating in the relevant destination market and the extent of their participation. We would expect some correlation between the results obtained by the competitive screen analysis and recent trade patterns. Applicants must provide an explanation of any significant differences.

We propose to require applicants to file trade data regarding all electricity sales and purchases in which they participated, identifying the seller, the buyer, the characteristics of the product traded and the price. The specific filing requirements for this historical trade data are set out in § 33.3(d)(10).

Transmission service data. The competitive screen analysis evaluates the ability of suppliers to access relevant markets economically and physically. One of its critical components is the availability of transmission capacity. While applicants would be required under the proposed rule to file estimates of ATC and TTC used in the competitive screen analysis, historical transmission service

[41] *FirstEnergy* at 61,104.

[42] Wisconsin Electric Power Company, *et al.* (*Primergy*), 79 FERC ¶ 61,158 at 61,694 (1997), and *FirstEnergy* at 61,107.

[43] *FirstEnergy* at 61,103–04.

information would be valuable to corroborate the results of the analysis that use ATC and TTC estimates. The Commission therefore proposes to require that applicants submit a description of all instances in the two years preceding the application in which transmission service on their systems has been denied, curtailed or interrupted. This description should, to the extent such data are available from OASIS sources, identify the requestor, the type, quantity and duration of service requested, the affected transmission path, the period of time covered by the service requested, the applicants' response, the reasons for the denial and the reservations or other use anticipated by the applicants on the affected transmission path at the time of the request. The specific filing requirements for this transmission service data are set out in § 33.3(d)(11).

d. Concentration Statistics. The final step of the competitive screen analysis is to assess market concentration. Applicants must file pre- and post-merger market concentration statistics calculated in accordance with the preceding sections. Both HHIs and single-firm market share statistics should be presented. The specific filing requirements for concentration statistics are set out in § 33.3(c)(4) of the proposed regulations.

The HHI statistics would be compared with the thresholds given in the Guidelines.[44] If the thresholds are not exceeded, no further analysis need be provided in the application. If an adequately supported screen analysis shows that the merger would not significantly increase concentration, and there are no interventions raising substantial concerns regarding the merger's effect on competition which cannot be resolved on the basis of the written record, the Commission would not look further at the effect of the merger on competition. If, however, the HHI statistics exceed the thresholds, the applicants must either propose mitigation measures that would remedy the merger's potential adverse effects on competition or address the other DOJ merger analysis factors.

e. Mitigation Measures and Analysis of Other Factors. In lieu of addressing the additional factors that would lessen concern regarding the adverse competitive impact of a proposed merger, applicants may propose mitigation measures. Proposals must be specific, and the applicant must demonstrate that proposed measures adequately mitigate any adverse effects of the merger.

Some mitigation measures can be shown to directly lower market concentration. Examples of such measures are generation divestiture and transmission rate reforms (such as the elimination of pancaked rates) that broaden the geographic market. A properly structured ISO or other regional transmission entity can lower concentration by both eliminating the pancaking of rates and encouraging new entrants. Where such measures are proposed, the application must also include, to the extent possible, a separate analysis demonstrating the effect of the proposal on market concentration. Other measures may not be directly linked to decreases in market concentration. Where such other measures are proposed, the application must include an analysis demonstrating how the proposed measure will ensure that the merger will not adversely affect competition in markets where the screen analysis shows a significant adverse effect on concentration. The specific filing requirements concerning mitigation measures are set out in § 33.2(g)(3).

Where the competitive screen analysis indicates concentration results that exceed the thresholds but mitigation measures are not proposed, applicants must provide additional analysis. The Guidelines describe four additional factors to examine in situations where merger-induced concentration exceeds specified thresholds.[45] These factors provide additional information that can be used to determine if a merger raises significant competitive concerns and, if so, if there are countervailing considerations. Based on the Guidelines, the Commission proposes that applicants evaluate the following four factors if the results of the screen analysis show that the concentration thresholds are exceeded: the potential adverse competitive effects of the merger; whether entry by competitors can deter anticompetitive behavior or counteract adverse competitive effects; the effects of efficiencies that could not be realized absent the merger; and whether one or both of the merging firms is failing and absent the merger the failing firm's assets would exit the market.

Applicants' analysis of these additional factors must be consistent with the standards discussed in the Guidelines. For example, the Guidelines require that entry must be timely, likely and sufficient in magnitude to deter or counteract the adverse competitive effects of concern in order to be considered an effective mitigating factor.[46] The Guidelines suggest that entry must occur within two years of the merger to be considered timely, and that all phases of entry must occur within the two-year period, including planning, design, permitting, licensing and other approvals, construction and actual market impact.[47] Given the current lead times for bringing new generation or transmission capacity on line, it may be unlikely that entry can be a mitigating factor unless facilities are already in the planning or construction stages at the time of the application.[48] The specific filing requirements for these additional factors are set out in § 33.2(g)(4) of the proposed regulations.

f. Merger applications that are exempt from filing a competitive screen analysis. There are mergers where the filing of a full-fledged horizontal or vertical screen analysis may not be warranted because it is relatively easy to determine that such merger proposal will not have an adverse impact on competition (*e.g.*, one of the merging parties operates entirely on the East Coast and the other merging party operates entirely on the West Coast). The Commission applied the policy of not always requiring a full competitive screen analysis in its approval of the *Duke/PanEnergy* merger, finding that even though applicants had not performed a complete Appendix A analysis, nevertheless the generating facilities of PanEnergy are so small and are located at such a great distance from Duke Power Company's market that consolidating them is likely to have a negligible effect on market concentration.[49]

Similarly, some mergers that only incidentally involve public utilities would not require a rigorous competitive screen analysis. An example is when major financial firms change their ownership structure in some way and one or both have a power marketing subsidiary. In this case, the principal interest in jurisdictional facilities would be the market-based power sales tariff of the power marketer since it would not own or control any generation.

Therefore, with regard to horizontal mergers, we propose that a merger applicant need not provide the full competitive screen analysis otherwise required under § 33.3 if the applicant

[44] *See* n.11 *supra.*

[45] These factors are those discussed in steps two through five of the DOJ Guidelines.

[46] Guidelines, 57 FR at 41,561.

[47] *Id.* at 41,561–562.

[48] For example, we found in *Primergy* that timely entry would not occur and thus was not a mitigating factor to the anticompetitive effects of the proposed merger. 79 FERC 61,158 at 61,695–696.

[49] *Duke,* 79 FERC at 62,037 (1997).

affirmatively demonstrates that the merging entities do not operate in the same geographic markets or, if they do, the extent of such overlapping operation is de minimis. The Commission seeks comment regarding the appropriate threshold for the de minimis test.

iii. Vertical Screen Analysis. The previous section describes the filing requirements for the analytic framework for evaluating the competitive effects of horizontal mergers, that is, mergers involving two or more jurisdictional electric utilities. However, we noted in the Policy Statement that we intended to apply the same analytic framework to mergers between electric utilities and firms that provide inputs for electricity generation, for example, ''vertical'' mergers.[50] Mergers may have both horizontal and vertical aspects.

Since the Policy Statement was issued, the Commission has acted on seven vertical mergers.[51] In analyzing these cases, the Commission developed a basic approach for assessing whether a vertical merger is likely to adversely affect competition in electricity markets. The framework used by the Commission was informed by the DOJ/FTC approach to evaluating vertical mergers and drew from the analytic framework described in the Policy Statement.

We are now formally proposing an analytic framework and the filing requirements to support that framework to evaluate the competitive effects of vertical mergers. This proposed analytic framework is consistent with the basic approach used by the Commission to evaluate vertical aspects of prior mergers.

The Commission has streamlined this vertical analytic framework and proposes certain abbreviated filing requirements and limitations on the scope of our review.[52] This should greatly reduce the number of applications that will require a complete analysis of the vertical aspects of a proposed merger involving a jurisdictional public utility.

For example, a merger cannot impair competition in ''downstream'' electricity markets if it involves an input supplier (the ''upstream'' merging firm) that sells: (1) a product that is used to produce only a de minimis amount of the relevant product in the downstream geographic market or (2) no product into the downstream electricity geographic market. If such a showing is made, an applicant will not be required to file additional information regarding the vertical aspects of a proposed merger. We believe these proposed abbreviated filing requirements will result in the expeditious processing of mergers that clearly present no vertical competitive concerns.

In cases where more complete information is necessary for the Commission to determine the competitive effects of a vertical merger, we propose an analytic framework comprising four elements: (1) define the relevant products traded by the upstream and downstream merging firms;[53] (2) define the relevant downstream and upstream geographic markets; (3) evaluate competitive conditions using market share and concentration HHI statistics in the downstream and upstream geographic markets; and (4) evaluate the potential adverse effects of the proposed merger in relevant downstream and upstream geographic markets and, if appropriate, other factors that can counteract such effects, including the ease of entry into either the upstream market or the downstream market and merger-related efficiencies.

We propose establishing the same filing requirements for the components of the proposed vertical analytic framework that have counterparts in the horizontal screen analysis, such as defining relevant downstream geographic markets using a delivered price test. Filing requirements for other parts of the vertical analysis, such as defining upstream geographic markets, would be only generally specified. Our proposed analytic framework for analyzing the competitive effects of vertical mergers and associated filing requirements are explained more fully below. We solicit comments on both the reasonableness of the framework and the adequacy of the information required to analyze vertical competitive issues.

a. *Vertical Analytic Framework.* As discussed earlier, the Commission's competitive concern in any merger involving jurisdictional electric utilities is whether the merger will affect competition in electricity markets through higher prices or reduced output. Horizontal mergers can cause this by eliminating a competitor from the market and by the exercise of market power by the merged firm. Vertical mergers do not directly eliminate a competitor from the market but may create or enhance the incentive for the merged firm to adversely affect prices and output in the downstream electricity market.[54] This effect on prices and output can occur in a number of ways, including: (i) foreclosure/raising of rivals' costs; (ii) facilitating coordination; and (iii) evasion of regulation.[55]

Foreclosure/Raising Rivals' Costs: A merger between an entity owning downstream electric generation and an entity owning an upstream input supplier to competitors of that generation may create the incentive for the upstream firm to exclude the merged firm's downstream generation competitors from access to inputs. The upstream merging firm can accomplish this through pricing, marketing and operational actions that would raise the input costs of suppliers competing with the downstream merging firm or by otherwise restricting such suppliers' input supply.[56] This behavior can also deter entry by rival generators in the downstream market.[57]

A vertical merger can create or enhance the ability of the merged firm to adversely affect electricity prices or output in the downstream market by raising rivals' input costs if the upstream and downstream geographic markets are susceptible to the exercise of market power. Under these circumstances in the upstream market, generators purchasing from the upstream merging firm could not turn to alternative suppliers to avoid an increase in input prices. Similarly, customers of the merging downstream firm would not be able to turn to alternative electricity suppliers to avoid an increase in electricity prices. The Commission requests commenters to address the extent to which vertical mergers in the energy industry could result in foreclosure or raising rivals' costs problems.

Facilitating Anticompetitive Coordination: Vertical mergers can also facilitate anticompetitive ''coordination.''[58] A vertical merger can

[50] Policy Statement at 30,113.

[51] *See Enova, LILCO, NORAM, Duke/PanEnergy,* PG&E Corporation and Valero Energy Corporation, 80 FERC ¶ 61,041 (1997) (*PG&E/Valero*); Destec Energy, Inc. and NGC Corporation, 79 FERC, ¶ 61,373 (1997) (*Destec/NGC*); Enron Corporation, 78 FERC, ¶ 61,179 (1997) (*Enron*).

[52] These specific filing requirements are set forth in § 33.4 of the proposed regulations.

[53] There may be several relevant upstream input products (such as fuel transportation and turbine manufacturers).

[54] Horizontal mergers may give rise to a higher market share for the merged entity and increase concentration in the market. Market share and concentration are not directly affected by a solely vertical merger.

[55] *See Enova,* 79 FERC ¶ 61,372 at 62,560.

[56] Foreclosure can also result from a vertical merger if the downstream merging firm refuses to purchase from input suppliers other than its upstream affiliate.

[57] *See Enova,* 79 FERC ¶ 61,372 at 62,560.

[58] Anticompetitive coordination refers generally to the exercise of market power through the concurrence of other (non-merging) firms in the market or on coordinated responses by those firms.

Continued

facilitate anticompetitive coordination in either the upstream or downstream markets if, in either case, the merger: (1) Creates or enhances the ability of competing firms to agree to raise prices or restrict output or (2) dampens the incentive for firms to compete aggressively on price or service. Whether anticompetitive coordination results in higher electricity prices or lower output depends on the competitive conditions in the upstream and downstream geographic markets. In addition, anticompetitive coordination can be increased if information, useful for coordinated behavior and not available elsewhere, must be shared between the upstream firm and its customers, and there are substantial transactions between the upstream merging firm and non-affiliated customers.[59]

The Commission is aware that the potential mechanisms through which a vertical merger could facilitate anticompetitive coordination and the conditions under which such coordination would result in competitive harm are complex and subject to some debate. In a later section, we solicit general comment on anticompetitive coordination and how, or if, it should be addressed in an analytic framework.

Regulatory Evasion: We solicit comment on the potential for vertical mergers involving jurisdictional electric utilities to result in regulatory evasion. For example, after merging with an upstream input supplier, a downstream electric utility's input purchases would be ''internal'' to the firm. The merger, therefore, may create the incentive for the merging upstream input supplier to inflate the transfer prices of inputs sold to the downstream regulated utility to the extent it can evade regulatory scrutiny. Profits would increase for the vertically-integrated firm as a result of such a strategy but would accrue to the unregulated affiliate. Higher electricity prices could result from such a strategy.

The Commission notes that regulatory evasion is a behavior that potentially affects retail electricity prices.[60] Consistent with our position taken in the Merger Policy Statement, the Commission does not propose to address regulatory evasion concerns that affect retail electricity prices unless specifically asked to do so by a state regulatory authority.[61]

We also solicit comment on our proposed treatment of mergers in which regulatory evasion may be a concern, and how ongoing changes in the industry, such as ISO development and retail access, might affect our proposed approach.

b. Products supplied by the upstream merging firm are used to produce a de minimis amount of the relevant downstream products. As discussed earlier, the Commission is proposing certain instances under which only minimal information and analysis would be necessary to confirm that a vertical merger poses no competitive concern. One such instance is when the upstream merging firm sells a product that is used to produce only a de minimis amount of the relevant product in the downstream geographic market.

The Commission expects that vertical consolidations that fall into this category will be relatively easy to identify. We therefore propose that applicants would need to supply only minimal information to make an affirmative showing that a vertical merger does not require further analysis in order to determine if it would have an adverse effect on competition in downstream electricity markets.

If the products sold by the upstream merging firm are used to produce a de minimis amount of the relevant products in the downstream geographic market, a vertical merger should pose no competitive concern.[62] An example is when the upstream merging firm supplies gas transportation but almost all of the energy in the downstream market is produced from coal-fired generating capacity.

The Commission proposes that applicants desiring to make such a showing would have to: identify products sold by the upstream and downstream merging firms and identify the suppliers (by type of generation, *e.g.*, gas-fired, coal-fired, that could compete with the downstream merging firm in providing downstream products. The second part of this analysis, that is, identifying the downstream suppliers, is necessary to determine whether customers affected by the merger could potentially turn to alternative suppliers in the event of a post-merger price increase. The Commission proposes that applicants may provide an approximate definition of the downstream geographic market. At this time, we will not propose thresholds for the proportion of output in the downstream geographic market that is accounted for by the inputs sold by the upstream merging firm or other ''bright line'' tests for such de minimis determinations.

c. The upstream merging firm does not sell products in the geographic market in which the downstream merging firm resides. A vertical merger involving an upstream firm that does not sell into the downstream geographic market would not affect competition in that market. Such a merger would involve an electric utility in a different geographic market from that served by the upstream firm and would raise no competitive concerns.

The Commission proposes that applicants desiring to make such a showing would have to identify: (1) Products sold by the upstream and downstream merging firms; and (2) downstream suppliers who purchase inputs from the upstream merging firm and determine if those customers compete with the downstream merging firm to supply downstream products. The second part of this analysis, that is, identifying the downstream suppliers, is necessary to determine whether customers affected by the merger could potentially turn to alternative suppliers in the event of a post-merger price increase. The Commission proposes that applicants could provide an approximate definition of the downstream geographic market.

For both of these abbreviated showings, applicants should explain, justify and document their analyses and provide all supporting data and documentation. The abbreviated filing requirements are set forth in § 33.2(g)(2)(ii) of the proposed regulations. We solicit comments: on the reasonableness and efficacy of the proposed abbreviated filing requirements provisions; approaches to approximating the downstream geographic market; and appropriate de minimis thresholds for the amount of downstream output produced by inputs sold by the upstream merging firm.

d. Components of the Analytic Framework. Described in more detail below are the components of the proposed analytic framework for vertical mergers.

See supra n.9. We emphasize that in the electric utility industry, the terms ''coordination'' or ''coordinating activities'' apply in a specific context. For example, coordinating with other firms in downstream electricity markets in the creation of independent system operators would not raise competitive concerns. The Commission has also long encouraged technical coordination in order to promote reliability.

[59] There are many examples of potential anticompetitive coordination. One possibility is if the downstream merging firm obtains price quotes and other sensitive competitive information from other (non-merging) upstream suppliers and transfers it to its upstream merging partner. The exchange of such information among upstream input suppliers can be potentially useful in agreeing to raise prices or restrict output to all downstream customers.

[60] Regulatory evasion could affect requirements service customers in wholesale electricity markets. However, we believe this is less likely to be a concern if wholesale markets are competitive.

[61] Policy Statement at 30,128.

[62] *See, Duke/PanEnergy*, 79 FERC, ¶ 61,236 at 62,039.

1. Relevant Products

a. Downstream Market

Applicants must identify and define the relevant products sold in the downstream electricity market affected by the business activity of the upstream merging firm. The proposed requirement for this aspect of the vertical analytic framework is the same as that proposed for the horizontal screen analysis, as set forth in § 33.3(c)(1) of the proposed regulations. We seek comments on how, if at all, our proposed approach for defining relevant products in the downstream market should differ from that required for horizontal mergers. We also seek comments on any alternative approaches.

b. Upstream Market

Applicants must identify the products produced by the upstream merging firm and used by the downstream merging firm and/or its competitors in the production of relevant downstream electricity products. Relevant upstream products could be grouped together when they are good substitutes for each other from the buyer's perspective. Also, the supply and demand conditions might vary over time, creating discrete, time-differentiated products.

Accordingly, the relevant products identified by the applicant should be fully explained, justified and documented. The specific filing requirements for identifying and defining relevant upstream products are set out in § 33.4(c)(1)(ii) of the proposed regulations. The Commission seeks comments on the proposed approach and any alternative approaches to defining relevant input products, and how such approaches should vary for different types of inputs.

2. Relevant Geographic Markets

a. Downstream Market

Defining the downstream geographic market consists of identifying the customers potentially affected by the merger and the suppliers that can compete with the merging firm to supply a relevant electricity product. In the proposed regulations for the horizontal screen analysis, relevant geographic electricity markets are defined using the delivered price test. Under the delivered price test, a supplier would be considered in the market if it has generating capacity from which energy can be made available and delivered to the market at a price, including transmission and ancillary services, no more than five percent above the market price.

The Commission proposes that the relevant downstream geographic market in a vertical merger would be defined similarly, as set out in § 33.3(c)(3) of the proposed regulations for the horizontal analytic framework. However, we seek comment on the appropriateness of a delivered price test analysis for analyzing downstream markets in vertical mergers. We also solicit comments on any alternative approaches to defining downstream geographic markets in a vertical merger context.

b. Upstream market

The Commission will not at this time propose precise filing requirements for defining upstream geographic markets. One reason is that the Commission has not yet acted upon an application for a merger with vertical aspects that required a rigorous definition of the upstream geographic market. Another reason is that the types of analysis and data needed to define geographic upstream markets may vary from input to input. The Commission expects to better understand the data and analysis needed to define geographic input markets—if such analysis proves necessary—as we evaluate proposed vertical mergers.

Until such time, the Commission is proposing that applicants would approximate the upstream geographic market for each relevant upstream product and submit data and documentation necessary to support their analysis. Such approximate definitions of the upstream geographic market could be based, perhaps, on historical trade data. Applicants should define the smallest reasonable geographic markets.

Applicants should fully explain, justify and document their analysis, including all supporting data and documentation. The filing requirements for this aspect of the analytic framework are set forth in § 33.4(c)(2) of the proposed regulations. We seek comment on appropriate approaches to defining upstream geographic markets in vertical mergers.

3. Evaluating Competitive Conditions in Geographic Markets

a. Downstream Market

Once the downstream geographic market has been defined, applicants would assess competitive conditions in the downstream market. To do so, applicants would calculate market shares for the suppliers identified in the delivered price test and downstream market concentration using the HHI statistic.

The Commission proposes that for a vertical merger, downstream market share statistics reflect the ability of buyers in the downstream market to switch—in response to a price increase—from generation served by the upstream merging firm. Specifically, we propose that applicants would identify the upstream suppliers who sell or deliver inputs to each generating unit or plant in the downstream geographic market. All generation capacity served by the same input supplier would be considered together and therefore be given a market share, *i.e.*, treated as if it was owned or controlled by a single firm.[63]

The Commission proposes that applicants calculate downstream market concentration using the HHI statistic. While the Commission has not explicitly reported HHI statistics for relevant geographic markets in prior vertical merger cases, the HHI statistic is, along with market share, a generally accepted indicator of competitive conditions in a relevant market.[64] As a general matter, therefore, the Commission proposes that markets that are ''highly concentrated'' under the Guidelines standard (*i.e.*, an HHI of 1800 or above) are considered to be conducive to the exercise of market power and therefore should warrant additional analysis.[65]

The specific filing requirements for assessing the competitive conditions in the downstream market are set forth in § 33.4(c)(3)(i) of the proposed regulations. We solicit comments on this approach to assessing market shares and concentration in the downstream market, and any alternative approaches.

b. Upstream Market

The Commission proposes that Applicants would assess competitive conditions in the upstream market by calculating market shares for each supplier identified in the delivered price test and market concentration using the HHI statistic. The Commission proposes that upstream geographic markets that are ''highly concentrated''

[63] *See Enova*, 79 FERC ¶ 61,372 at 62,562. If multiple upstream suppliers serve a single generating plant or unit, applicant's analysis would take this into account.

[64] The DOJ 1984 Merger Guidelines address vertical mergers and discuss both market share and HHI statistics. *See* DOJ 1984 Merger Guidelines at 46.

[65] The DOJ 1984 Merger Guidelines use as a threshold for further investigating the competitive effect of a vertical merger a ''highly concentrated'' market. *See* DOJ 1984 Merger Guidelines at 46. Because concentration thresholds are indicators of cases in which additional investigation into the possibility of competitive harm might be warranted, the Commission would look further at mergers with an HHI near 1800 or above.

under the Guidelines standard (*i.e.*, an HHI of 1800 or above) are considered to be conducive to the exercise of market power and therefore should warrant additional analysis.

The specific filing requirements for assessing the competitive conditions in the upstream market are set forth in § 33.4(c)(3)(ii) of the proposed requirements. We solicit comments on this approach to assessing market shares and concentration in the upstream market, and any alternative approaches.

4. Mitigation Measures and Analysis of Other Factors

Where applicants' analysis indicates concentration results that raise concerns regarding the competitive effect of the merger, the Commission proposes that applicants would evaluate additional factors that could provide insight into whether a proposed merger would be likely to harm competition in electricity markets. Applicants need evaluate these factors only if competitive conditions in the upstream and downstream markets support the possibility that the merger could raise rivals' costs or facilitate coordination, as described in the following sections. In lieu of addressing the additional factors that would lessen concern regarding the adverse competitive impact of a proposed merger, applicants may propose mitigation measures. Proposals must be specific, and the applicant must demonstrate that proposed measures adequately mitigate any adverse effects of the merger.

If applicants choose not to propose mitigation, the factors that we propose applicants evaluate in this stage of the analytic framework are those set out in Sections 2 through 5 of the Guidelines: potential adverse competitive effects, ease of entry, merger-related efficiencies, and whether one of the merging firm's assets would exit the market, but for the merger. The second, third and fourth of these factors (entry, merger-related efficiencies and a failing firm rationale) can counteract any potential competitive harm indicated by market share and concentration statistics. Regarding entry, the Commission seeks comments on the circumstances under which entry into either the upstream or downstream markets would be sufficient to mitigate the potential competitive harm of a proposed merger and the circumstances under which entry into both markets would be necessary.[66] The first of these factors looks more specifically at the circumstances under which potential adverse competitive effects would materialize. Below, we discuss the proposed requirements for evaluating such circumstances for mergers posing foreclosure/raising rivals' costs and anticompetitive coordination concerns.

a. Foreclosure/Raising Rivals' Costs

If both the upstream and downstream markets are conducive to the exercise of market power, there is the potential for the merger to harm competition in the downstream geographic market by raising the input costs of rival downstream suppliers. As such, we propose that applicants demonstrate that raising rivals' costs would be difficult, even if the merger creates or enhances the ability of the merged firm to adversely affect prices or output in the downstream market.

For example, we propose that applicants provide adequate information, supported by data and documentation, regarding how the merged firm could raise its rivals' costs. We propose that such information could include, but is not limited to: (1) Types of products or services sold by the upstream firm to each downstream competitor; (2) terms of contracts under which products or services are sold and the duration of such contracts; (3) a description of the prices, availability quality and input delivery points of inputs sold to downstream competitors; and (4) information on generation unit scheduling, impending technological improvements, and marketing that is provided by customers to the upstream firm, particularly any market-sensitive information that may be subject to confidentiality provisions.[67] We seek comment on how such data can be made available to intervenors under protective order procedures.

We also propose that applicants would evaluate whether customers of the upstream input supplier can readily switch to alternative inputs to avoid a price increase by the upstream merging firm. If switching to alternative inputs is possible, the merger may not create or enhance the ability of the merging firm to affect output and prices in the upstream market.

We propose that applicants would have to provide data and documentation supporting how regulatory requirements governing the conduct of upstream input suppliers (such as open-access provisions applicable to gas pipelines under Order No. 636)[68] could counteract any competitive harm posed by a merger.

Finally, a raising rivals' costs strategy is unlikely to harm competition unless such behavior is profitable. Therefore, we propose that applicants would provide data and documentation supporting an assessment of the profitability of a raising rivals' costs strategy if this data could materially affect a conclusion that a proposed merger could harm competition.

The filing requirements for this aspect of the analytic framework are set forth in § 33.2(g)(4) of the proposed regulations. The Commission seeks comment on the foregoing, and other pertinent considerations that may materially affect a finding that a proposed vertical merger would be likely to impair competition in electricity markets and how such considerations should be analyzed.

b. Facilitating Anticompetitive Coordination

There is a possibility that a vertical merger could harm competition in the downstream market by facilitating anticompetitive coordination in either the upstream or downstream market. As discussed earlier, whether anticompetitive coordination results in higher electricity prices or lower output depends on the competitive conditions in the upstream and downstream geographic markets. However, since we have not described the ways in which a vertical merger could facilitate coordination, it would be premature to specify the market conditions under which increased coordination would warrant applicants proceeding to evaluate additional factors.

Therefore, we solicit comments on how a vertical merger could facilitate anticompetitive coordination; the conditions under which such coordination would impair competition in electricity markets; and the significance of coordination problems as they relate to the industries likely to be affected by the vertical mergers in which the Commission would take an interest.

5. Remedy

In the event a vertical merger poses competitive concerns after accounting

[66] *See* DOJ 1984 Merger Guidelines §§ 4.211 and 4.212.

[67] *See*, Vastar Resources, Inc., *et al.*, 81 FERC ¶ 61,135 at 61,633.

[68] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas After Partial Wellhead Decontrol, Order No. 636, FERC Stats. and Regs. ¶ 30,939 (April 8, 1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (August 2, 1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (November 27, 1992), *reh'g denied*, Order No. 636–C, 62 FERC ¶ 61,007 (January 8, 1993), *order aff'd in part and remanded in part*, United Distribution Companies, v. FERC, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997); *rehearing pending.*

for the additional factors described in the previous section, the Commission proposes that the merger may be made acceptable if certain remedial actions are taken. For example, in *Enova* the Commission specified certain remedies that would address the competitive concerns presented by that merger. The remedies included a code of conduct, restrictions on affiliate transactions and an electronic gas reservation and information system.[69] We solicit comments on the types of remedial action that would effectively address such competitive concerns.

3. Effect on Rates—Proposed Requirements for Ratepayer Protections

The Commission has previously determined that ratepayer protection mechanisms are necessary to protect the wholesale customers of merger applicants (*e.g.*, open seasons to allow early termination of existing service contracts or rate freezes) if the contemplated benefits of the merger do not materialize. If the proposed merger raises substantial issues of fact with regard to its impact on rates, the Commission has stated that it will consider further investigation of the matter or set it for hearing.[70] Therefore, all merger applicants would be required to demonstrate how wholesale ratepayers will be protected, and applicants would have the burden of proving that their proposed ratepayer protections are adequate. Specifically, each proposed ratepayer protection mechanism would clearly identify what customer groups are covered (*e.g.*, requirements customers, transmission customers, formula rate customers), what types of costs are covered, and the time period for which the protection will apply. This information should be included in the applicants' explanation of the effect of the transaction on rates required in § 33.2(g)(i) of the proposed regulations.

4. Effect on Regulation—Proposed Requirements Concerning the Impact on State and Commission Regulatory Jurisdiction

The Commission has previously stated that, in merger filings involving public utility subsidiaries of registered holding companies, applicants must either commit to abide by the Commission's policies with respect to intra-system transactions within the holding company structure or be prepared to go to hearing on the issue of the effect of the proposed registered holding company structure on effective regulation by the Commission.[71] Consistent with this policy, we propose that, for all merger applications involving public utility subsidiaries of registered holding companies, applicants include such a commitment.

Since regulatory evasion can also result, for example, from passing higher input prices through to the retail customers of a regulated affiliate, we further propose that merger applicants, in all cases, state whether the affected state commissions have authority to act on the proposed merger. Where the affected state commissions have such authority, the Commission would not set for further investigation or hearing the matter of whether the transaction will impair effective regulation by the affected state commissions. However, if the affected state lacks authority over the merger and raises concerns about the effect on regulation, we will consider, on a case-by-case basis, whether to set this issue for hearing.[72] This information should be included in the applicants' explanation of the effect of the transaction on regulation required in § 33.2(g)(1) of the proposed regulations.

D. Emerging Issues

1. Computer Modeling

The use of computer models—specifically, computer programs used to simulate the electric power market—has been raised in comments on the Policy Statement and also in specific cases. In comments on the Policy Statement, DOJ recommended using computer simulations to delineate markets and also noted that these simulations could be helpful in gauging the market power of the merged firm.[73] The Commission believes that use of a properly structured computer model could account for important physical and economic effects in an analysis of mergers and may be a valuable tool to use in a horizontal screen analysis. For example, a computer model might prove particularly useful in identifying the suppliers in the geographic market that are capable of competing with the merged company. It could provide a framework to help ensure consistency in the treatment of the data used in identifying suppliers in a geographic market.

Therefore, we are issuing a notice of request for written comments and intent to convene a technical conference concurrently with this NOPR. This notice requests comments on the use of computer models in merger analysis and intends to convene a public conference to discuss this matter. As more fully explained in the notice, the purpose of this inquiry is to gain further input and insight into whether and how computer models can be useful to our competitive screen analysis set forth in Appendix A of the Policy Statement.

2. Other Emerging Issues

The 1996 Policy Statement primarily addresses horizontal mergers, but shortly after it was adopted a number of vertical electric-gas mergers were filed with the Commission. For this reason, we request comments now on whether we should expect other new types of corporate groupings involving public utilities to emerge, what form they might take, and how we should analyze the competitive effects if such combinations are in fact presented. We seek comments on new kinds of mergers that may lead to the blurring of traditional utility services and other business lines. Should our market concentration analysis extend to new products that may result from such a convergence of business lines, even if these products are principally concerned with end-use markets? For example, a combination involving a public utility and a telecommunication business could offer new products and services, such as sophisticated interactive electric metering, real-time pricing, automatic utility control of customer machinery and appliances to minimize electricity costs, and computerized shopping for the most economical power supplier. Are our proposed vertical merger filing requirements adequate for review of this form of public utility merger, to the extent such mergers are jurisdictional?

We also request comment on how the structural changes occurring in the electric industry should be considered in our analysis of the effect that public utility mergers may have on competition. For example, the Commission is aware that as retail markets evolve into regional power markets, it may become more difficult for individual states to adequately examine a merger's impact on such

[69] *Enova*, 79 FERC ¶ 61,372 at 62,565 (1997).

[70] Policy Statement at 30,111, 30,121–24, and n.5. *See also*, *Morgan Stanley*, 79 FERC at 61,504–05; *Duke/PanEnergy*, 79 FERC at 62,039–41; *Enova*, 79 FERC at 62,566; *Destec*, 79 FERC at 62,574–75; *LILCO*, 80 FERC at 61,079–80; *FirstEnergy*, 80 FERC at 61,098; *NORAM*, 80 FERC at 61,382–8–12.

[71] Policy Statement at 30,112 and 30,124–25. *See also*, *Duke/PanEnergy*, 79 FERC at 61,041–42; *Morgan Stanley*, 79 FERC at 61,505; *Enova*, 79 FERC at 62,566–67; *Destec*, 79 FERC at 62,575; *LILCO*, 80 FERC at 61,080; *FirstEnergy*, 80 FERC at 61,098–99; *NORAM*, 80 FERC at 61,383; and *Delmarva*, 80 FERC at 61,412–13 and n.60.

[72] Policy Statement at 30,125.

[73] Appendix to DOJ Merger NOI Comments at A–11, n12.

regional markets.[74] We seek comment on whether it is feasible to address competition only at the wholesale level and ignore changes in the market that arise in the context of state retail choice programs and transform retail franchise service territories into multistate supplier markets. Where merger applicants are members of a multistate ISO or regional power exchange, should we modify our analysis and criteria and, if so, how?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[75] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities, or a certification that the rule will not have a substantial economic effect on a substantial number of small entities. The entities that would be required to comply with the proposed rule are public utilities disposing of jurisdictional facilities, merging such facilities with such facilities owned by another person, or acquiring the securities of another public utility. These entities do not fall within the RFA's definition of small entities.[76] Thus, the Commission certifies that this rule will not have a ''significant economic impact on a substantial number of small entities.''

V. Environmental Statement

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environment Policy Act.[77] The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under §§ 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations and accounting.[78] Consequently, neither an environmental assessment nor an environmental impact statement is required.

VI. Information Collection Statement

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–519	100	1	80	8,000

Total Annual Hours for Collection:

(Reporting + Recordkeeping, (if appropriate)) = *8,000*

Although most of the discussion in this document focuses mainly on the Commission's merger policy, the NOPR does address the filing requirements for all data filed under the FERC–519 form. This data collection is relevant to a small number of mergers as well as numerous less complex corporate applications. The hours per response is a weighted average time estimate based on the projected number of merger filings and other corporate applications.

Information Collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

ANNUALIZED CAPITAL/STARTUP COSTS

Annualized Costs (Operations & Maintenance)	$4,210.31
Total Annualized Costs	4,210.31

The Office of Management and Budget's (OMB) regulations,[79] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–519, Disposition of Facilities, Mergers and Acquisition of Securities.

Action: Proposed collection.

OMB Control No.: 1902–0082.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On occasion.

Necessity of the information: The proposed rule revises the requirements contained in 18 CFR Part 33 which implements § 203 of the FPA. This proposed rule revises 18 CFR Part 33 by providing applicants with more detailed guidance for preparing applications and is consistent with the policies set forth in the Policy Statement. The proposed rule is intended to lessen regulatory burdens on the industry by eliminating outdated and unnecessary filing requirements, clarifying existing requirements, and streamlining the filing requirements for mergers that do not raise competitive concerns.

The implementation of these proposed filing requirements will help the Commission carry out its responsibilities under the FPA in accordance with the objectives of the Commission's Open Access Rule[80] and in consideration of the changing market structures in the electric industry. The Commission will use the data received as a result of the proposed filing requirements: (1) In the review of the proposed merger of jurisdictional facilities to ascertain whether the merger is in the public interest; (2) for general industry oversight; and (3) to expedite the corporate application review process.

Internal Review: The Commission has reviewed the requirements pertaining to the merger of jurisdictional facilities of public utilities and determined that the proposed revisions are necessary because of continuing changes in the electric power industry. Requiring such filing information, as set forth in this NOPR, would assist the Commission in

[74] *See, Atlantic City/Delmarva,* 81 FERC 61,173 at 61,755 (1997).

[75] 5 U.S.C. 601–612.

[76] 5 U.S.C. 601(3) (citing § 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[77] 18 CFR Part 380.

[78] 18 CFR 380.4(a)(16).

[79] 5 CFR 1320.11 (1996).

[80] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order 888–A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order 888–B, 81 FERC ¶ 61,248 (1997).

determining whether proposed mergers are consistent with the competitive goals of the FPA, the Energy Policy Act of 1992[81] and the Commission's Open Access Rule. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, [Attention: Michael Miller, Division of Information Services, Phone: (202) 208–1415, fax: (202) 273–0873, email:michael.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than August 24, 1998.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM98–4–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 888 First Street, NE, Washington, DC, 20426, during business hours.

[81] Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776, 2905 (1992).

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to revise Part 33, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 33—APPLICATION FOR ACQUISITION, SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

Sec.
33.1 Applicability.
33.2 Contents of application—general information requirements.
33.3 Additional information requirements for applications resulting in a single corporate entity obtaining ownership or control over generating facilities of unaffiliated parties.
33.4 Additional information requirements for applications resulting in a single corporate entity obtaining ownership or control over businesses that provide inputs to electric generation and electric generation products that were previously unaffiliated.
33.5 Proposed accounting entries.
33.6 Form of notice.
33.7 Verification.
33.8 Number of copies.
33.9 Protective order.
33.10 Additional information requests by the Commission.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 33.1 Applicability.

The requirements of this part will apply to public utilities seeking authority for any transaction requiring Commission authorization under section 203 of the Federal Power Act.

§ 33.2 Contents of application—general information requirements.

Each applicant shall include in its application, in the manner and form and in the order indicated, the following general information with respect to such applicant and each entity whose jurisdictional facilities or securities are involved:

(a) The exact name of the applicant and its principal business address.

(b) The name and address of the person authorized to receive notices and communications regarding the application, including phone and fax numbers, and E-mail address.

(c) A description of the applicant, including:

(1) All business activities of the applicant, including authorizations by charter or regulatory approval, even if not currently engaged in such activity;

(2) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, subsidiaries, affiliates and associate companies, unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction;

(3) A description of all joint ventures, strategic alliances, or other business arrangements to which the applicant or its parent companies, subsidiaries, affiliates and associate companies is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests;

(4) The identity of common officers or directors of parties to the proposed transaction;

(5) A description of any authorizations, licenses, or other approvals received from the Commission; and

(6) A description and location of wholesale power sales customers and unbundled transmission services customers served by the applicant or its parent companies, subsidiaries, affiliates and associate companies.

(d) A description of jurisdictional facilities owned, operated, or controlled by the applicant or its parent companies, subsidiaries, affiliates, and associate companies.

(e) A narrative description of the proposed transaction for which Commission authorization is requested, including:

(1) The identity of all parties involved in the transaction;

(2) All jurisdictional facilities and securities associated with or affected by the transaction;

(3) The consideration for the transaction; and

(4) The effect of the transaction on such jurisdictional facilities and securities.

(f) All contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction.

(g) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant must

include a general explanation of the effect of the transaction on:

(1) Competition;

(2) Rates; and

(3) Regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction. The applicant should also file any other information it believes relevant to the Commission's consideration of the transaction.

(h) If the proposed transaction involves physical property of any party, the applicant must provide a general or key map showing in different colors the properties of each party to the transaction.

(i) If the applicant is required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the proposed transaction, the applicant must identify the regulatory bodies and indicate the status of other regulatory actions, and provide a copy of each order of those regulatory bodies that relates to the proposed transaction.

§ 33.3 Additional information requirements for applications resulting in a single corporate entity obtaining ownership or control over generating facilities of unaffiliated parties.

(a) If, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of two or more of the previously unaffiliated parties to the transaction or their parent companies, subsidiaries, affiliates and associate companies (collectively merging entities), the applicant must file the horizontal Competitive Screen Analysis described in paragraphs (b), (c), (d), (e) and (f) of this section, unless the applicant affirmatively demonstrates that:

(1) The merging entities do not conduct business in the same geographic markets or

(2) The extent of the business transactions in the same geographic markets is de minimis.

(b) All data, assumptions, techniques and conclusions in the horizontal Competitive Screen Analysis must be accompanied by appropriate documentation and support.

(1) If the applicant is unable to provide any specific data required for this section, it must identify and explain how the requested data submission was satisfied and the suitability of the substitute data.

(2) The applicant may provide other analyses in addition to the horizontal Competitive Screen Analysis.

(3) The applicant may use a computer model to complete one or more steps in the horizontal Competitive Screen Analysis. The applicant must fully explain, justify and document any model used and provide descriptions of model formulation, mathematical specifications, solution algorithms, as well as the annotated model code, and any software needed to execute the model. The applicant must explain and document how inputs were developed, the assumptions underlying such inputs and any adjustments made to published data that are used as inputs. The applicant must also explain how it tested the predictive value of the model, for example, using historical data.

(c) The horizontal Competitive Screen Analysis must be completed using the following steps:

(1) Define relevant products. Identify and define all wholesale electricity products sold by the merging entities during the two years prior to the date of the merger application, including but not limited to: non-firm energy, short-term capacity (or firm energy), and long-term capacity (a contractual commitment of more than one year). If supply and demand conditions for a product vary substantially between time periods, those periods must be identified by time of day and/or load level, and analyzed separately.

(2) Identify destination markets. Identify each wholesale power sales customer or set of customers (destination market) affected by the proposed transaction. Affected customers are, at a minimum, those entities directly interconnected to any of the merging entities. Affected customers also should include those entities that have purchased electricity at wholesale from any of the merging entities during the two years prior to the date of the application. If the applicant does not identify an entity to whom the merging entities have sold electricity during the last two years as an affected customer, the applicant must provide a full explanation for each such exclusion.

(3) Identify potential suppliers. A seller may be included in a geographic market to the extent that it can economically and physically deliver generation services to the destination market. The applicant must identify potential suppliers to each destination market using the delivered price test.

(i) Delivered price test. For each destination market, the applicant must calculate the amount of relevant product a potential supplier could deliver to the destination market from owned or controlled capacity at a price, including applicable transmission and ancillary services costs, that is no more than five (5) percent above the pre-transaction market clearing price in the destination market.

(ii) The applicant must measure each potential supplier's presence in the destination market in terms of generating capacity, using at least economic capacity and available economic capacity measures. Additional measures, such as total capacity, may be presented.

(A) *Economic capacity* means the amount of generating capacity owned or controlled by a potential supplier with variable costs low enough that energy from such capacity could be economically delivered to the destination market. Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity that is committed under long-term firm sales contracts and adding capacity that is acquired under long-term firm purchase contracts (i.e., contracts with a remaining commitment of more than one year). In addition, any generating capacity of the potential supplier that is under the operational control of a third-party must be attributed to the party for whose economic benefit the capacity is operated; generating capacity may also be attributed to another supplier for other reasons deemed necessary, but the applicant must explain the reasons for doing so.

(B) *Available economic capacity* means the amount of generating capacity meeting the definition of economic capacity less the amount of generating capacity needed to serve the potential supplier's native load, i.e., the capacity needed to serve wholesale and retail power customers on whose behalf the potential supplier, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet their reliable electricity needs.

(C) Each potential supplier's economic capacity and available economic capacity (and any other measure used to determine the amount of relevant product that could be delivered to a destination market) must be adjusted to reflect available transmission capability to deliver each relevant product. The allocation to a potential supplier of limited capability of constrained transmission paths internal to the merging entities' systems or interconnecting the systems with other control areas must recognize both the transmission capability not subject to firm reservations by others and any firm transmission rights held by the potential supplier that are not committed to long-term transactions. For each such instance where limited transmission capability must be

allocated among potential suppliers, the applicant must explain the method used and show the results of such allocation.

If the proposed transaction would cause an interface that interconnects the transmission systems of the merging entities to become transmission facilities for which the merging entities would have a native load priority under their open access transmission tariff for use of those facilities, all of the unreserved capability of the interface must be allocated to the merging entities for purposes of the horizontal Competitive Screen Analysis, unless the applicant demonstrates one of the following: the merging entities would not have adequate economic capacity to fully use such unreserved transmission capability; the merging entities have committed a portion of the interface capability to third parties; or suppliers other than the merging entities have purchased a portion of the interface capability.

(4) Calculate market concentration. Using the amounts of generating capacity (i.e., economic capacity and available economic capacity, and any other relevant measure) determined in paragraph (c)(3) of this section, for each product in each destination market, the applicant must calculate the market share, both pre-and post-merger, for each potential supplier, the Herfindahl-Hirschman Index (HHI) statistic for the market, and the change in the HHI statistic. (The HHI statistic, which is a measure of market concentration and is a function of the number of firms in a market and their respective market shares, is calculated by summing the squares of the individual market shares, expressed as percentages, of all potential suppliers to the destination market.)

(5) Historical transaction data. To corroborate the results of the horizontal Competitive Screen Analysis, the applicant must provide historical trade data and historical transmission data. Such data should cover the two-year period preceding the filing of the application. The applicant may adjust the results of the horizontal Competitive Screen Analysis, if supported by historical trade data or historical transmission service data. Any adjusted results must be shown separately together with an explanation of all adjustments to the results of the horizontal Competitive Screen Analysis.

(d) Data to support the delivered price test. In support of the delivered price test required by paragraph (c)(3) of this section, the applicant must provide the following data and information used in calculating the economic capacity and available economic capacity that a potential supplier could deliver to a destination market. The transmission data required by paragraphs (d)(6) through (d)(8) of this section must be supplied for the merging entities' systems. Such transmission data must also be supplied for other relevant systems, to the extent data are publicly available.

(1) Generation capacity and variable cost. For each generating plant or unit owned or controlled by each potential supplier, the applicant must provide: supplier name; name of the plant or unit; primary and secondary fuel-types; nameplate capacity; summer and winter total capacity; summer and winter capacity adjusted to reflect planned and forced outages and other factors, such as fuel supply and environmental restrictions; and variable cost components, including, at a minimum, variable operation and maintenance, including both fuel and non-fuel operation and maintenance, and environmental compliance. To the extent costs are allocated among units at the same plant, allocation methods must be fully described.

(2) Long-term purchase and sales data. For each sale and purchase of capacity, the applicant must provide the following information: purchasing entity name; selling entity name; duration of the contract; provisions regarding renewal of the contract; priority or degree of interruptibility; FERC rate schedule number, if applicable; and quantity and price of capacity and/or energy purchased or sold under the contract.

(3) Native load commitments (i.e., commitments to serve wholesale and retail power customers on whose behalf the potential supplier, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet their reliable electricity needs). For each time period, if time-differentiated relevant products are analyzed, the applicant must provide: supplier name and hourly native load obligations for the most recent two years. If data on native load obligations are not available, the applicant must fully explain and justify any estimates of native load obligations.

(4) Transmission and ancillary service prices, and loss factors. The applicant must use in the horizontal Competitive Screen Analysis the maximum rates stated in the transmission providers' tariffs. If necessary, those rates should be converted to a dollars-per-megawatt hour basis and the conversion method explained. If a regional transmission pricing regime is in effect that departs from system-specific transmission rates, the analysis should reflect the regional pricing regime. The following data must be provided for each transmission system that would be used to deliver energy from each potential supplier to a destination market: supplier name; name of transmission system; firm point-to-point rate for each system; non-firm point-to-point rate; scheduling, system control and dispatch rate; reactive power/voltage control rate; and transmission loss factor.

(5) Destination market price. The applicant must provide, for each relevant product and destination market, market prices for the time periods corresponding to the time-differentiated products being analyzed for the most recent two years. The applicant may provide suitable proxies for market clearing prices if actual market prices are unavailable. Estimated prices must be supported and the cost or sales data used to estimate the prices must be included with the application.

(6) Transmission capability. The applicant must provide transfer capability data for each of the transmission paths, interfaces, or other facilities used by suppliers to deliver to the destination markets on an hourly basis for the most recent two years. The applicant must report simultaneous transfer capability, if it is available. Transmission capability data must include the following information: transmission path, interface, or facility name; total transfer capability (TTC); and firm available transmission capability (ATC).

(7) Transmission constraints. For each existing transmission facility that affects supplies to the destination markets and that has been constrained during the most recent two years or is expected to be constrained within the planning horizon, the applicant must provide the following information: name of all paths, interfaces, or facilities affected by the constraint; locations of the constraint and all paths, interfaces, or facilities affected by the constraint; hours of the year when the transmission constraint is binding; and the system conditions under which the constraint is binding. The applicant must include information regarding expected changes in loadings on transmission facilities due to the proposed transaction and the consequent effect on transfer capability. To the extent possible, the applicant should provide system maps showing the location of transmission facilities where binding constraints have been known or are expected to occur.

(8) Firm transmission rights. For each potential supplier to a destination market that holds firm transmission rights on a transmission path, interface,

or facility necessary to deliver energy from a potential supplier (including the supplier itself) to that market, the applicant must provide the following information: supplier name; name of transmission path interface, or facility; the FERC rate schedule number, if applicable, under which transmission service is provided; and a description of the firm transmission rights held (including, at a minimum, quantity and remaining time the rights will be held, and any relevant time restrictions on transmission use, such as peak or off-peak rights).

(9) Summary of potential suppliers' presence. The applicant must provide a summary table with the following information for each potential supplier for each destination market: potential supplier name; the supplier's total amount of economic capacity (not subject to transmission constraints); and the supplier's amount of economic capacity from which energy can be delivered to the destination market (after adjusting for transmission availability). A similar table must be provided for available economic capacity, and for any other generating capacity measure used by the applicant.

(10) Historical trade data. The applicant must provide data identifying all of the merging entities' wholesale sales and purchases of electric energy for the most recent two years. For each transaction, the applicant must include the following information: type of transaction (such as non-firm, short-term firm, long-term firm, peak, off-peak, etc.); name of purchaser; name of seller; date; duration and time period of the transaction; quantity of energy purchased or sold; energy charge per unit; megawatthours purchased or sold; price; and the delivery points used to effect the sale or purchase.

(11) Historical transmission data. The applicant must provide information concerning any transmission service denials, interruptions and curtailments on the merging entities' systems, for the most recent two years, to the extent the information is available from OASIS data, including the following information: name of the customer denied, interrupted or curtailed; type, quantity and duration of service at issue; the date and period of time involved; reason given for the denial, interruption or curtailment; the transmission path; and the reservations or other use anticipated on the affected transmission path at the time of the service denial, curtailment or interruption.

(e) Any remedies proposed by the applicant (including, for example, divestiture or participation in an independent system operator) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the horizontal Competitive Screen Analysis as an additional post-transaction analysis. Any mitigation commitments that involve facilities (e.g., in connection with divestiture of generation) must specify which facilities are affected by the commitment.

(f) Additional factors. If the applicant does not propose mitigation measures and does not otherwise demonstrate that the proposed transaction will not adversely affect competition, the applicant must address: the potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction; the efficiency gains that reasonably could not be achieved by other means; and whether, but for the transaction, one or more of the merging entities would be likely to fail, causing its assets to exit the market.

§ 33.4 Additional information requirements for applications resulting in a single corporate entity obtaining ownership or control over businesses that provide inputs to electric generation and electric generation products that were previously unaffiliated.

(a) If, as a result of the proposed transaction, a single corporate entity obtains ownership or control over a party to the transaction or its parent companies, subsidiaries, affiliates and associate companies that provides inputs to electric generation and another party to the transaction or its parent companies, subsidiaries, affiliates and associate companies that currently is unaffiliated with the party that provides inputs to electric generations and that provides electric generation products, the applicant must file the vertical Competitive Screen Analysis described in paragraphs (b), (c), (d) and (e) of this section, unless the applicant affirmatively demonstrates that the parties do not provide inputs to the generation of electric energy and electric generating capacity products in the same geographic markets or the extent of the inputs to the generation of electric energy (i.e., upstream relevant products) provided by the party to potential suppliers of electric generating capacity products (i.e., the downstream relevant products) to the relevant destination markets, as defined in paragraph (c)(2) of § 33.3, is *de minimis.*

(b) All data, assumptions, techniques and conclusions in the vertical Competitive Screen Analysis must be accompanied by appropriate documentation and support.

(c) The vertical Competitive Screen Analysis must be completed using the following steps:

(1) Define relevant products.

(i) Downstream relevant products. Consistent with paragraph (c)(1) of § 33.3, the applicant must identify and define all relevant products sold by a party to the transaction or its parent companies, subsidiaries, affiliates, and associate companies in relevant downstream geographic markets.

(ii) Upstream relevant products. The applicant must identify and define all relevant inputs to the generation of electricity provided by an upstream business of any of the parties to the transaction or its parent companies, subsidiaries, affiliates and associate companies in the most recent two years.

(2) Define geographic markets.

(i) Downstream geographic markets. Consistent with paragraphs (c)(2) and (c)(3) of § 33.3, the applicant must identify all geographic markets in which it or its parent companies, subsidiaries, affiliates and associate companies sells the downstream relevant products identified in paragraph (c)(1)(i) of this section.

(ii) Upstream geographic markets. The applicant must identify all geographic markets in which it or its parent companies, subsidiaries, affiliates and associate companies provides the upstream relevant products identified in paragraph (c)(1)(ii) of this section.

(3) Analyze competitive conditions.

(i) Downstream geographic market. The applicant must compute market share for each supplier in each relevant downstream geographic market and the HHI statistic for the downstream market. The applicant must provide a summary table with the following information for each relevant downstream geographic market: the economic capacity of each downstream supplier (specify the amount of such capacity served by each upstream supplier); the total amount of economic capacity in the downstream market served by each upstream supplier; the market share of economic capacity served by each upstream supplier; and the HHI statistic for the downstream market. A similar table must be provided for available economic capacity and for any other measure used by the applicant.

(ii) Upstream geographic market. The applicant must provide a summary table with the following information for each upstream relevant product in each relevant upstream geographic market: the amount of relevant product provided by each upstream supplier; the total amount of relevant product in the market; the market share of each

upstream supplier; and the HHI statistic for the upstream market.

(d) Any remedies proposed by the applicant (including, for example, divestiture or participation in an independent system operator) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the vertical Competitive Screen Analysis as an additional post-transaction analysis. Any mitigation commitments that involve facilities must specify which facilities are affected by the commitment.

(e) Additional factors. If the applicant does not propose mitigation measures and does not otherwise demonstrate that the proposed transaction will not adversely affect competition, the applicant must address: the potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction; the efficiency gains that reasonably could not be achieved by other means; and whether, but for the transaction, one or more of the parties to the transaction would be likely to fail, causing its assets to exit the market. The applicant must address each of the additional factors in the context of whether the proposed transaction is likely to present concerns about raising rivals' costs or anticompetitive coordination.

§ 33.5 Proposed accounting entries.

If the applicant is required to maintain its books of account in accordance with the Commission's Uniform System of Accounts (part 101 of this chapter), the applicant must present proposed accounting entries showing the effect of the transaction with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis), the effect on the income statement, and the effects on other relevant financial statements. The applicant must also explain how the amount of each entry was determined.

§ 33.6 Form of notice.

The applicant must file a form of notice of the application suitable for issuance in the **Federal Register**, as well as a copy of the same notice in electronic format in WordPerfect 6.1 (or other electronic format the Commission may designate) on a 3½″ diskette marked with the name of the applicant and the words ''Notice of Application.'' The Commission may require the applicant to give such local notice by publication as the Commission in its discretion may deem proper.

§ 33.7 Verification.

The original application shall be signed by a person or persons having authority with respect thereto and having knowledge of the matters therein set forth, and shall be verified under oath.

§ 33.8 Number of copies.

An original and five copies of application under this part shall be submitted. If the applicant must submit information specified in paragraphs (b), (c), (d), (e) and (f) of § 33.3 or paragraphs (b), (c), (d) and (e) of § 33.4, the applicant must submit all such information in electronic format along with a printed description and summary. The electronic version of all text documents shall be submitted in WordPerfect Version 6.1, and the electronic version of all spreadsheet documents shall be submitted in either Lotus, QuattroPro Version 6.0 or Microsoft Excel Version 4.0 (or other electronic format the Commission may designate). The printed portion of the applicant's submission must include documentation for the electronic submission, including all file names and a summary of the data contained in each file. Each column (or data item) in each separate data table or chart must be clearly labeled in accordance with the requirements of § 33.3 and § 33.4. Any units of measurement associated with numeric entries must also be included.

§ 33.9 Protective order.

If the applicant seeks to protect any portion of the application, or any attachment thereto, from public disclosure pursuant to § 388.112 of this chapter of the Commission's regulations, the applicant must include with its request for privileged treatment a proposed protective order under which the parties to the proceeding will be able to review any of the data, information, analysis or other documentation relied upon by the applicant for which privileged treatment is sought.

§ 33.10 Additional information requests by the Commission.

The Director of the Office of Electric Power Regulation, or his designee, may, by letter, require the applicant to submit additional information as is needed for Commission analysis of an application filed under this part.

[FR Doc. 98–10686 Filed 4–23–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT18–1–7204b; A–1–FRL–5999–3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Alternative Reasonably Available Control Technology for Volatile Organic Compounds at Risdon Corporation in Danbury

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 Connecticut. This revision allows an alternative reasonably available control technology (RACT) determination for volatile organic compound (VOC) emissions at Risdon Corporation's Danbury facility which are subject to Connecticut's miscellaneous metal parts and products VOC RACT regulations. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and, the Bureau of Air Management, Department of Environmental Protection, State Office

Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–2211; (617) 565–2773; or by E-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register.**

Authority: 42 U.S.C. 7401 et seq.

Dated: April 2, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–10973 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 053–1053b; FRL–6003–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Missouri; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Missouri state 111(d) plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The state plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

In the final rules section of the **Federal Register**, the EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 26, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 9, 1998.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 98–10976 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180, 185, and 186

[OPP–300551A; FRL–5783–8]

RIN 2070–AC18

Proposed Tolerance Revocations for Canceled Pesticide Active Ingredients; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule on revocation of tolerances and exemptions from the requirements of a tolerance for canceled pesticide active ingredients. The proposed revocation was published in the **Federal Register** of January 21, 1998. The comment period expired on March 23, 1998. One commenter, the European Union, requested additional time to make an analysis. In response, the Agency is reopening the comment period until May 5, 1998.

DATES: Written comments, identified by the docket control number [OPP–300551A], must be received on or before May 5, 1998.

ADDRESSES: By mail, submit written comments 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, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8037, e-mail: nevola.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 21, 1998 (63 FR 3057)(5743–8), EPA issued a proposed rule to revoke tolerances and exemptions from the requirement of a tolerance for canceled pesticide active ingredients. The original due date for comments on the Proposed rule was March 23, 1998. EPA is reopening the comment period until May 5, 1998. EPA received a request for an extension due to the need to collect specific information that may be responsive to the proposal.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300551A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record

is located at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300551A]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 9, 1998.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–10851 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6002–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Beulah Landfill Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Beulah Landfill Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments may be submitted on or before May 26, 1998.

ADDRESSES: Comments may be mailed to: Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

Record Center, U.S. EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, Phone: (404) 562–9530, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday—By Appointment Only

Media Center, George Stone Vocational School, 2400 Longleaf Drive, Pensacola, Florida 32526, Phone: (850) 944–1424, Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday

FOR FURTHER INFORMATION CONTACT: Randa Chichakli, U.S. EPA, Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletion.

I. Introduction

EPA announces its intent to delete the Beulah Landfill Site, Escambia County, Pensacola, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

1. Responsible parties or other persons have implemented all appropriate response actions required;
2. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA has recommended deletion and has prepared the relevant documents;
2. FDEP has concurred with the deletion decision;
3. Concurrently with this Notice of Intent to Delete, notices have been published in local newspapers and have

been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL; and

4. EPA has made all relevant documents available at the information repositories.

5. EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Beulah Landfill Site in Pensacola, Escambia County, Florida, is located 10 miles northwest of Pensacola. The Site is located on approximately 102 acres, 80 acres of which comprise the landfill itself. The Site is separated into two sections (northern-half and the southern-half). The northern-half of the Site operated from 1950 to 1960, and accepted mostly municipal trash. The northern-half is now closed. The wastes are covered with 4 to 6 inches of native soil.

The southern-half was a borrow pit for sand prior to 1965. In 1968 a 10 acre area of the southern-half was excavated and bermed for the purpose of disposing of domestic sewage and wastewater treatment sludges. Initial deposition rates were approximately 5000 gallons a day and increased to 20,000 gallons a day prior to closure in 1984.

Preliminary analytical results of groundwater, surface water, sludge and soil samples indicated the presence of zinc, copper, chlordane, pentachlorophenol, PCB 1260 and several polynuclear aromatic compounds, including anthracene, fluoranthene, naphthalene and pyrene. The wastes disposed at the Site potentially threatened the nearby surface water bodies, Coffee Creek and Eleven Mile Creek, the shallow groundwater system, and the local sand and gravel aquifer.

Based on those threats the Site was proposed for listing on the National Priorities List on June 24, 1988, 53 FR 23988. The listing became final effective February 21, 1990, 55 FR 6154, with a Hazardous Ranking Score of 38.15.

On July 7, 1989, the FDEP, formerly the Florida Department of Environmental Regulation, issued a permit for the closure of the landfill, Permit Number SF17–151349. However, the permit was not implemented immediately because of the Site's listing on the NPL. The State is now in the process of closing the landfill.

In September 1991, EPA entered into an Administrative Order on Consent (AOC) for the Remedial Investigation/Feasibility Study (RI/FS) for the Site with several Potentially Responsible Parties (PRPs).

The purpose of the RI is to define the nature and extent of the threat to human health and the environment. Information obtained in the RI were also used to develop the Baseline Risk Assessment. The purpose of the FS is to develop and evaluate alternatives for the remedial action if any is required.

On August 7, 1993, the completed RI and Baseline Risk Assessment along with the Proposed Plan for the Site were made available to the public. On August 17, 1993, a Public Meeting was held at the George Stone Vocational School to discuss the RI, Baseline Risk Assessment and Proposed Plan. At the meeting, representatives from EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) were present to answer questions.

Based on the results of the RI and the Baseline Risk Assessment for the Site, EPA determined that no further action was necessary to ensure the protection of human health and the environment. Therefore, on September 16, 1993, EPA issued its Record of Decision (ROD) for the Site finding that, with the exception of groundwater monitoring, its response at the Site was complete. The PRPs have collected and analyzed groundwater samples since 1995, and found all contaminant levels to be below the ATSDR comparison values.

Proper closure of the landfill is being completed by the State of Florida and does not impact EPA's intent to delete the Site from the NPL. A five-year review will be conducted by EPA in 1998 to confirm that the remedy remains effective.

EPA, with concurrence of FDEP, has determined that all appropriate actions at the Beulah Landfill Site have been completed, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the Site from the NPL.

Dated: April 7, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, USEPA Region 4.

[FR Doc. 98–10863 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket 98–42; FCC 98–53]

Regulations for RF Lighting Devices

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rulemaking*, the Commission is proposing to update the regulations for RF lighting devices. This action is taken in response to new developments in RF lighting technology. It is intended to support the development of new more efficient RF lighting products for consumer and commercial applications.

DATES: Comments are due July 8, 1998. Reply comments are due August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Office of Engineering and Technology, Anthony Serafini at (202) 418–2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted April 1, 1998 and released April 9, 1998. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Notice of Proposed Rulemaking

1. By this action, the Commission proposes to amend part 18 of its rules to update the regulations for radio frequency (RF) lighting devices. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current FCC rules, however, may not easily accommodate these technological advancements and thus hinder the further development and implementation of these new products. This action seeks to reduce unnecessary

regulatory burden and to support the introduction of new and beneficial products while ensuring that spectrum-based communications services continue to be protected from interference. Accordingly, the Commission proposes to relax the line-conducted emission limits and to adopt radiated emission limits above 1 GHz for RF lighting devices and solicits comments on these proposals.

2. RF lighting technology has been typically designed to operate at relatively low frequencies around 150 kHz. The new products we are considering are designed to operate at much higher frequencies and therefore were not taken into account when the existing rules were adopted. The new consumer RF light operates in the 2.2-2.8 MHz band. This product is more efficient and longer lasting than existing incandescent bulbs. We propose to amend our rules to allow for this new technology without causing potential harmful interference to spectrum-based services. We propose to relax the consumer line-conducted emission limit in Section 18.307(c) by 22 dB in the 2.2–2.8 MHz band to the existing non-consumer limit of 3000 microvolts.

3. The new commercial use product is a high-power RF lamp that operates in the 2400-2500 MHz Industrial, Scientific, and Medical (ISM) band and offers benefits similar to the consumer lighting product. Although this product is an RF lamp, it uses a magnetron power source similar to magnetrons used in microwave ovens operating in the same band. Therefore, it does not easily fit under our rules for either RF lighting or microwave ovens. We propose to amend the RF lighting rules to consider the requirements of this new technology. Specifically, we seek comment on whether the non-consumer line-conducted limits in Section 18.307(c) should be relaxed 10 dB for RF lighting products. We also propose to adopt out-of-band radiated limits above 1 GHz.

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (''Notice''). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IFRA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.

Need for and Objectives of the Proposed Rules

5. This rule making proceeding is initiated to obtain comment regarding proposals to change the conducted line emission limits for RF lighting. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current FCC rules, however, do not easily accommodate these technological advancements and thus hinder the further development and implementation of these promising new products. This action seeks to relax the part 18 regulations to accommodate new and beneficial products while ensuring that other important communications services continue to be protected from interference. This action will potentially benefit all entities using RF lighting technologies, including small entities.

Legal Basis

6. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

7. The RFA generally defines a ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' is the same meaning as the term ''small business concern'' under the Small Business Act (''SBA''), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, a ''small business concern'' is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).

8. The Commission has not developed a definition of small entities applicable to RF Lighting Devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.

9. This Notice seeks comment to help the Commission determine the appropriate regulations necessary to protect communications services while facilitating development and use of the new generation of energy saving RF lighting devices. We also request comment on the description and the number of small entities that may be significantly impacted by this proposal.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

10. Under part 18 of the FCC rules, consumer ISM equipment must be approved under the FCC certification process and non-consumer equipment is subject to verification. No changes are proposed to the testing and approval process requirements for RF lighting product.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. U.S. manufacturers have developed new RF lighting technologies that offer potential economic and environmental benefits to consumers and industry. General Electric (GE) has developed and Electrodeless Fluorescent Lamp (EFL) that operates between 2.2–2.8 MHz. This a more efficient, longer lasting consumer lamp that is an alternative to normal incandescent light bulbs. EFL lamps represent a new generation of technology beyond the existing low frequency RF lights known as Compact Fluorescent Lamps (CFL), which are limited in their applications due to their non-traditional design using curved tubing. EFL lamps are nearly identical in size and shape to incandescent bulbs and therefore, are expected to have greater consumer applications and acceptance over CFL lamps.

12. The existing RF lighting rules were adopted many years ago for products operating at relatively low frequencies and do not easily accommodate new state-of-the-art RF lighting technologies. We believe it is appropriate to examine and modify our rules to accommodate these new technologies to the extent possible while still ensuring that communications services are protected from harmful interference.

13. Fusion Lighting, Inc. (Fusion) has developed an efficient, longer-lasting,

high-power commercial lamp that is suitable for lighting coverage of large, commercial areas, such as warehouses, parking lots and shopping malls. Fusion's efforts were supported by the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the National Air and Space Administration (NASA). Fusion states that its sulfur based lamp is over four times more efficient than incandescent lighting, yet does not have the color drawbacks of present mercury based high intensity discharge lamps used in typical outside lighting and commercial environments. The lamp produces a spectra closely matching that of the sun, but with very little heat or ultraviolet rays. In testing demonstrations, two Fusion lamps, shining light from both ends into a reflective light tube 240 feet long, were able to replace the light of 240 and 175 watt mercury lamps at the DOE headquarters. At the National Air and Space Museum, three Fusion lamps shining into three separate 90–foot tubes replaced 94 conventional lights.

14. Fusion states that the cost of complying with the current line-conducted limits for RF lighting devices is excessive. The Fusion lamp must use a line filter to come into compliance with the line-conducted limits for commercial RF lighting devices. Fusion argues that although existing line filters will permit Fusion's lamp to pass the current FCC limits, they are not designed for the operating temperatures of the lamp and therefore fail to meet Underwriter Laboratories (UL) safety requirements. Additionally, Fusion solicited data from power supply manufacturers and notes that a custom line filter needed to make their product meet both the FCC and UL requirements would add approximately 15 percent to the final cost.

15. At this time, we are proposing no additional, alternative RF rule modifications beyond those generally described by GE and Fusion. We seek comment on any additional alternatives.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

16. None.

List of Subjects in 47 CFR Part 18

Business and industry.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–10948 Filed 4–23–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115, FCC 98–27]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) seeking comment on three issues involving carrier duties and obligations relating to the use of Customer Proprietary Network Information (CPNI) and other customer information established under sections 222(a) and (b) of the Telecommunications Act of 1996. We are doing this based on various responses from parties in the proceeding.

DATES: Comments are due on or before March 30, 1998 and Reply Comments are due on or before April 14, 1998.[1] Written comments by the public on the proposed information collections are due March 30, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 6, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) adopted February 19, 1998 and released February 26, 1998 (FCC 98–27). This FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of this Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9827.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 70 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (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 estimates; (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.

OMB Approval Number: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of

[1] Editorial Note: This document was received at the Office of the Federal Register on April 17, 1998.

Customer Proprietary Network Information and Other Customer Information.

Form No.: N/A.

Type of Review: Proposed Collections.

Respondents: Businesses or other for profit.

Title	Number of responses	Estimated time per response	Total annual burden (hours)
Proposed Foreign Storage of CPNI	10	78.5 hours	785
Proposed Foreign Maintenance of CPNI of all U.S.-Based Customers' Records	4,832	30 minutes	2,416

Synopsis of Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

1. *Implementation of sections 222(a) and (b).* The Commission in the Notice of Proposed Rulemaking (NPRM) focused on issues relating to the implementation of sections 222(c)–(f). Based on various responses from parties, we now seek further comment on three general issues that principally involve carrier duties and obligations established under sections 222(a) and (b) of the Act. Specifically, section 222(a) requires telecommunications carriers ''to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.'' Section 222(b) provides that ''a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.''

A. Customer Right to Restrict Carrier Use of CPNI for Marketing Purposes

2. Section 222(c)(1) prohibits carriers from using, disclosing, or permitting access to CPNI without customer approval for purposes other than those expressly provided in sections 222(c)(1)(A) and (B), and those in connection with the exceptions established in sections 222(d)(1)–(3). Section 222, however, is silent on whether a customer has the right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the circumstances defined by subsections 222(c)(1) (A) and (B). While the *Notice* referred to customers' ''rights to restrict access to their CPNI,'' it did so in the context of when carriers must seek approval for CPNI use for purposes outside the scope of the exceptions in sections 222(c)(1)(A) and (B).

3. One view is that customers should be able to restrict carrier use of CPNI for all marketing purposes, even within the customer's total service offering. This position may be supported by the privacy protection in section 222(a), which imposes on every telecommunications carrier ''a duty to protect the confidentiality of proprietary information of, and relating to * * * customers * * *,'' as well as by the principle of customer control implicitly embodied in section 222(c). In addition, interpreting section 222 to permit customers to restrict all marketing use of CPNI could be viewed as furthering the privacy-competition balance struck in section 222, insofar as such a right would allow customers to prevent carrier marketing practices that they found objectionable as their service relationship with the carrier grew. Under this view, the only limitations on the customer's right to restrict uses of CPNI within sections 222(c)(1)(A) and (B) arguably would be those ''required by law'' in accordance with section 222(c)(1), as well as those set forth in section 222(d). We seek comment on this issue of whether customers have a right to restrict all marketing uses of CPNI. Parties supporting a particular interpretation should state the statutory as well as policy basis for their conclusion and should demonstrate why other conclusions are not justified.

B. Protections for Carrier Information and Enforcement Mechanisms

4. We seek comment on what, if any, safeguards are needed to protect the confidentiality of carrier information, including that of resellers and information service providers, that are in addition to those adopted in this accompanying order. We note that Congress expressly protected carrier information in section 222(a), as well as in the specific limitations on the use of that information in section 222(b). We believe that Congress' goals of promoting competition and preserving customer privacy will be furthered by protecting the competitively-sensitive information of other carriers, including resellers and information service providers, from network providers that gain access to such information through their provision of wholesale services. Therefore, we seek comment on what, if any, additional regulations or safeguards are necessary to further this goal. These safeguards, for example, may include personnel and mechanical access restrictions. Parties identifying specific safeguards should comment explicitly on the costs and benefits of imposing such regulation.

5. We also seek comment on what, if any, further enforcement mechanisms we should adopt to ensure carrier compliance with our rules, or that may be necessary to encourage appropriate carrier discharge of their duty under section 222(a) to protect the confidentiality of customer information. We note, for example, that the Commission in other proceedings has sought to compensate carriers who have become victims of anticompetitive behavior, as well as to streamline and update the formal complaint process in order to promote the policies of the 1996 Act. Parties identifying specific enforcement mechanisms should comment explicitly on the costs and benefits of imposing such regulation.

C. Foreign Storage of, and Access to, Domestic CPNI

6. The Federal Bureau of Investigation (FBI) asks the Commission to regulate the foreign storage of, and foreign-based access to, CPNI of U.S. customers who subscribe to domestic telecommunications services (domestic CPNI). The FBI contends that vital law enforcement, public safety, national security, business, and personal privacy reasons justify a prohibition under section 222 on carriers storing domestic CPNI in foreign countries, for any purpose, including billing and collection. The FBI further maintains that permitting direct foreign access or foreign-storage of CPNI would seriously undermine important U.S. governmental, business, and privacy-based protections afforded to CPNI under other international and bilateral treaties. According to the FBI, the Commission has the authority to prohibit such foreign storage or access based upon our jurisdiction conferred in section 222. We seek comment on the FBI's proposal. In particular, we seek

comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits and/or requires us to prohibit the foreign storage or access to domestic CPNI.

7. As an exception to this administrative prohibition, the FBI suggests that foreign storage or access to domestic CPNI may be permitted upon informed written customer approval. When a U.S. domestic customer consents to having his or her CPNI stored or accessed from a foreign country, the FBI further proposes, however, that we require carriers to keep a copy of that customer's CPNI record within the U.S. for public safety, law enforcement, and national security reasons, so that such information is available promptly to law enforcement. We seek comment on whether requiring written customer consent to store or access CPNI from a foreign country and maintaining duplicate CPNI records in the U.S are necessary to protect customer confidentiality under section 222(a) or any other provision.

8. Finally, the FBI also requests that we require carriers to maintain copies of the CPNI of all U.S.-based customers, regardless of whether they are U.S. domestic customers, because of the need for prompt, secure, and confidential law enforcement, public safety, or national security access to such information, pursuant to lawful authority. The FBI cites the need of such information for investigations and as trial evidence. We seek comment on this proposal.

II. Procedural Issues

B. Further Notice of Proposed Rulemaking

1. Ex Parte Presentations

9. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

2. Initial Paperwork Reduction Act Analysis

10. This Further Notice contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due July 6, 1998. Comments should address: (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 estimates; (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.

3. Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice.* The Commission will send a copy of the *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See* id.

a. Need for, and Objectives of, the Proposed Rules

12. The Commission is issuing the *Further Notice* to seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purposes, even within sections 222(c)(1)(A) and (B). The Commission also seeks comment on what, if any, additional further safeguards may be needed to protect the confidentiality of carrier information, including that of resellers and information service providers, and on what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with the rules adopted pursuant to the *Second Report and Order.* The Commission seeks comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI, as requested by the FBI based on their national security concerns.

b. Legal Basis

13. The *Further Notice* is adopted pursuant to sections 1, 4(i), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222, and 303(r).

c. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

14. Consistent with our conclusions in the present *Second Report and Order,* our rules apply to all telecommunications carriers; therefore, any new rules or changes in our rules adopted as a result of the *Further Notice* might impact small entities, as described in the Final Regulatory Flexibility Analysis *supra.* For a list of the small entities to which the proposed rules would apply, see the *Second Report and Order* Final Regulatory Flexibility Analysis *supra* Part X.A.1.c (Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply). We hereby incorporate that description and estimate into this IRFA. These entities include telephone companies, wireline carriers and service providers, local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, wireless carriers, cellular service carriers, mobile service carriers, broadband PCS licensees, narrowband PCS licensees, SMR licensees, and resellers. We discussed *supra* the number of small businesses falling within both of the SIC categories, and attempted to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

d. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. Because we have not made any tentative conclusions or suggested proposed rules, we are unable at this time to describe any projected reporting, recordkeeping, or other compliance requirements. We have discussed generally in the Further Notice, *supra* Part IX, however, the possibility that such proposals, if adopted, might entail additional obligations for carriers.

e. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. As noted *supra,* we seek comment on whether customers may restrict a carrier's use of CPNI for all marketing purpose, and on what, if any, additional safeguards may be needed to protect the confidentiality of carrier information, as well as what further enforcement mechanisms, if any, should be adopted to ensure carrier compliance with our rules. In addition, we seek comment on whether the duty in section 222(a) upon all telecommunications carriers to protect the confidentiality of customers' CPNI, or any other provision, permits or requires the Commission to prohibit the foreign storage of, or access to domestic CPNI. Consistent with our rules in the *Second Report and Order,* our intent is to further the statutory principle that customers must have the opportunity to protect the information they view as sensitive and personal from use and disclosure by carriers. Because we have not proposed any rules, at this juncture, we are unable to forecast the economic impact on small entities.

f. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

4. Comment Filing Procedures

18. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 30, 1998, and reply comments on or before April 14, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

19. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

20. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

21. You may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts>. For information on filing comments via the Internet, please see <ecfs@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the body of the text if you are filing by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

III. Ordering Clauses

22. Accordingly, *It is ordered* that pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), a *Further Notice of Proposed Rulemaking* is hereby *Adopted.*

23. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Further Notice of Proposed Rulemaking,* including the associated Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* (1981).

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–10741 Filed 4–23–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 79
Friday, April 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

East Side Project, McKean, Elk, and Forest Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed East Side Project. The Forest Service is proposing to harvest timber on approximately 8,206 acres of National Forest land distributed over a 141,000 acre area located on the eastern half of the Allegheny National Forest. Forest health is the driving concern in this project proposal. Growth loss and mortality are occurring as a result of extensive insect defoliation and drought which occurred from 1991 through 1994.

Reforestation treatments and commercial timber harvest will be used in stands which have experienced considerable tree mortality. Harvest treatments will consist of clearcuts, overstory removals, two-age, shelterwood seed/removals, thinnings, group selection, individual tree selections and improvement cuts. Reforestation treatments will consist of herbicide application, area fencing, planting, site preparation and fertilization. In addition to commercial timber harvest, the proposed action will consider approximately 606 acres of wildlife habitat improvement. These treatments will consist of creating openings, planting warm season grasses, planting shrubs and trees, fencing, aspen regeneration and pruning. Four fish structures will also be created. Additional transportation requirements for this project include 17.2 miles of new road construction, 19.5 miles of road reconstruction (betterment), 53.8 miles of road reconstruction (restoration) and 7.1 miles of road obliteration. It is anticipated that 7 existing stone pits and 12 new pits will be used as a source of material for road construction and reconstruction.

The Agency invites written comments and suggestions on the scope and substance of the analysis and the environmental impact statement. In addition, the Agency gives notice that the environmental impact statement preparation process will be conducted so that interested and affected people are aware of how they may participate in and contribute to the final decision.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted in writing and postmarked by May 17, 1998, to ensure timely consideration.

ADDRESSES: Send written comments to East Side Project, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, PA 16365.

FOR FURTHER INFORMATION CONTACT: Lois M. DeMarco, Allegheny National Forest at 814/723–5150 about the Environmental Impact Statement.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan, approved in 1986, provides for the management of forest resources. Vegetative management objectives include producing a sustainable supply of high-quality sawtimber and wood products, developing and maintaining a wide array of wildlife habitats, and providing a range of recreation settings and experiences. Specific objectives are defined for each Management Area.

From 1991 through 1994, a series of defoliations linked to elm spanworm and forest tent caterpillar occurred over a wide area of the northern tier of Pennsylvania. One or more defoliations occurred on 374,305 acres of the Allegheny National Forest. A series of droughts also occurred in 1988, 1991, and 1995. In 1994 scattered areas of tree mortality and decline were observed by Forest Service personnel. Additional mortality has resulted in large areas of the Forest which will not meet the long-term vegetative management objectives stated in the Forest Plan.

An environmental analysis was performed in 1996 which was documented in the Mortality II Environmental Assessment and Decision Notice signed on February 5, 1997. The Mortality II Decision and Environmental Assessment were litigated. The outcome of the litigation requires the Forest Service to prepare an Environmental Impact Statement (with consideration of a broad range of reasonable alternatives) and a reconsideration of the optimality and appropriateness of even-aged management decisions within the project area.

Four additional environmental analyses were at various stages of completion when Judge William Standish of the Third Judicial District issued a ruling on the Mortality II litigation. We have reviewed the requirements of NEPA (40 CFR 1508.25) to define the scope of the EIS and have determined that it should include the areas previously presented as Morality II and should be expanded to consider areas previously identified as Thomas Rock, Coal Mine, Rocket John and Forest Road (FR) 446.

We reviewed the comments received on each of the projects now included in the EIS and have identified the following preliminary issues: 1. The use of even-aged vs. uneven-aged management; and 2. The construction of additional roads and improvements to existing roads.

A range of alternatives will be considered. One of these will consider No Action for the project area. Another alternative will consider the use of uneven-aged management on a broader scale than does the proposed action. Issues which are generated through the scoping process may generate additional alternatives.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by October 1, 1998. At that time, the Environmental Protection Agency will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**.

It is very important that those interested in the management of the Allegheny National Forest participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations

(CEQ) for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewers position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1988), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). After the comment period ends on the draft environmental impact statement, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement.

The final environmental impact statement is scheduled to be completed in February 1999. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

The responsible official is John E. Palmer, Forest Supervisor, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren PA 16365.

Dated: April 16, 1998.

John E. Palmer,

Forest Supervisor.

[FR Doc. 98–10895 Filed 4–23–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plans, Boise National Forest and Payette National Forest, Idaho. Significant Amendment Land and Resource Management Plan, Sawtooth National Forest, Idaho

AGENCY: Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plans for the Boise and Payette National Forests, and significant amendment to the Land and Resource Management Plan for the Sawtooth National Forest located in Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Custer, Elmore, Gem, Gooding, Idaho, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley and Washington Counties, Idaho; Box Elder County, Utah, and Malheur County, Oregon.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement in conjunction with revision and significant amendment of its Land and Resource Management Plans (hereafter referred to as Forest Plans) for the Boise, Payette and Sawtooth National Forests (hereafter referred to as the Southwest Idaho Ecogroup).

This notice describes the specific portions of the current Forest Plans to be revised and amended, environmental issues considered, estimated dates for filing the Environmental Impact Statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information. The purpose of the notice is to begin the scoping phase of public involvement in the revision and amendment process.

DATES: Comments concerning the scope of analysis should be received in writing by June 24, 1998. The agency expects to file a Draft Environmental Impact Statement in the Fall of 1999 and a Final Environmental Impact Statement in the Fall of 2000.

ADDRESSES: Send written comments to: Joey Pearson, Administrative Assistant, Southwest Idaho Ecogroup Planning Team, Payette National Forest, P.O. Box 1026, McCall, ID 83638.

FOR FURTHER INFORMATION CONTACT: Faye Krueger, Planning Team Leader—Payette National Forest (208) 634–0700; Jeff Foss, Planning Team Leader—Boise National Forest (208) 373–4100; or Sharon LaBrecque, Planning Team Leader—Sawtooth National Forest (208) 737–3200.

Responsible official: Jack Blackwell, Intermountain Regional Forester at 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: Pursuant to part 36 Code of Federal Regulations (CFR) 219.10 (f) and (g), the Regional Forester for the Intermountain Region gives notice of the agency's intent to prepare an Environmental Impact Statement for the revision and significant amendment efforts described above. According to 36 CFR 219.10(g), Land and Resource Management Plans shall ordinarily be revised on a 10 to 15 year cycle. The existing Forest Plan for the Boise National Forest was approved on April 27, 1990, the Payette Forest Plan was approved on May 6, 1988, and the Sawtooth Forest Plan was approved on September 16, 1987.

On November 14, 1997, the Department of the Interior and Related Agencies Appropriations Act of 1998, H.R. 2107, was passed. Language in section 333 of the law specifically prohibits the expenditure or obligation of funds for new revisions of national forest land management plans until new final or interim final rules for forest plan revision are published in the **Federal Register**. Forests that had formally published a Notice of Intent to revise prior to October 1, 1997, or have been court-ordered to revise are exempt from this section and may proceed to complete forest plan revision. The Payette is under court order (Wilderness Society, et al. v. U.S. Forest Service, Civ. No. 94–0193–S–MHW) to complete Forest Plan revision by December 31, 2000, and thereby meets the exemption criteria to proceed with revision in accordance with 36 CFR 219.10(g). The Boise and Payette Forests were the subject of the Idaho Sporting Congress suit (Civ. No. 95–0025–S–BLW). On September 25, 1996, District Court Judge B. Lynn Winmill affirmed the Forest Service in part because the two Forests had initiated the forest plan revision process. Judge Winmill's opinion was affirmed by the Ninth Circuit Court of Appeals on August 21, 1997. Judge Winmill's decision in the Idaho Sporting Congress suit meets the intent

of the exemption criteria of the Appropriations Act, therefore the Boise Forest may also proceed with revision in accordance with 36 CFR 219.10(g).

The Sawtooth National Forest does not meet the exemption criteria for revision. Through the analysis of the management situation, the Sawtooth Forest did identify several areas where current management direction can be improved. Therefore, analysis efforts on the Sawtooth will continue to parallel analysis efforts on the Boise and Payette, with the intent to amend the Sawtooth Forest Plan in accordance with 36 CFR 219.10(f).

With this in mind, the Regional Forester gives notice that the Boise, Payette, and Sawtooth National Forests are beginning an environmental analysis and decision-making process for the proposed action to revise the Boise and Payette Forest Plans and to amend the Sawtooth Forest Plan. Opportunities will be provided to discuss the Forest Plan revision and amendment processes with the public. The public is invited to help identify issues that will be considered in defining the range of alternatives in the Environmental Impact Statement. Scoping meetings will be scheduled for May and June 1998. Alternative development meetings will be held in the Fall of 1998.

Forest plans describe the long-term direction for managing National Forests. Agency decisions in these plans do the following:

- Establish multiple-use goals and objectives (36 CFR 219.11);
- Establish forestwide management requirements (standards and guidelines);
- Establish management areas and management area direction through the application of management prescriptions;
- Identify lands not suited for timber production (36 CFR 219.3);
- Establish monitoring and evaluation requirements; and
- Recommend areas for official designation of wilderness.

The authorization of project-level activities on the Forests occur through project, or site-specific, decision-making. Project-level decisions must comply with the National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Forest Plan.

Linkage to the Interior Columbia Basin Ecosystem Management Project

Southwest Idaho Ecogroup is within the area of land covered by the Interior Columbia Basin Ecosystem Management Project (ICBEMP). There are two sources of information from the ICBEMP that will heavily influence the development of the planning process: (1) The integrated science assessments and (2) the Upper Columbia River Basin Final Environmental Impact Statement (URCB FEIS) and Record of Decision.

The integrated science assessments provide an information base that provides context at broad, multiple state area scale. The information on forestlands, rangelands, aquatic and hydrologic integrity, ecosystem pathways and disturbance patterns, and the current and projected conditions of fish, wildlife and plant species were used to aid in identifying need for change topics. This information will continue to be used in defining the extent of the need for change and in the development and evaluation of alternatives.

The other primary document that will influence this project is the UCRB FEIS. The Draft EIS was issued for public comment in June, 1997, and a final document is expected in late 1999. This document, which incorporates the results of the science assessments, will amend all three Forest Plans when the Record of Decision is issued. This amendment will establish new goals, desired range of future conditions, objectives and standards for management. This amendment will simplify the scope of the Ecogroup planning effort, but will not replace the need for the revision/amendment for these reasons:

- The UCRB effort is at a broad scale. The application of the information and decisions will need to be fine-tuned for the Forest-level scale.
- The UCRB provides some standards that are only to be used until such time as better local standards are developed. The planning effort will refine these standards to local conditions.
- The UCRB EIS does not provide all of the analysis or decisions required by the National Forest Management Act regulations. The planning effort will need to evaluate land allocations, timber suitability, wilderness recommendations and other factors that the UCRB did not address.

Need for Change in the Current Forest Plans

In the Fall of 1996, the Forests in the Southwest Idaho Ecogroup completed five year monitoring reports. The results of the monitoring reports, in addition to public input and Forest Plan implementation experience, indicated that there is a need for change in some management direction in all three Forest Plans. Because of the need to consider management of ecosystems across administrative boundaries, and the fact that the three Forests share key issues, resources, customers and interested publics, it was determined that an ecogroup approach to planning would increase the overall efficiency and quality of the effort to address the need for change issues. Several sources were used in determining the needed changes in the current Forest Plans. These sources include:

- Results of the three Forest Plan monitoring reports;
- Comparison of regulatory, manual, and handbook requirements;
- New information, such as the Interior Columbia Basin Ecosystem Management Plan scientific assessment and other research; and
- Comments concerning implementation of current direction.

In November 1997, the Southwest Idaho Ecogroup published a Preliminary Analysis of the Management Situation (Pre-AMS). The Pre-AMS summarized the current management condition of the three Forests based on analysis of the findings from the sources listed above.

Major Revision/Amendment Topics

Based on the information sources listed above, the following issues/areas were identified as needs for change in management direction in all three Forest Plans. As previously explained, the Boise and Payette National Forests will address these needs for change through the revision process, while the Sawtooth will address them through a significant amendment. Since the Forest Plans were originally signed, the Boise and Payette Forests have experienced major changes in forest conditions as a result of wildfire and tree mortality. The magnitude of these changes requires that the Boise and Payette Forest Plans be revised. The Sawtooth Forest has not experienced such major changes. Until the Sawtooth is allowed to proceed with revision, it will accommodate the needed changes through a significant amendment.

In revising/amending the Forest Plans, the Forests are focusing on those areas that must be reviewed in accordance with federal regulations, and on urgent issues identified through new information, monitoring and public concerns. The regulations focus the process by stating; ''The Forest Supervisor shall determine the major public issues management concerns, and resource use and development opportunities to be addressed in the planning process'' [36 CFR 219.12(b)]. Throughout this planning process, only those portions of the Plans identified as critical issues needing change will be

addressed. Some examples of issues that were not identified as critical or did not have an identified need for change include recommended wilderness, heritage resource program management, and minerals program management. Issues not identified as critical will be addressed at a later time through non-significant amendments.

The Southwest Idaho Ecogroup is proposing to revise or amend the three Forest Plans by addressing the listed need for change topics. The following is a brief definition of the issues associated with each need for change topic and the purpose and need for change, and a description of what we propose to do to address the needed changes:

Biological Diversity

Biological diversity is the variety and abundance of life in an area including all living organisms, the genetic differences among them, and the communities and ecosystems in which they occur. It also refers to the compositions, structures and functions of species and habitats and their interactions. The goal of conserving biological diversity is to support sustainable development by protecting and using biological resources.

The current Forest Plans address many of the key indicators of biological diversity; however, these indicators are largely described and analyzed as separate functional entities. There is little information as to how these indicators interact with one another and with natural processes, particularly at the broad, Forest-level scale. The current Forest Plans need improved direction for potentially needed restoration, management and maintenance of plant communities, including vegetative structure, species composition, distribution, and patterns and how they are influenced by soil and disturbance processes in relationship to historic and current conditions. All three Forests manage significant habitat for federally listed threatened and endangered plant, wildlife and fish species. These include: Macfarlane's four-o'clock, Ute's lady tresses, gray wolf, bald eagle, peregrine falcon, sockeye salmon, chinook salmon, steelhead and redband trout. In addition, these are species that are currently proposed or candidates for listing including bull trout and Northern Idaho ground squirrel. Current Forest Plan direction for these species is to follow recovery plans developed by the appropriate regulatory agency.

The Ecogroup also manages habitat for a number of species that are designated ''sensitive'' by the Regional Forester because their populations or habitats are trending downward. Current management direction in the Forest Plans is to follow conservation assessments and plans developed at the Regional level. There is a need to improve management direction in the Forest Plans to better address the needs of listed and sensitive species.

Through this planning effort, biological diversity concepts will be used to:

- Develop improved management guidelines through better understanding of species, including threatened, endangered or sensitive (TES) species, candidate species, plant, fish, and animal species of concern, and the communities they are dependent upon.
- Develop improved guidelines for snag and coarse woody debris that better provide habitat for plant and animal species dependent on coarse woody debris, to improve soil productivity, and to better provide for natural decay processes necessary for nutrient cycling;
- Develop improved management direction to address soil processes (erosion rates, mass stability, infiltration, nutrient cycling) as they relate to management of other resources;
- Develop improved management direction for desired structure and density for each structural stage, from openings to old forest vegetation (including old growth);
- Develop additional management practices, standards and guidelines for tree density, stand structure, and species composition that address the extent and frequency of all types of disturbances.

The intent of this improved management direction is to provide for short- and long-term biological, physical, economic and social sustainability.

Fire and Smoke Management

The 1897 Organic Act states that forests shall be protected against destruction by fire. Early Forest Service policy interpreted protection to mean fire suppression, and for several decades fire management focused on maximum suppression efforts. The result of this interpretation is that in many areas fire regimes within the Southwest Idaho Ecogroup have changed from historical conditions; fuel loadings have increased, and areas with moderate to high fuels are larger and more contiguous. Historically, approximately 15 percent of the Ecogroup area would likely have had stand-replacing fires. Past management activities, including suppression efforts, have resulted in increasing the area that would likely have stand-replacing fires to approximately 42 percent of the Ecogroup. Population growth within the Ecogroup has also led to increases in wildland/urban interface. This growth of wildland/urban interface increases the risk of fire spreading from private to federal lands and vice versa.

The current Forest Plans need improved direction addressing the role of fire as an ecosystem process or tool for maintaining or restoring ecosystem health, particularly in vegetative communities that historically burned more frequently. The ability to accomplish fire management objectives, to set priorities for ecosystem management, and to assess properly functioning condition may be limited by missing, vague, or conflicting Forest Plan direction.

The Federal Clean Air Act mandates that human health and welfare from air pollution be protected. Particulate matter emissions are produced from Forest Service activities as prescribed fire. The current Forest Plans need improved direction that better addresses the trade-offs with air quality versus increased prescribed burning to improve rangeland and forest ecosystem health.

Through this planning effort, fire management will be incorporated into the Forest Plans through:

- Integration of fire management goals and objectives into Forest-wide desired conditions;
- Development of resource specific goals and objectives related to how and when fire will be used;
- Development of goals, objectives, standards and guidelines for the use of prescribed fire to improve ecosystem health and to reduce the risk of large uncharacteristic fires;
- Development of goals, objectives, standards, guidelines and monitoring requirements for air quality and smoke management;
- Development of management direction addressing wildland/urban interface; and
- Development of goals and objectives for determining appropriate suppression response based on factors such as social and political implications, economics, environmental considerations, public and firefighter safety and values at risk.

The intent of the new direction is to restore or maintain fire as a process where appropriate in various ecosystems, to reduce the risk of uncharacteristic wildfire in wildland/urban interface, and to aid in determining how much area needs to be treated with prescribed fire.

Habitat Fragmentation and Disruption

Fragmentation is the separation or isolation of similar types of habitat,

either by natural events or human activities. Historically, fire, wind, insects, and disease were the disturbance processes that resulted in the fragmentation of habitats, causing disturbance to species and the habitats necessary for their survival. Current disturbance processes are far more numerous and have affected far greater areas than in the past. Agricultural and urban development have in effect created genetically isolated islands of habitat. Forest management practices such as roads, trails, utility corridors, and timber harvest have also resulted in fragmentation of habitats and disturbance to species. Disruption is the modification of species behavior as a result of the presence of humans or their activities. Some species of fish and wildlife are sensitive to human activities during breeding, nesting and wintering portions of their life cycles. Human activities, whether intentional or not, can increase stress to these species and reduce their reproductive success or increase their risk for mortality.

The current Forest Plans need improved direction concerning habitat fragmentation and disruption from roads, trails, timer harvest, fire, culverts, utility corridors, and other sources. Likewise, the Forest Plans need to better recognize the importance of maintaining Forest habitats of special concern that have been affected as a result of off-Forest activities such as conversion to agriculture and urban development. Through this planning effort, improved management direction concerning habitat fragmentation and disruption will be incorporated into the Forest Plans through:

- Integration of goals, objectives, standards and guides for the protection of species during sensitive periods of their life cycles; and
- Integration of goals, objectives, standards and guides to reduce the effects of fragmentation.

The intent of this improved direction is to develop management strategies that improve habitat connectivity, minimize life cycle disruption, and maintain species viability.

Non-Native Plants

Non-native plants are species that do not have their origin in a local geographic area. Non-native plants include exotic plants and noxious weeds. Exotic plants are species that have been introduced to an area, usually from a different continent, typically for restoration purposes such as road stabilization, range improvements and burned area emergency rehabilitation (BAER). Noxious weeds are plant species designated by law that can have detrimental effects on agriculture, commerce, or public health. These species are generally new or not common to the United States, spread aggressively, and are difficult to manage. Some exotic and noxious weed species thrive in areas so well that they tend to out-compete native species. This affects the amount and distribution of native plants and the animals that depend on them for forage and cover.

Recent monitoring reports for the Ecogroup Forests describe a growing concern with the spread and effects of noxious weeds. The expansion of noxious weeds with the Ecogroup is out-pacing containment and control efforts. New infestations both on Forest Service System lands and on adjacent lands pose significant risk for further expansion.

Non-native plants are being introduced unintentionally (seeds from vehicle tires or animal droppings) and intentionally (BAER, restoration projects). Research has shown that seeded non-native plants have an impact on establishment and growth of native vegetation in fire rehabilitation areas. In some areas, certain species have been purposely introduced to provide forage and cover. This has resulted in monocultures or sites with few selected plant species. These conditions affect fire regimes, soil erosion and wildlife habitat.

The current Forest Plans do not address exotic and noxious weed plants from a multi-program approach (recreation, timber, special uses * * *). Current direction only addresses the treatment of noxious weed infestations, rather than taking a prevention, containment and control approach. Likewise, the current Plans address noxious weeds from a range or timber management standpoint and do not recognize that other resource programs are significant contributors to the spread of noxious weeds. There is a need to develop improved direction in the Plans for designing or implementing BAER treatment strategies to assist in evaluating the trade-offs between the short-term emergency needs of post-fire rehabilitation and the long-term compatibility with ecosystem management.

Through this planning effort, non-native plants will be addressed through:

- Development of improved goals, objectives, standards and guides to address noxious weeds from a multi-program approach;
- Development of improved goals, objectives, standards and guides for a prevention, containment and control approach to noxious weed management; and
- Development of improved goals, objectives, standards and guides for the use of non-native plants in BAER activities and non-structural range improvement projects.

The intent of this new direction is to establish a containment/control strategy that recognizes the difficulty of controlling large, firmly established populations of noxious weeds; and to ensure seeding and revegetation practices associated with erosion control, fire rehabilitation, non-structural range improvement, and watershed restoration is compatible with the desired future condition and priorities established for management activities.

Rangeland/Grazing Resources

The National Forest Management Act requires that Forest Plans determine potential capability and suitability for producing grazing animal forage while providing habitat for management indicator species. Range capability is defined as lands that have the potential to be grazed given the physical constraints of grazing (distance from water, slope, access * * *).

Current capability criteria do not make a clear distinction between sheep and cattle use. Capability determinations have been corrected or contested on a recurring basis at the project level. Some sites currently considered capable are not meeting resource objectives relating to soil productivity, erosion, and hydrologic function. This indicates that the criteria used in the past to determine capability needs to be updated. The current Forest Plans do not meet the expectations outlined in new Forest Service national direction regarding the identification of capability criteria and the rationale supporting those criteria. The capability assessments in the original Forest Plan Final Environmental Impact Statements need to be updated to include new direction and more current information.

Suitability identifies areas within the capable base where grazing is appropriate within the context of land management considerations such as economics, environmental consequences, rangeland conditions, and other uses or values. Actual average livestock use levels defined in animal unit months per year (AUM/year) are lower than originally anticipated in the Forest Plans. Some contributing factors to this downward trend include protection of threatened and endangered species habitat, increased livestock operator costs due to mitigation measures identified to protect habitat,

changing economics of grazing livestock, and voluntary and involuntary reductions for resource protection.

Guidelines in the current Forest Plans do not address site conditions such as severe drought which occurs 10 to 40 percent of the time across the Ecogroup. From a wildlife standpoint, there is inconsistent or insufficient direction concerning wildlife wintering areas that are also used by livestock, as well as the potential threat of disease transmission from domestic sheep to bighorn sheep populations. Recreation use increases above the projections made in the current Forest Plans have resulted in increased user conflicts between livestock, wildlife and recreationists. No direction or monitoring process exists in the current plans to address this concern.

Through this planning effort, capability and suitability concerns will be addressed through:

- Improved capability assessments at the programmatic level that include current Forest Service direction, research findings, and distinguish the difference between cattle and sheep;
- Development of suitability criteria to be validated on a site-specific level that reflect site conditions; and
- Development of improved goals, objectives, standards and guides that address concerns such as drought and potential wildlife/livestock and recreation/livestock conflicts.

The intent of this new direction is to insure that the Forest Plans clearly identify at the programmatic level areas where livestock grazing is appropriate and capable.

Riparian and Aquatic

Aquatic ecosystems are watersheds, waterbodies, riparian areas, and wetlands and the species (fish, wildlife, plant, amphibian, invertebrate) they contain. Riparian refers to distinctive soil and vegetation between a stream or other body of water and an adjacent upland.

All three Forests manage significant aquatic habitat for both anadromous and resident fish populations. Collectively, the Forests have over 14,400 miles of rivers and streams and 62,520 acres of lakes supporting at least 57 native and non-native fish species. The Environmental Protection Agency and the State of Idaho Department of Environmental Quality have identified a list of 130 waterbodies within the Southwest Idaho Ecogroup that are not fully meeting their designated beneficial uses.

In 1992, Snake River sockeye salmon were listed as endangered under the Endangered Species Act (ESA), as amended. In 1993 and 1997, Snake River chinook salmon and steelhead, respectively, were listed as threatened.

In 1995, the three Forest Plans were amended by management direction in the Interim Strategies of Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and portions of California (PACFISH) and the Inland Native Fish Strategy (INFISH). These strategies include the identification of interim riparian management objectives (RMOs), standards and guidelines, and watershed analysis requirements. These interim strategies are in effect until long-term management direction is developed through geographically specific environmental analyses such as the Upper Columbia River Basin Assessment and forest plan revision efforts. At the forest plan level, RMOs need to reflect the inherent diversity and capability of the Ecogroup aquatic ecosystems, and to support the designated beneficial uses for Water Quality Limited waterbodies.

There is a need to develop improved Forest Plan direction for riparian area management that is consistent across the Ecogroup. This direction should include all riparian areas (including intermittent streams) and landslide-prone areas. In June 1998, bull trout are proposed to be listed as a threatened species. In response to the potential for listing, the Governor's Bull Trout Plan was implemented in July 1996. This plan, which was coordinated with the Forest Service, included development of watershed specific problem assessments and conservation plans. This direction needs to be considered in the Forest Plans.

Through this planning effort, improved management direction for riparian and aquatics will be incorporated into the plans through:

- Development of consistent goals, objectives, standards and guides, and monitoring strategies for riparian and aquatic management;
- Development of appropriate RMOs and desired future conditions that reflect the inherent diversity and capability of the Ecogroup aquatic ecosystems and fully support the designated beneficial uses for waterbodies as identified by the State Water Quality Standards;
- Development of direction for the management of intermittent streams and landslide-prone areas;
- Development of improved management direction for sensitive species, including the identification of management indicator species; and

The intent of this new direction is to insure that: riparian and aquatic ecosystems are being managed consistently across the Ecogroup; the appropriate emphasis is being placed on riparian protection and restoration; that RMOs reflect the inherent capability of the aquatic ecosystems; appropriate emphasis is being placed on sensitive as well as listed species; and intermittent streams and landslide-prone areas are being appropriately managed.

Timberland Suitability

The National Forest Management Act and its implementing regulations require that lands identified as not suited for timber production be reassessed at least once every ten years to determine if they should be reclassified as suited. Suited lands include forested lands outside of withdrawn areas such as designated Wilderness, lands where reforestation can be assured, and lands where timber management activities can take place without causing irreversible resource damage to soils productivity or watershed conditions. The suitability assessment includes the identification of tentatively suited timberlands (available forest lands that are physically suited for timber management) and suited timberlands (the tentatively suited lands considered appropriate for timber management). Since the Forest Plans were released, land exchanges have resulted in both the loss and the addition of timberlands. A preliminary reassessment indicates that land exchanges have resulted in an approximate increase of 7,400 acres of tentatively suited lands (2,400 acres on the Boise and 5,000 acres on the Payette). New information about the capability of Forest lands and an increased understanding about the effects of timber management will also influence the reassessment of suited timberlands.

Through this planning effort, a complete reassessment of timberland suitability will be conducted.

Management Emphasis Areas

All three Forests include many outstanding natural areas with various combinations of biophysical resources and social interests. Included in the management emphasis areas are Wild and Scenic Rivers. Agency policy related to the Wild and Scenic Rivers (WSR) Act of 1968 in land management planning requires that rivers identified as potential WSRs be evaluated as to their eligibility, with the findings documented in the Forest Plan. An eligible river must be free flowing and

possess at least one feature that is judged to be outstandingly remarkable.

It is recommended but not required to complete WSR suitability studies during the Forest Plan revision process. To be found suitable, the benefits of designating the river should outweigh the disadvantages. Currently, the Boise has 35 river segments identified as eligible for WSR status, the Payette and Sawtooth have five segments each. Since the original studies were completed, there have been changed conditions such as the listing of species under ESA and new information from sources such as the ICBEMP Scientific Assessments. Suitability studies have not been conducted on the eligible rivers listed in the three Forest Plans.

There is a need to re-evaluate the previous eligibility studies based on the new information and changed conditions. There is also a need to address the suitability of high priority eligible segments. Through this planning process, the Forests are proposing to address WSR issues by:

- Re-evaluating previous eligibility studies; and
- Complete suitability studies for Priority 1 segments in revision as agreed in a settlement agreement between American Rivers, Inc. and the Payette National Forest (Big Creek, French Creek, Monumental Creek, and the Secesh River on the Payette National Forest, and the South Fork Salmon River on the Payette and Boise National Forests). Suitability studies on Priorities 2, 3, and 4 segments will be completed after the revision/amendment effort.

Social and Economic Issues

While the majority of the revision topics appear to be biological and physical in nature, we recognize that the topics are all linked to social and economic issues. As we develop alternatives for the need for change topics, we need to consider how these alternatives will affect the economics of the current and traditional resource users; what influences the alternatives may have on the demographics of local communities; how the alternatives address local community priorities; and what influences the alternatives may have on local and regional cultures.

We recognize that livestock grazing, timber production and recreation activities are key sources of income to communities dependent on forest resources for the generation of revenue. As we develop and analyze the effects of alternatives we need to consider things such as local community stability, community development patterns, goods and services, employment, current and traditional resource users, and forest revenue.

We also recognize that founding of many of the communities within the Ecogroup was and continues to be tied directly to the use and production of forest products. For these communities, we need to consider land use patterns, including urban interface, local employment, community development patterns, local communities of place and interest and the implications to these factors.

As we develop alternatives and analyze their effects, we will also need to consider local and regional culture (attitudes, beliefs, values and life-styles). Some of the questions we will be considering include:

- How will Tribal life-styles and cultural traditions be affected by management activities and decisions?
- What are the potential social conflicts, risks, and implications regarding rangeland grazing and timber harvest?
- How will these alternatives affect opportunities for recreation and recreation experiences?
- How will the traditional life-styles associated with livestock grazing be affected?
- How will the alternatives tie to local community priorities?

Decision To Be Made

Based on the analysis made in the FEIS, the Regional Forester must decide what changes will be made to goals, objectives, standards and guides, and monitoring and evaluation criteria in the Forest Plans to best address the need for change topics. The Regional Forester must also decide what changes in management boundaries and prescriptions are necessary to meet the changed goals and objectives.

Framework for Alternatives To Be Considered

A range of alternatives, including an alternative addressing community stability, will be considered when revising and amending the Forest Plans. The alternatives will address different options to resolve the issues identified in the revision/amendment topics listed above. Alternatives must meet the purpose and need for revision/amendment to be considered valid. One of the alternatives to be examined is the ''no-action alternative''. This is a required alternative that represents continuation of management under the current plans as amended. Alternatives are developed in response to public issues, management concerns, and resource opportunities identified during the scoping progress. In describing alternatives, desired vegetation and resource conditions will be defined. Preliminary information, including a map of the proposed programmatic action, is available for review at all Ecogroup District and Supervisor Offices.

Involving the Public

The Forest Service is seeking information, comments and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches with members of the public who are interested in forest management. Federal and state agencies and some private organizations have been cooperating in the development of assessments of current biological, physical, and economic conditions. This information will be used to prepare the Draft Environmental Impact Statement (DEIS). The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities, and specific decisions to be made.

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice, and public scoping opportunities will be offered in numerous locations. Public participation activities will include written comments, open houses, focus groups and collaborative forums.

Public participation will be sought throughout the revision/amendment process and will be especially important at several points along the way. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping meetings are currently scheduled from May 26 to June 19, 1998 in the following Idaho locations: Boise, Idaho City, Mountain Home, Garden Valley, Cascade, McCall, Riggins, Weiser, Council, Twin Falls, Burley, Ketchum, Stanley.

Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in the Fall of 1999. At that time, the EPA will publish a notice of availability in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the

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

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

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in the Fall of 2000. The responsible official will consider the comments, responses, and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding making the revisions and amendment. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised and amended plans. The decisions will be subject to appeal in accordance with 36 CFR part 217.

Dated: April 16, 1998.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 98–10782 Filed 4–23–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc National Forest Noxious Weed Control Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to eradicate between 100 and 300 acres of noxious weeds annually, beginning 1999 for a period of 10 to 20 years, within site specific areas of the Modoc, Lassen, and Siskiyou Counties in northeastern California. The proposed 26 target weeds are Plumeless thistle, Musk thistle, Canada thistle, Yellowspine thistle, Scotch thistle, Russian knapweed, Rush skeletonweed, Diffuse knapweed, Spotted knapweed, Yellow starthistle, Hoary cress or whitetop, Squarrose knapweed, Marlahan mustard, Leafy spurge, Halogeton, St. Johnswort, Dalmation toadflax, Purple loosestrife, Mediterranean sage, Puncture vine, Perennial pepperweed, Medusahead, Jointed goatgrass, Barbed goatgrass, Common crupina, and Wavyleaf thistle. The proposed treatment methods are mechanical, biological, cultural, preventive, chemical, and through land management practices such as livestock grazing. The herbicides which will be used are chloraulfuron, dicamba, clopyralid, 2,4-D, picloram, hexazinone, glyphosate, triclopyr, sulfometuron methyl, and simazine. The proposed herbicides are distributed under a number of trade names and strengths. The agency invites written comments and suggestions on the proposed project.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives. Possible alternatives to this proposal are no action, utilize all treatments except aerial, and all treatments except chemical.

DATES: Comments concerning the proposal should be received in writing by May 25, 1998, to receive timely consideration in the preparation of the draft EIS. The draft EIS will be filed with the Environmental Protection Agency (EPA) and to be available for public review in August 1998. The final EIS and Record of Decision are expected to be issued in November 1998.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Steven F. Bishop, Acting Forest Supervisor, Modoc National Forest, 800 West 12th Street, Alturas, CA 96101.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Jim Irvin, or Allison Sanger, Project Leader, Modoc National Forest, 800 West 12th Street, Alturas, CA 96101, 530–233–5811.

SUPPLEMENTARY INFORMATION: There are 26 noxious weed species which receiving intensive control in or near the Modoc National Forest. Thirteen of the 26 species are listed as ''A'' rated weed pests which means they have limited distribution in California and are subject to eradication, quarantine, or other holding actions at the State and County levels. All 26 of these are exotic pests, not native to California and thus replace the native species then they invade different plant communities.

In 1997, approximately 90 acres of noxious weeds were treated on the Modoc National Forest in Modoc, Lassen, and Siskiyou Counties. Infestations are scattered primarily over Lassen and Modoc Counties, the largest being the common crupina infestation above Round Valley which covers a total of 740 acres of private and Forest Service lands. Most infestations are less than one acre in size.

An Integrated Weed Pest Management approach will be use to control and eradicate these weeds species. This approach uses a combination of control methods which include; mechanical control such as hand pulling, clipping, mowing, and burning of weeds; cultural control such as fertilization, seeding, and cultivation; biological control through the use of parasites and pathogens; preventive through the use of education and guidelines to increase awareness and prevent new infestations onto Forest lands; chemical control through the use of herbicides; and control by land management practices such as livestock grazing.

Chemical methods include the use of backpack sprayers, truck mounted power sprayers, or aerial application of a specific area only. The chemicals (herbicides) would be in either liquid or granular form. Helicopters are used for aerial application to minimize resource damage in areas with limited access, and large infestations. To obtain the greatest reduction of weeds from chemical control, selection of the proper herbicide with application at the proper time and method are of the utmost importance.

Aerial application is being proposed for only one area on the Forest, a 160 acre (740 acre total) infestation of common crupina found on private and

Forest Service lands in the northeastern corner of Round Valley. This will be a one-time aerial application of herbicides with follow-up by ground treatment. No other aerial application of herbicides will be analyzed in this document.

Public participation is especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, cumulative effects and connected actions).

The Modoc County Agriculture Department will be invited to participate as a cooperating agency to supervise the eradication of this weed.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in August 1998. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

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

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

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulation, and policies in making a decision.

Dated: April 9, 1998.

Stephen F. Bishop,

Acting Forest Supervisor.

[FR Doc. 98–10954 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–32–P

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

The Director's Advisory Committee; Notice of Closed Meetings

April 21, 1998.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2§ 10(a)(2) (1996), the U.S. Arms Control and disarmament Agency (ACDA) announces the following Advisory Committee meetings:

Name: The Director's Advisory Committee (DirAC).

Dates: May 11–12, 1998, June 8–9, 1998.

Time: 8:30 a.m.

Place: For the May meeting: Offutt Air Force Base Omaha, Nebraska. For the June meeting: State Department Building, 320 21st Street, N.W. Room 4930 Washington, D.C.

Type Of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Director's Advisory Committee, Room 5844, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory: To advise the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meetings: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding agreements including the START II Treaty, Comprehensive Test Ban Treaty and the Convention on Conventional Weapons. Members will exchange information and concepts with key ACDA personnel. All meetings will be held in Executive Session.

Reason for Closing: The DirAC members will be reviewing and discussing matters specifically authorized by Executive Order 12,958 to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meetings: The closing of the meetings is in accordance with a determination by the Acting Director of the U.S. Arms Control and Disarmament Agency dated April 21, 1998, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 10(d) (1996).

Nancy Aderholdt,

Acting Director of Administration.

April 21, 1998.

Determination To Close Meetings of the Director's Advisory Committee

The Director's Advisory Committee (DirAC) will hold meetings in Omaha, Nebraska, on May 11–12, and Washington, D.C., on June 8–9, 1998.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee act, 5 U.S.C. app. 2 § 10(d) (1996), I have determined that the meetings may be closed to the public in accordance with 5 U.S.C. § 552b(c)(1) (1996). Materials to be discussed at the meetings have been properly classified, and are specifically authorized under criteria established by Executive Order 12,958, 60 Fed. Reg. 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

Ralph Earle, II,

Acting.

[FR Doc. 98–11095 Filed 4–22–98; 11:22 am]

BILLING CODE 6820–32–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposal(s) 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.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 26, 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.

If the Committee approves the proposed additions, 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

Coveralls, Disposable
8415–01–092–7529
8415–01–092–7530
8415–01–092–7531
8415–01–092–7532
8415–01–092–7533

(Remaining 20% of the Government's requirement)

NPA: Tradewinds Rehabilitation Center, Gary, Indiana

Services

Base Supply Centers, Shaw Air Force Base, South Carolina
NPA: Lions Club Industries, Inc., Durham, North Carolina.
Base Supply Centers, Goodfellow Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas
Grounds Maintenance, Family Child Care Office, Building 7175, Edwards Air Force Base, California
NPA: Desert Haven Enterprises, Inc., Lancaster, California
Janitorial/Custodial, Travis Air Force Base, California
NPA: PRIDE Industries, Roseville, California
Litter Pickup, Andrews Air Force Base, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.

G. John Heyer,

General Counsel.

[FR Doc. 98–10965 Filed 4–23–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: May 26, 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 January 23, February 27, and March 6, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 3535, 9999 and 11207) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities 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 to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities 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 proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Infantry Kit, Cold Weather, Marine Corps
8465–00–NSH–0029
Candle Shipper, Spring Scents
M.R. 508

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.

Deletion

I certify that the following action will not have a signicant 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 will not have a severe economic impact on future contractors for this service.

3. The action will result in authorizing small entities to furnish the service 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 service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Janitorial/Custodial, U.S. Army Reserve Center, 547 Philadelphia Avenue, Reading, Pennsylvania

G. John Heyer,

General Counsel.

[FR Doc. 98–10966 Filed 4–23–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Additions to the Procurement List and Proposed Additions and Deletions to the Procurement List; Correction

In the document appearing on page 19474, FR Doc. 98–10262, in the issue of April 20, 1998, in the first column, the effective date for the ''Additions to the Procurement List'' should read May 20, 1998 rather than May 18, 1998. The ''Proposed Additions and Deletions to the Procurement List'' appearing on page 19473, FR Document 98–10265, in the issue of April 20, 1998, in the third column, the ''Comments Must be Received on or Before'' date should read May 20, 1998 rather than May 18, 1998.

G. John Heyer,

General Counsel.

[FR Doc. 98–10964 Filed 4–23–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Business Information Service for the Newly Independent States (BISNIS) FinanceLink.

Agency Form Number: N/A.

OMB Number: N/A (number to be assigned).

Type of Request: Regular Submission.

Burden: 33 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. BISNIS's FinanceLink is an internet-based service that will facilitate contact between exporters and financing agencies. U.S. exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to U.S.-based financing agencies who have expressed an interest in receiving such information. The intention is to provide a service that benefits both exporters and financing agencies.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dennis Marvich, (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental 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 to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: April 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–10910 Filed 4–23–98; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with MARCH anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely request, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with MARCH anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Brass Sheet and Strip from Germany.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 1999.

Antidumping Duty Proceedings	Period to be reviewed
Brazil:	

	Period to be reviewed
Ferrosilicon A–351–820	
Companhia Ferroligas Minas Gerais-Minasligas, Companhia Brasileira Carbureto de Calcio, Companhia de Ferro Ligas da Bahia	3/1/97–2/28/98
Canada:	
Construction Castings A–122–503	
Bibby Ste. Croix, LaPerle Foundry, Fonderie Grand Mere, Clow Canada	3/1/97–2/28/98
Ecudaor:	
Fresh Cut Flowers A–331–602	
Florisol Cia Ltda., Argicola Flores La Antonia, Flores del Qinche, S.A., Guaiisa Farms, Velvet, Agricola Landwork, Agritab, Agroindustrial Espialmor, Armizo, Claveles de la Montana, Empagri, Florequisa, Flores Barragan-Rodriguez, Flores Mitad del Mundo, Floricultural Ecuaclavel, Guala Import, Illiniza Flowers, Nerita Flowers, San Alfonso, Flores del Quinche, Flores la Antonia, Florisol, Plantaciones Malima, Americflowers, Arco Valeno, Biocare Limited, Colorsfromtheworld, Comedinsa, Comercializadora Agricola, Caribe, Comprinz, Ecoflowers, Ecuaflor, Ecuaplanet Trading, Ecuaplanta, Florimex Verwaltung GMBH, Incaflor, Maximafarms Ecuador, Miliflowers, Nevado Naranjo Ecuador, Noeliaflowers, Panorama Roses, Quito Inor Flowers, Trevis, U.S. Floral Corp	3/1/97–2/28/98
Finland:	
Rayon Staple Fiber A–405–071	3/1/97–2/28/98
Sateri Oy (formerly Kemira Fibres Oy).	
Germany:	
Brass Sheet & Strip A–428–602	
Wieland-Werke AG	3/1/97–2/28/98
Germany:	
Lead & Bismuth Steel A–428–811	
Saarstahl AG	3/1/97–2/28/98
Mexico:	
Steel Wire Rope A–201–806	
Aceros Camesa, S.A. de C.V.	3/1/97–2/28/98
South Korea:	
Steel Wire Rope A–580–811	
Boo Koo Corporation, Dae Heung Industrial Co., Dae Kyung Metal, Dong-II Steelll Mfg. Co., Ltd., Dong Young, Hanboo Wire Rope, Inc., Jinyang Wire Rope, Inc., Korea Sangsa Co., Kumho Wire Rope Mfg. Co., Ltd., Kwangshin Rope, Myung Jin Co., Seo Hae Industrial, Seo Jin Rope, Sungsan Special Steel Processing, TSK Korea Co., Ltd., Yeonsin Metal	3/1/97–2/28/98
Thailand:	
Circular Welder Pipes & Tubes A–549–502	
Saha Thai Steel Pipe Co., Ltd., S.A.F. Pipe Export Co., Ltd., Thai Union Steel Co., Ltd	3/1/97–2/28/98
The People Republic of China:	
Glycine* A–570–836	
Sinochem Tianjin, Yotech Chemical Industrial Co., Ltd	3/1/97–2/28/98
*If one of the above named companies does not qualify for a separate rate, all other exporters of manganese metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part	
The People's Republic of China:	
Paint Brushes A–570–501	
Hebei Animal By-Products Import & Export Corporation*	2/1/97–1/13/98
*Inadvertently omitted from previous initiation notice.	
The United Kingdom:	
Lead & Brismuth Steel A–412–810	
British Steel PLC, British Steel Engineering Steels, Ltd., British Steel Engineering Steels Holdings, Ltd	3/1/97–2/28/98
Countervailing Duty Proceedings	
Germany:	
Lead & Bismuth Steel C–428–812	
Saarstahl AG	1/1/97–12/31/97
Turkey:	
Welded Carbon Steel Line Pipe C–489–502	
Mannesman-Sumerbank Boru Endustrisi T.A.S., Yucel Boru ve Profil Endustrisi A.S., Cayirova Boru Sanayi ve Ticaret A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S	1/1/97–12/31/97
The United Kingdom:	
Lead & Bismuth Steel C–412–811	
British Steel Engineering Steels Ltd.	1/1/97–12/31/97
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must

include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 17, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 98–10890 Filed 4–23–98; 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: Effective Date of Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Effective date of revocation in part of antidumping duty order.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288 or James Kemp at (202) 482–0116; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

Background

On April 13, 1998, the Department published in the **Federal Register** the notice of final results for the fourth antidumping duty administrative review and revocation in part of the order on steel wire rope from the Republic of Korea (63 FR 17986). The effective date of the revocation of the order for Chung Woo Rope Co., Ltd. (Chung Woo), Ssang Yong Cable Manufacturing Co., Ltd. (Ssang Yong) and Sung Jin Company (Sung Jin), is March 1, 1997. Accordingly, we will issue instructions to Customs Service (Customs) to terminate the suspension of liquidation for all shipments of steel wire rope manufactured, shipped and/or exported by Chung Woo, Ssang Yong and Sung Jin after February 28, 1997. Additionally, we will direct Customs to liquidate such suspended entry summaries for Chung Woo, Ssang Yong and Sung Jin without regard to antidumping duties and to refund with interest any cash deposits on entries made on or after March 1, 1997.

This notice is published pursuant to 19 CFR 353.25(c)(2)(vi) and 353.25(c)(3).

Dated: April 17, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–10891 Filed 4–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 10, 1998, Stelco, Inc. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty administrative review made by the International Trade Administration respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** on March 16, 1998 (63 FR 12725). The NAFTA Secretariat has assigned Case Number USA–98–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 10, 1998, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 11, 1998);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 26, 1998); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 14, 1998.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 98–10905 Filed 4–23–98; 8:45 am]

BILLING CODE 3510–GT–P

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 the United Arab Emirates

April 20, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 24, 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 current limits for certain categories are being adjusted, variously, for carryover, carryforward and carryforward used.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 63528, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 20, 1998.

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 November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on April 24, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
219	1,383,806 square meters.
226/313	2,366,342 square meters.
317	38,173,918 square meters.
326	2,233,832 square meters.
334/634	261,606 dozen.
335/635/835	184,878 dozen.
336/636	221,341 dozen.
338/339	697,520 dozen of which not more than 437,517 dozen shall be in Categories 338–S/339–S [2].
340/640	391,604 dozen.
341/641	378,654 dozen.
342/642	300,819 dozen.
347/348	469,245 dozen of which not more than 240,291 dozen shall be in Categories 347–T/348–T [3].
351/651	206,473 dozen.
352	398,583 dozen.
363	7,158,886 numbers
369–O [4]	735,221 kilograms.
369–S [5]	103,651 kilograms.
638/639	282,015 dozen.
647/648	404,223 dozen.
847	253,815 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] 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.

[5] 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. 98–10922 Filed 4–23–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Institute for Defense Analyses, 1801 N. Beauregard St., Alexandria, Virginia on Tuesday May 19, 1998 from 0830 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest and discuss the DAU curriculum development interface with the DoD Functional Boards. The agenda will include continuing discussions concerning acquisition research, consolidation of the DAU structure into a unified educational institute, and an update on DAU distance learning efforts.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703.845.6756.

Dated: April 17, 1998.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 98–10885 Filed 4–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three or five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 18 May 1998, at 1400 hours at the Omni Hotel, 2727 West Club Drive, Tucson, Arizona, 85742. The meeting will be open to the public.

For further information please contact Mr. Terence Thompson, telephone: 703–602–1098.

Dated: April 20, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–10884 Filed 4–23–98; 8:45 am]

BILLING CODE 5000–04–Mea

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 199. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 199 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATES: May 1, 1998.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 198. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: April 20, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ANCHORAGE [INCL NAV RES]				
05/01 -- 09/30	120	59	179	03/01/98
10/01 -- 04/30	86	56	142	03/01/98
BETHEL	103	65	168	03/01/98
CORDOVA	85	62	147	03/01/98
CRAIG				
05/01 -- 08/31	95	66	161	05/01/97
09/01 -- 04/30	79	64	143	05/01/97
DENALI NATIONAL PARK				
06/01 -- 08/31	115	52	167	03/01/98
09/01 -- 05/31	90	50	140	03/01/98
DUTCH HARBOR-UNALASKA	110	69	179	03/01/98
EARECKSON AIR STATION	72	55	127	03/01/98
EIELSON AFB				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
ELMENDORF AFB				
05/01 -- 09/30	120	59	179	03/01/98
10/01 -- 04/30	86	56	142	03/01/98
FAIRBANKS				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
FT. RICHARDSON				
05/01 -- 09/30	120	59	179	03/01/98
10/01 -- 04/30	86	56	142	03/01/98
FT. WAINWRIGHT				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
GLENNALLEN	86	53	139	08/01/97
HEALY				
06/01 -- 08/31	115	52	167	03/01/98
09/01 -- 05/31	90	50	140	03/01/98
HOMER				
05/01 -- 09/30	116	66	182	03/01/98
10/01 -- 04/30	87	64	151	03/01/98
JUNEAU	89	72	161	03/01/98
KENAI-SOLDOTNA				
04/01 -- 09/30	109	61	170	03/01/98
10/01 -- 03/31	74	59	133	03/01/98
KENNICOTT	149	84	233	08/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KETCHIKAN				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
KLAWOCK				
05/01 -- 08/31	95	66	161	05/01/97
09/01 -- 04/30	79	64	143	05/01/97
KODIAK				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
KOTZEBUE				
05/16 -- 09/15	101	81	182	04/01/97
09/16 -- 05/15	90	80	170	04/01/97
KULIS AGS				
05/01 -- 09/30	120	59	179	03/01/98
10/01 -- 04/30	86	56	142	03/01/98
MCCARTHY	149	84	233	08/01/97
MURPHY DOME				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
NOME	83	63	146	03/01/98
PETERSBURG	76	62	138	03/01/98
SEWARD				
05/01 -- 09/15	114	62	176	03/01/98
09/16 -- 04/30	78	59	137	03/01/98
SITKA-MT. EDGECOMBE				
04/01 -- 09/04	101	60	161	03/01/98
09/05 -- 03/31	83	59	142	03/01/98
SKAGWAY				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
SPRUCE CAPE				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
TANANA	83	63	146	03/01/98
UMIAT	125	107	232	08/01/97
VALDEZ				
05/15 -- 09/15	105	65	170	03/01/98
09/16 -- 05/14	84	62	146	03/01/98
WASILLA	79	72	151	03/01/98
WRANGELL				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
[OTHER]	72	55	127	03/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA:				
AMERICAN SAMOA	73	53	126	03/01/97
GUAM:				
GUAM (INCL ALL MIL INSTAL)	150	79	229	05/01/98
HAWAII:				
CAMP H M SMITH	110	61	171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110	61	171	07/01/97
FT. DERUSSEY	110	61	171	07/01/97
FT. SHAFTER	110	61	171	07/01/97
HICKAM AFB	110	61	171	07/01/97
HONOLULU NAVAL & MC RES CTR	110	61	171	07/01/97
ISLE OF HAWAII: HILO	76	55	131	07/01/97
ISLE OF HAWAII: OTHER				
04/01 -- 12/18	137	53	190	07/01/97
12/19 -- 03/31	150	54	204	07/01/97
ISLE OF KAUAI				
05/01 -- 11/30	109	71	180	07/01/97
12/01 -- 04/30	133	73	206	07/01/97
ISLE OF KURE	60	41	101	07/01/97
ISLE OF MAUI				
04/16 -- 12/14	100	58	158	07/01/97
12/15 -- 04/15	113	59	172	07/01/97
ISLE OF OAHU	110	61	171	07/01/97
KANEOHE BAY MC BASE	110	61	171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 -- 11/30	109	71	180	07/01/97
12/01 -- 04/30	133	73	206	07/01/97
KILAUEA MILITARY CAMP	76	55	131	07/01/97
LULUALEI NAVAL MAGAZINE	110	61	171	07/01/97
NAS BARBERS POINT	110	61	171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	07/01/97
SCHOFIELD BARRACKS	110	61	171	07/01/97
WHEELER ARMY AIRFIELD	110	61	171	07/01/97
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	13	9	22	07/01/97
MIDWAY ISLANDS:				
MIDWAY ISLANDS [INCL ALL MIL]	60	41	101	07/01/97
NORTHERN MARIANA ISLANDS:				
ROTA	105	71	176	05/01/97
SAIPAN	170	78	248	05/01/97
[OTHER]	61	53	114	05/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
CAROLINA				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
DORADO				
04/01 -- 12/19	196	68	264	09/01/97
12/20 -- 03/31	354	83	437	09/01/97
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82	60	142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
MAYAGUEZ	74	58	132	09/01/97
PONCE	99	58	157	09/01/97
ROOSEVELT ROADS & NAV STA	82	60	142	03/01/98
SABANA SECA [INCL ALL MILITARY]				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
SAN JUAN & NAV RES STA				
05/01 -- 11/28	105	65	170	09/01/97
11/29 -- 04/30	134	68	202	09/01/97
[OTHER]	80	55	135	09/01/97
VIRGIN ISLANDS (U.S.):				
ST. CROIX				
04/15 -- 12/14	109	80	189	07/01/97
12/15 -- 04/14	129	82	211	07/01/97
ST. JOHN				
06/01 -- 12/15	228	79	307	07/01/97
12/16 -- 05/31	344	91	435	07/01/97
ST. THOMAS				
04/15 -- 12/18	215	76	291	07/01/97
12/19 -- 04/14	322	87	409	07/01/97
WAKE ISLAND:				
WAKE ISLAND	40	35	75	10/01/96

[FR Doc. 98–10887 Filed 4–23–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Applications Concerning CS6 Antigens Methods for Production of Antigens

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Number 5,698,416 (entitled ''Methods for Production of Antigens Under Control of Temperature-Regulated Promotors in Enteric Bacteria'' and issued December 16, 1997) and U.S. Patent Application SN 08/799,145 (entitled ''Transformed Bacterial Containing CS6 Antigens and Vaccines'' filed May 13, 1994) for licensing. These inventions have been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harris, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The inventions are related to (1) a CS6 antigen for use in vaccines to protect from pathological effects of entertoxigenic *E. coli* and (2) method(s) for the preparation of proteins, and in particular a method which has been found to be especially useful for the preparation of antigens in *E. coli.* The natural and recombinant constructs giving rise to the proteins contain temperature-regulated promotors. The methods of the invention are exemplified by the production of antigens classified as colonization factor antigens (CFA) which have use as vaccines and for giving rise to antibodies for laboratory testing of antigens.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–10988 Filed 4–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare an Environmental Impact Statement (EIS) for the Alamo Lake Feasibility Study; La Paz and Mohave Counties, AZ

AGENCY: Army Corps of Engineers (Corps), Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: Alamo Dam is located on the Bill Williams River, on the border of Mohave and La Paz Counties, in west-central Arizona, approximately 110 miles northwest of Phoenix, Arizona. Construction of the dam and appurtenant works was completed in 1968 as a multipurpose project (flood control, water conservation and supply, and recreation) under authorization of the Flood Control Act of December 22, 1944. Since the late 1970's local, state, and federal offices, interest groups, and private parties have raised issues and concerns surrounding the operation of Alamo Dam and its impact, both upstream and downstream, upon recreation, fisheries, endangered species, and riparian habitat. In response to these concerns, the Corps of Engineers is studying the impacts of alternative water storage elevations to optimize biological and recreational benefits while still meeting the authorized project purposes.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy J. Smith, U.S. Corps of Engineers, Attn.: CESPL–PD–RN, PO Box 532711, Los Angeles, California, 90053–2325; phone (213) 452–3854; email tjsmith@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: To prepare for preparation of the EIS, the Corps will be conducting a public scoping meeting on May 6, 1998, at 7 p.m., at the La Paz County Board of Supervisors Office located at 1108 Joshua Road, Parker, Arizona. This scoping meeting will be held to solicit public input on significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, and alternatives that should be addressed in the analysis. Individuals and agencies may offer information or data relevant to the proposed study and provide comments suggestions by attending the public scoping meeting, or by mailing the information within thirty (30) days to Mr. Timothy J. Smith. Requests to be placed on the mailing list for announcements and the Draft EIS also should be sent to Mr. Timothy J. Smith.

Alternatives

A full array of alternatives to the proposed action will be developed for further analyses. The proposed plan, viable project alternatives, and the no action plan will be carried forward for detailed analysis in the National Environmental Policy Act document.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–10987 Filed 4–23–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, May 21, 1998: 5:00 p.m.–10:00 p.m.

ADDRESSES: Executive Inn, Van Buren Room, 1 Executive Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:00 p.m.	Call to Order
5:15 p.m.	Approve Meeting Minutes
5:30 p.m.	Public Comment/Questions
6:00 p.m.	Presentations
7:00 p.m.	Break
7:15 p.m.	Presentations
8:30 p.m.	Public Comment
9:00 p.m.	Administrative Issues

10:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on April 20, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–10939 Filed 4–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATE: Wednesday, May 20, 1998: 6 p.m.–9 p.m. (Mountain Daylight Time).

ADDRESS: Loma Linda Community Center, 1700 Yale SE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order/Roll Call
7:00 p.m. Public Comments
7:10 p.m. Approval of Agenda
7:12 p.m. Approval of 03/18/98 and 4/15/98 Minutes
7:17 p.m. Chairperson's Report
7:20 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Presentation/Discussion
7:45 p.m. Break
7:55 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Issues Discussion
8:42 p.m. New/Other Business
8:52 p.m. Public Comments
8:58 p.m. Announcement of Next Meeting
9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, May 20, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on April 20, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–10940 Filed 4–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision, and extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, ''Nuclear Fuel Data Survey'', and the termination of RW–859S ''Nuclear Fuel Data Supplement''.

DATES: Written comments must be submitted within 60 days of the publication of this notice. 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 of your intention to do so as soon as possible.

ADDRESSES: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650, telephone: (202) 426–1960, e-mail: jim.finucane@eia.doe.gov, and fax (202)–426–1280.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this

program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden required by section 3506(c)(2)(A)g of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by OMB for the collections under sections 3507(g) and (h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, title 44, U.S.C. Chapter 35).

This data collection will provide the Office of Civilian Radioactive Waste Management of the Department of Energy (DOE) with detailed information concerning the spent nuclear fuel generated by the respondents (all generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and needs this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final storage/disposal site for all of the spent fuel and high level radioactive waste materials.

II. Current Actions

The current proposed actions are: (1) An extension of an existing data collection, RW–859, with a change in the frequency of its collection, and (2) the termination of a second data collection, RW–859S. A three-year extension of the data collection, RW–859, is proposed. The revisions of RW–859 affect the frequency of the collection. Instead of occurring every year, the collection will occur every three to five years. The RW–859S, which was collected every five years, will be terminated and four data items from that form will be collected by RW–859. Such data items include information on each discharged assembly, canistered materials, uncanistered materials, and non-fuel components. As before, all data will be collected once; only changes in the specific data element will require updating. This revision will also permit the data elements to be collected to be streamlined. Specifically, all of the data which is needed on an assembly specific basis will be collected at one time; thereafter referring this data by reference to the assembly serial number. In addition, the certification statement, the crane data, the site data, the transportation data, and the request for data on fresh fuel in core will be eliminated.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for Form RW–859 is estimated to average 40 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) title 44, U.S.C. Chapter 35).

Issued in Washington, DC April 17, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–10938 Filed 4–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–356–000]

Kern River Gas Transmission Company and Mojave Pipeline Company; Notice of Request Under Blanket Authorization

April 20, 1998.

Take notice that on April 16, 1998, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84108, and Mojave Pipeline Company (Mojave), P.O. Box 1492, El Paso, Texas 79978, filed a joint prior notice request with the Commission in Docket No. CP98–356–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Kern County, California, under Kern River's blanket certificates issued in Docket Nos. CP89–2047–000 and CP89–2048–000 and under Mojave's blanket certificates issued in Docket Nos. CP89–1–000 and CP89–2–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Kern River and Mojave jointly proposed to construct and operate a delivery point on their jointly owned ''Common Facilities'' in Kern County to provide natural gas deliveries to MacPherson Oil Company (MacPherson). The proposed delivery point would consist of one 8-inch tap

and valve assembly off of existing header facilities and one 4-inch Daniels turbine meter, with appurtenances. Kern River states that MacPherson would reimburse Kern River for the estimated $98,100 construction cost of the delivery point. Kern River also states that it would in turn reimburse Mojave for its share of the construction cost.

Kern River and Mojave state that their respective FERC Gas Tariff provisions permit the construction of the proposed delivery point and that they have sufficient capacity to accomplish their proposed deliveries to MacPherson without detriment or disadvantage to their other customers.

Kern River and Mojave state that they would deliver a total of 15,000 Mcf of natural gas per day and up to 5,475 MMcf of natural gas annually to MacPherson at the proposed delivery point. Kern River and Mojave also state that they would transport gas on a firm basis pursuant to their respective Rate Schedules FT–1 of their FERC Gas Tariff.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10901 Filed 4–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–346–000]

Mississippi River Transmission Corporation; Notice of Application

April 20, 1998.

Take notice that on April 13, 1998, Mississippi River Transmission Corporation (Applicant), P.O. Box 4455, Houston, Texas 77210–4455, filed in Docket No. CP98–342–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon from interstate service two points of interconnection with Texas Gas Transmission Corporation (Texas Gas) located in Lincoln and Morehouse Parishes, Louisiana, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the first point of interconnection with Texas Gas for which Applicant now seeks abandonment authorization consists of a ten-inch meter station constructed in 1972 in Lincoln Parish, Louisiana, to exchange natural gas with Texas Gas on Applicant's West Line. Applicant further states that the second point of interconnection consists of a ten-inch dual meter station constructed in 1964 to exchange natural gas with Texas Gas in Morehouse Parish, Louisiana, through Applicant's Main Line 1 and Main Line 2. Applicant asserts that these points of interconnection with Texas Gas have not been utilized for an extensive period of time. Applicant further asserts that it has notified Texas Gas of Applicant's proposal. It is indicated that the estimated cost of the abandonment proposals herein is $49,853.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10898 Filed 4–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–340–000]

Natural Gas Pipeline Company of America; Notice of Application

April 20, 1998.

Take notice that on April 9, 1998, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148 filed in Docket No. CP98–320–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon existing mainline facilities and authorization to install and operate certain minor replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Natural proposes to abandon: (1) Approximately 176 miles of Natural's 30-inch Gulf Coast No. 1 line, in eastern Texas north of Natural's Compressor Station No. 302, by sale to a non-affiliated third party for conversion to non-natural gas service; (2) seven 2,800 HP compressor units at Compressor Station 303; (3) seven 2,800 HP compressor units at Compressor Station 304; and (4) three taps, two laterals, and one meter facility along the 176-mile segment which are no longer required to provide natural gas transmission service.

Natural also proposes to construct and operate minor facilities at seventeen locations along the 176-mile segment which will have the effect of replacing previously certificated receipt/delivery facilities impacted by the abandonment of No. 1 line. Natural also proposes to install one new, additional tap to support and maintain storage discharge capability at its North Lansing storage

facility, which is located at the north end of the 176-mile segment.

Natural states that it has agreed to sell the 176 miles of pipe to a non-affiliated third party, Mid-Valley Products Pipeline L.L.C., (Purchaser) for an arms-length negotiated sales price. Natural explains that the Purchaser will convert the 176 miles of pipe to petroleum products service and therefore, following receipt of abandonment authority, the ownership and operation of the pipe will not be subject to the NGA authority of the Commission. Natural indicates that the compressor units, for which abandonment authority is sought, are not being sold to the third party. Natural claims that these compressor units are old and have not been needed for Gulf Coast Mainline operations for some time.

Natural further states that Natural's remaining 30-inch No. 2 line and 36-inch No. 3 line, and the remaining compression along the 176-mile segment, will be fully adequate to serve current demand in that discrete section of its Gulf Coast Mainline.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 11, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10900 Filed 4–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–349–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 20, 1998.

Take notice that on April 14, 1998, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas 77056, filed in Docket No. CP98–340–000, an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon certain firm sales service provided to Owens-Corning Fiberglas Corporation (Owens-Corning) and the City of Lexington (Lexington), all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco states that it entered into firm sales agreements with Owens-Corning and Lexington on August 1, 1991, under which Transco sells gas to Owens-Corning and Lexington under Transco's Rate Schedule FS. It is stated that one agreement is with Owens-Corning with a Daily Sales Entitlement of 3,000 Mcf per day, and that two of the agreements are with Lexington each with a daily Sales Entitlement of 1,000 Mcf per day.

In accordance with Paragraph 1 of Article IV of its FS Agreement, Transco states that it delivers gas to Owens-Corning and Lexington at various upstream points of delivery. Transco indicates that it acts as agent for Owens-Corning and Lexington, for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in both Owens-Corning and Lexington's FS Agreement with Transco.

Transco seeks authorization to abandon the FS Agreements with Daily Sales Entitlement of 3,000 Mcf daily to Owens-Corning, and a total of 2,000 Mcf daily to Lexington, effective March 31, 1999, pursuant to the election of Owens-Corning and Lexington to terminate their respective FS Agreements with Transco.

Transco states that Paragraph 2 of Article II of the FS Agreements that Transco has with Owens-Corning and Lexington provides that at the end of the Primary Term, and on each anniversary date thereafter, the term of the service agreement will be extended by successive one Contract Year periods, unless either party notifies the other in writing not less than two Contract Years prior to the end of the Primary Term or two Contract Years prior to any anniversary date thereafter, of its election not to extend the term of the service agreement. Transco further states that Paragraph 1 of Article II of the FS Agreements define ''Contract Year'' as the period from the effective date (specified as November 1, 1990) through March 31, 1991, and each twelve month period thereafter for the term of the agreement.

It is stated that the Primary Term of the Owens-Corning Agreement ended on March 31, 1996, and that the Primary Term of the two Lexington FS Agreements ended March 31, 1994 and March 31, 1996, respectively. Transco avers that the Primary Terms of the FS Agreements were extended in accordance with Paragraph 2 of Article II of the FS Agreements. Owens-Corning, by letter dated March 31, 1997, and Lexington by letter also dated March 31, 1997, provided Transco with two-years notice to terminate their respective FS Agreements as of March 31, 1999.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10899 Filed 4–23–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–6–000]

Inquiry Concerning the Commission's Policy on the Use of Computer Models in Merger Analysis; Notice of Request for Written Comments and Intent To Convene a Technical Conference

The Federal Energy Regulatory Commission (Commission) hereby announces that it is requesting comments on the use of computer models in merger analysis and intends to convene a public conference to discuss this matter. The purpose of this inquiry is to gain further input and insight into whether and how computer models should be used in the analysis of mergers, including whether computer models can be useful in a horizontal screen analysis that follows the Appendix A guidelines of the Merger Policy Statement.[1]

We are issuing this request concurrently with the Notice of Proposed Rulemaking on Revised Filing Requirements Under Part 33 of the Commission's Regulations (Docket No. RM98–4–000). In that NOPR we identify the use of computer models as an emerging issue in the analysis of mergers. We are issuing this notice concurrently in order to inform the Commission's understanding of the current and likely future role played by computer models in merger analysis. The attachment to this notice provides a framework for discussion of models and includes a sample model intended to serve as a starting point for discussion and comment.

I. Introduction

The use of computer models—specifically, computer programs used to simulate the electric power market—has been raised in comments on the Policy Statement and also in specific cases. In comments on the Policy Statement, the Department of Justice (DOJ) recommended using computer simulations to delineate markets. DOJ also noted that these simulations could be helpful in gauging the market power of the merged firm.[2]

In *Primergy*, the applicants used a computer simulation in their market power analysis. We did not accept the results of this computer simulation, in part because we felt that the model was not properly structured or tested. However, it was not our intention to inhibit the use of computer models. We emphasized that ''we do not wish to discourage the development of computer models for use in merger analysis''.[3]

The Commission continues to believe that a properly structured computer model could account for important physical and economic effects in analyses of mergers and may be a valuable tool to use in horizontal screen analyses. A computer model could be particularly useful in identifying the suppliers in the geographic market that are capable of competing with the merged company. A computer model may also provide a framework to help ensure consistency in the treatment of those data in identifying suppliers in a geographic market.

Two important ways in which a computer model could improve the accuracy of the delivered price test are: (1) by explicitly representing economic interactions between suppliers and loads at various nodes in the transmission network and (2) by accounting for the transmission flows that result from power transactions. We discuss these and other matters in greater detail in the Attachment.

Interactions between suppliers and loads. In competitive markets for electric energy, decisions about what suppliers would serve what loads are likely to be driven by short-run marginal costs, including the opportunity cost to suppliers of serving one load rather than another. Because there can be many possible combinations of supplies and loads, some form of computer model could be helpful in estimating such combinations.

Transmission flows from exchanges of power. Because of the properties of electric power flows, exchanges of power between control areas affect flows throughout the transmission grid. Any reasonable approximation of these effects may require a computer model to make the many calculations needed to simulate the electric power flows.

Developing and using a computer model involves a number of choices about the structure of the model, the level of detail reflected in the model, the sources of information, and other issues. These issues are discussed in the Attachment. If these technical aspects of model design and development can be addressed adequately, a computer program could be helpful in defining geographic markets. One common approach to market simulation, discussed further as an example in the Attachment, is to model the dispatch of generation to meet loads in the transmission network. The simulation model in the example estimates market outcomes that minimize the total cost of generation and transmission. The contribution of such a program to a delivered price analysis is illustrated by briefly describing the output information that the model could provide. Typical output from a program could consist of the following:

- Generation levels. The computer model would show the level of output of each generator.
- Power traded. The model would show the net quantity of power traded between interconnected areas[4] under economic dispatch.
- Flows on the transmission grid. The model would show the quantity of power flowing through each transmission facility represented in the model, constrained by any transmission capacity limits that have been input to the model. The effects of binding limits would be reflected in model output of generation levels and power prices.
- Prices for power. For each area, the model would show the marginal cost of power. This price can also be interpreted as the market-clearing price for the area.

II. Request for Written Comments

If a computer model were available to produce the types of output described above, we believe that its use could both enhance and potentially expedite delivered price analyses. However, the

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[1] Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, 78 FERC ¶ 61,321 (1997) (Policy Statement).

[2] Appendix to DOJ Merger NOI Comments at A–11, n12.

[3] Wisconsin Electric Power Company, *et al.* (*Primergy*), 79 FERC ¶ 61,158 at 61,694 (1997).

[4] Typically, the interconnected areas would be control or planning areas, but the exact geographic area would depend on how the model was implemented.

Commission also recognizes that there are many technical and procedural questions that need to be addressed concerning whether and how to use a computer model in merger analysis. To assist in the discussion of these issues, the attachment presents an overview technical discussion, followed by a list of questions for comment. These questions are organized into five areas: basic model structure, alternative implementations of the basic structure, data issues, application of models to merger analysis, and model development and maintenance. All interested persons are invited to submit written comments (not to exceed 25 pages) on these questions and any other issues that the Commission should be considering with regard to computer models and merger analysis. Comments must be filed on or before June 14, 1998, in Docket No. PL98–6–000. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS).

III. Intent To Convene Technical Conference

The Commission intends to convene one or more technical conferences to discuss the use of computer modeling. We will issue a notice of conference at a later date.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

Attachment: Computer Modeling and Merger Analysis

The purpose of this attachment is to present a sample computer model as a starting point for discussion of issues and questions about how such models could be helpful in merger analysis, specifically in reference to the Commission's delivered price test and potentially in other aspects of merger analysis. This attachment is a Commission staff paper intended to facilitate technical discussion. Specific comments on the sample model should be considered in light of the questions raised at the end of this attachment.

Background and Organization of Attachment

This Attachment discusses computer models and their use in merger analysis. A computer model is a computer program designed to implement a specific mathematical procedure. The specific procedures discussed here are typically called ''models'' because they are, or at least contain, abstract representations of real world processes. We concentrate here on two such processes: power markets and electric power flows over transmission networks. Computer models hold great potential in merger analysis because they can simulate both market processes and the electric power flows that results from market processes.

Computer models of electricity markets and networks have many potential uses, but we are primarily concerned here with how the market simulations produced by such models can be used in performing a delivered price test described in the horizontal analysis section of this NOPR. In the context of a delivered price test, computer models—in the sense of simulations of markets or electricity networks—must be distinguished from other types of computer programs. A wide range of computer programs could be used to automate parts of the delivered price test. For example, a computer program could be used to identify all generating units that could supply a destination market at a particular price, given the variable cost of power at each plant, and the transmission cost to the destination, as inputs. Such a program would not typically be called a model, because it does not simulate either market interactions or electricity flows.

For purposes here, the computer models for our consideration can be grouped into three broad categories:

- Electricity Market Models. These models simulate electricity production and trade between regions, but do not attempt to represent the underlying electricity network in the model. Examples of such models include the Electricity Market Model (EMM) from the Energy Information Administration (EIA), and the more detailed Policy Office Electricity Model (POEMS) developed for the Policy Office of the Department of Energy.
- Electric Power Production/Transmission Power Flow Models. Generally, these are detailed models that simulate electric power generation and/or electric power transmission, but do not attempt to represent the market interactions or power trade between regions. There are several models that implement standard power flow simulation techniques.[1] Detailed production cost models (*e.g.*, PROMOD and GE-MAPS), when they are designed for detailed cost analysis of a single utility, could also be placed in this category.
- Hybrid Models. Hybrid models combine a market simulation component with an electricity production and transmission component. We know of no standard model designed specifically for this purpose. Some production cost models, such as GE-MAPS, have been expanded beyond single utility territories and used as simulations of a competitive regional electricity market. However, these models remain highly detailed and may be more difficult to use for simulating electricity market trading of electricity over large regions than a regional market model with a more aggregated representation of the power transmission network. We seek comment on currently available models in the questions at the end of this attachment.

[1] For example, the FERC Office of Electric Power Regulation uses a load flow program called PSLF from General Electric that is a package of programs handling loadflow, fault analysis, and stability calculations.

For examining the competitive aspects of mergers, hybrid models are the computer models of interest, because both market processes and actual power flows are important for the analysis. To understand the role of a computer model in the analysis, it is essential to distinguish between the computer model itself and its application. A run of the computer model simulates power generation and power transmission for a particular scenario. The outputs from the simulation are then applied to a particular problem—for example, power generation and transmission levels from the simulation output might be used in the identification of suppliers in a delivered price test. In this attachment, we will restrict the use of the term computer model to the first function—simulating results for a particular scenario—but also discuss how these simulation results could be used in a delivered price test. In addition, we seek comment on other potential uses of a computer simulation model in the competitive analysis of mergers.

This attachment describes one type of computer simulation model we have been considering and its potential use in merger analysis. It then raises a series of questions about the framework and examples presented. These questions are intended to serve as a guide for commenters and perhaps for discussion at technical conferences on computer modeling and merger analysis. The Attachment is organized into five sections, as follows:

- Overview of a modeling framework for electric power trading over a transmission network. This framework is presented to facilitate a discussion of whether the Commission should consider a computer model for use in the analysis of mergers, and what role a computer model, if utilized, should play in the analysis.
- Description of a simple model implementing the general framework, presented both qualitatively and as a mathematical formulation. The purpose of this simple example is to provide a structured starting point for technical questions about the design and development of a more complex simulation model for use in merger analysis.
- Data considerations in model implementation using currently available public sources of data. This section discusses the data needed for a computer model and the availability and limitations of publicly available data.
- Application of a computer model in merger analysis. This section addresses the question of how computer model simulation runs would play a role in a delivered price test.
- Questions for discussion at a technical conference or conferences. These questions extend the earlier discussion by asking questions about the design and development of the framework and sample model, how a model should be used in the competitive analysis of mergers, what data sources are available, and how the Commission should proceed in developing and maintaining a model.

Overview of Model Structure

The role of computer modeling in merger analysis can be identified by first reviewing

the Commission's delivered price test. For a delivered price test, applicants are expected to estimate the cost of economic transactions to acquire power and transmit it to a destination, and also to determine how much power is available to be generated and transmitted to a destination, given the limitations on power transactions imposed by the transmission system. For example, given a particular destination market, an applicant should:

- Determine an appropriate competitive price for wholesale electric power in that destination market that is consistent with available information, and adequately support the method used to determine the price.
- Estimate the available generating capacity and variable cost of wholesale electric power from potential supplier facilities at the level of individual generating units to the extent possible.
- Estimate the cost of transmitting power (including ancillary services) from the source of generation to the destination, using maximum applicable tariff rates or other conservative estimates that can be supported.
- Make other adjustments, as appropriate, to reflect a supplier's competitive presence in a destination market, and support such adjustments with adequate analysis, data and assumptions, and
- Evaluate the impact of transmission system limitations on the ability of potential suppliers to deliver power to the destination market, using simultaneous estimates of transmission capacity limits to the extent possible.

These requirements help delineate a framework for analyzing electric power transactions over a transmission network. This process of analysis can be made more explicit by first constructing a general representation of the analysis and then incorporating this general picture in a mathematical formulation of the economic problem and the constraints imposed by the physical electricity transmission system limits. Figure 1 gives a general representation of the problem of combining the analysis of electric power transactions with an analysis of the physical limitations imposed by the electric transmission grid. The upper diagram represents the economic network of power transactions, that is, the production and consumption of power in each area, as well as trades of power between interconnected areas. The amount of trading that occurs among areas depends on the load requirement of each area, on the price and availability of power in each area, and also on the cost of transmitting power between the areas. The lower diagram represents the actual physical transmission network in which these economic transactions occur. It would comprise primarily the transmission lines and transformers that are called ''flowgates.'' Transactions between areas (in the upper diagram) cause flows across these flowgates in the physical network (in the lower diagram). These flows are then subject to the actual physical limits imposed by the electric transmission network.

Most of the key elements in the Figure 1 are the same elements that would need to be considered in a delivered price test without a computer model. In order to explain the structure shown in Figure 1, we explain these common components first:

Areas. These are locations in the transmission network where electric power is injected by generators and withdrawn by loads. Although in principle they can be any part of the network for which generation and load data are available, in practice they often correspond to control areas. In any case, the considerations that go into defining the locations of generating plants and loads can be the same, whether or not a computer model is used to conduct a delivered price test.

Generators. In Figure 1, the generators located in each area are shown as supply curves. In the model, the width of each step on the supply curve would correspond to the capacity of a specific generator located in an area. The height would correspond to the variable cost of power from that generator. To construct a supply curve, generators may be arranged in order of the variable cost of generation, just as they would be for a delivered price test without a computer model. Supply curves can be constructed in others ways, and we seek comment on such alternatives.

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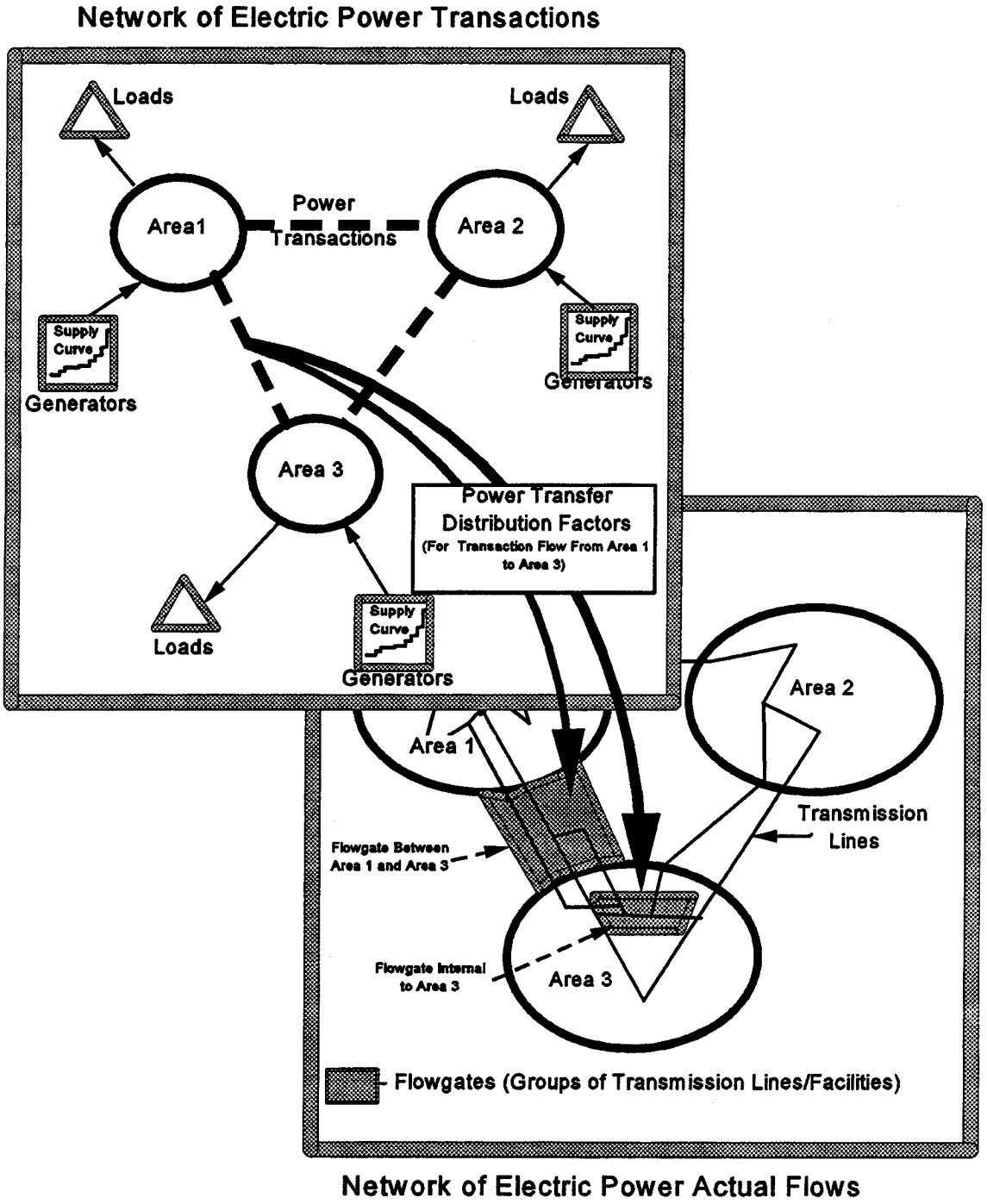
Figure 1. Electric Power Transactions and Transmission Flows



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Loads. Loads in Figure 1 represent demands to be met by generating power and transmitting it over an electricity network. Although a computer model of power transactions would be expected to include more than just destination market loads explicitly considered in setting the destination market price, the information sources for these loads should be the same as the sources for a delivered price test without a computer model.

Power Transactions/Area Interconnections. The specification of interconnections and the cost of transmitting power between areas included in the analysis should be the same with and without a computer model. In particular, transmission prices should represent a conservative estimate of the cost of transmitting power (e.g., by using maximum tariff rates).

As noted above, a computer model of market interactions would contain more loads than just those at a particular destination. To be adequate, it should represent all relevant loads that would have a significant impact on the market for power at a destination. This type of computer model could then calculate the suppliers' opportunity cost of selling power, and market prices that reflect these opportunity costs, because the cost of power at each destination would be considered in the model. Although this opportunity cost can be informally considered as an adjustment to a supplier's competitive presence when doing a delivered price test without a model, a model removes the ambiguity in this informal consideration by explicitly calculating the opportunity cost.

A computer model should also represent the physical electrical network and model the relationship between power transactions and actual power flows and the limitations on power transactions that must be imposed when actual power flows approach transmission capacity limits. These two considerations—the relationship between electric power trading and physical power flows, and the effect of transmission capacity limits—should be included in any analysis of a merger to the extent that information is available. One value of a simulation model lies in incorporating both of these considerations in the computer program, where the needed calculations can be performed in an efficient, standard way. The treatment of transmission flows and limits in the computer simulation model are discussed in more detail below.

Estimating Transmission Flows from Power Transactions. The model structure presented in Figure 1 shows the link between transactions and transmission using power transfer distribution factors (PTDFs). As shown in Figure 1, these factors are used to superimpose the effect of power transactions shown in the upper diagram on the underlying electricity network shown in the lower diagram of the figure. These flows may be on individual lines or groups of lines.[2] The lines represented in a computer model may correspond to tie lines between areas, but they may also correspond to other lines in the transmission network that are internal to areas and not part of an interface between areas.[3]

Figure 2 shows how the PTDFs are applied. The exchange of power between areas shown on the left side of the figure corresponds to the injection of power (100 MW in the example) into the transmission grid in Area 1 and the withdrawal of the same quantity of power in Area 2.[4] Because of the nature of the electricity flows in networks, this exchange of power induces flows on all lines in an interconnected grid. While a precise estimate of the electricity flows from a specific change can only be determined from a complicated power flow model, the flows can be approximated by a standard modeling technique, known as the DC Load Flow model.[5] Distribution factors can be used to capture the DC Load Flow estimates as shown in Figure 2. The quantity of flows on each line in the actual transmission network is estimated by multiplying the quantity exchanged by a PTDF. For example, 70 MW of the 100 MW power (a PTDF of 0.7 times power trade 100 MW) exchanged between Area 1 and Area 2 flows on the lines from Area 1 to Area 2.

The Distribution Factor Task Force of the North American Electric Reliability Council (NERC) estimates PTDFs for input into the interim Interchange Distribution Calculator (iIDC).[6] A computer program for market and merger analysis could use these PTDFs, but other forms of distribution factors are standardly used in DC load flow analysis.

[2] Groups of lines are referred to here as ''flowgates,'' discussed further below.

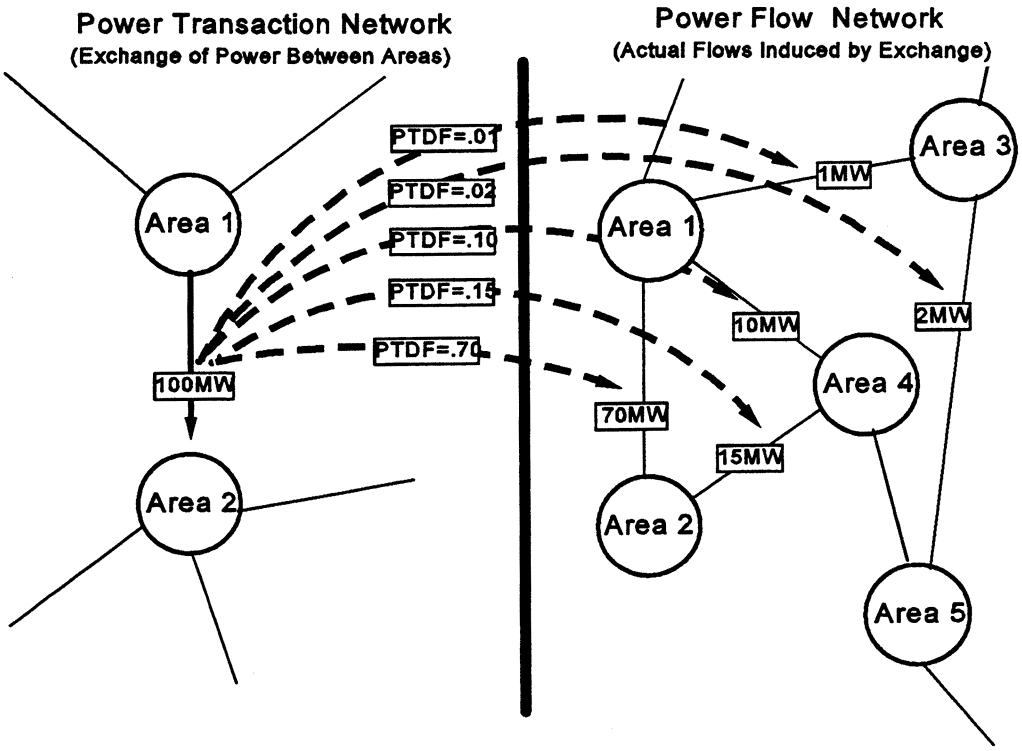
[3] For example, in the DC flow model used by the NERC to generate the draft PTDFs, 20 transmission lines make up the flowgate representing the interface between APS and PJM, 12 lines represent the interface between APS and AEP, 3 lines make up the interface with Ohio Edison, 3 lines make up the interface with Duquesne and 7 the interface with Virginia Power. In addition to tie line flowgates, the NERC model includes 34 flowgates representing lines internal to the APS control area.

[4] For purposes of the example and discussion, we are ignoring losses.

[5] See Fred C. Schweppe, Michael C. Caramanis, Richard D. Tabors and Roger E. Bohn, *Spot Pricing of Electricity*, Kluwer Academic Publishers, Boston, 1988. Appendix D describes the DC Load Flow.

[6] NERC plans to use the iIDC to support a flow-based transmission reservation and scheduling process and line loading relief procedures. In response to an NERC Board of Trustees recommendation, the Engineering Committee and Operating Committee approved the creation of a Transmission Reservation and Scheduling Task Force to ''develop a process for the reservation of transmission services and scheduling of energy transfers recognizing the actual use being made of the Interconnection''. The task force developed a detailed recommendation for a flow-based transmission service methodology (FLOBAT) based on flowgates and PTDFs. See ''Transmission Reservation and Scheduling, Transmission Reservation and Scheduling Task Force'', Report to the Board of Trustees, December 12, 1996.

Figure 2. Example of Applying PTDFs to A Power Transaction



We seek comment on the most appropriate source for information on distribution factors for modeling purposes.

Transmission Capacity Limits. NERC has compiled distribution factors for the Eastern Interconnection[7] that relate control area power exchanges to flow across area tie lines and their corresponding flowgates. These flowgates are groups of transmission facilities that are monitored for security purposes. Using these factors, it should be possible to model flows at points in the transmission system that are most likely to constrain the economic use of the transmission grid. These flows become important for market analysis when any flows reach a physical limit on the flowgate. When the limit is reached, power must be redispatched if the destination loads are to be met. Redispatching power means changing which generating units produce power, so that power generation does not cause transmission flows to exceed the limit on the flowgate.

The physical limit on a flowgate is not a simple, static quantity. Flowgate limits are set for individual elements of the transmission network to assure they are not operated beyond safe loading, depending upon such cond itions as thermal limits, generating resource availability, line outages, loop flow, stability and voltage conditions, and so on. Because the limits reflect system conditions at any point in time, the limits are dynamic and care must be exercised if single quantities limits are used in a computer model. These considerations about the nature of transmission limits are not limited to the particular example of flowgates; they apply as well to the Total Transfer Capability (TTC) and Available Transfer Capability (ATC) quantities posted on OASIS. We focus here on flowgate limits because they appear to be the limits most directly related to the distribution factors used to estimate network flows. Other approaches to estimating physical flows and associated limits are possible; we ask questions about such approaches in the last section of this attachment.

NERC is developing an Interregional Security Network (ISN) that may include data on flowgate capacities, but these limits are not currently available. Estimates of the capacity limits of these flowgates are important data for the implementation of a model based on that network. The availability of these limits would be of considerable value even if a model is not used, since they could be used to estimate limits on transmission flows for many types of analysis of transmission grid transactions, including conducting delivered price test without a model.

Specification of a Simple Model

The two main benefits of implementing the electric power modeling framework through a computer program are: (1) Better representation of the market interactions, in particular the opportunities presented to suppliers by the presence of other loads in addition to the loads at the destination market and (2) better representation of the impact that transmission limits will have on economic transactions. In order to make the general structure specific for use in a computer program, the mathematical structure of the algorithm must be described and the data used as input to this algorithm must be specified. As a starting point for discussion, this section describes an algorithm that can be implemented using most standard mathematical programming software packages. The algorithm is described qualitatively and also presented as a mathematical formulation.

The problem solved in this example is finding the lowest cost combination of supplies (generating plants) and power transactions between areas, to meet fixed demand (loads) over an electricity transmission network, given costs for power, charges for transmission of power within and among areas,[8] transmission loss factors, and physical limits to moving the power over the grid. Solving this cost minimization problem simulates the actions of a competitive market. Under this least cost dispatch, buyers of power can't make any more trades among suppliers to lower their purchase costs. This is the expected result in a purely competitive market, where buyers have alternatives and are permitted to trade among these alternatives until they get the best value for their money.

In the ''real'' world, conditions are more complex than in a computer program. The clearest differences between generation and transmission in the computer program and the real world are assumptions about information (the model assumes it is perfect and costless) and the cost of transactions (the model assumes no costs for searching for

[7] The Eastern Interconnection is the portion of the transmission grid that covers the eastern part of North America, extending from the Rocky Mountains to the Atlantic Ocean (but excluding the Electric Reliability Council of Texas (ERCOT)).

[8] As discussed above (page 4), these areas would typically be control areas. Since the sample model is general, we drop the specific qualifer.

suppliers, negotiation of trades, or costs of interruption.) The computer model makes any trade that can lower costs, even if it involves large and complicated combination of individual trades among buyers and generators across a transmission network. Even simple transactions are assumed to involve only variable costs of generation and maximum transmission rates.

While these idealizations are limitations, some idealizations of this sort are inevitable, and point out the need to view computer simulation model as a tool in an overall analysis. These issues can be addressed with model runs where assumptions change—i.e., by conducting sensitivity analysis under different scenarios. In addition, computer program results need to be validated by checks against other sources of market information before making use of the outputs from the program.

The model specified here is a basic model that could be used to examine electric power transactions and transmission flows. This model is presented as a ''strawman'' point of departure for discussion. It represents only a single period solution of the problem, that is, it does not attempt to address startup costs or other multiple period effects. It also includes some parameters as a single constant that may need to be varied across areas, for example, adjustments for losses. Further, other factors would need to be addressed through adjustment of input data (for example, through adjustments to plant capacities for availability in each time period analyzed). These issues will be raised below in the section on issues and questions for comment. However, even without such modifications, staff believes that this basic model does capture important market and transmission effects. Even the use of a simple model, not much more complex in structure than the model presented here, could potentially enhance the delivered price test and expedite the analysis of mergers, if data are available to implement the model. In the next section we discuss data issues related to this implementation.

The objective of the model, the constraints that must be met in reaching this objective, and the model inputs and outputs are described below. The model is stated mathematically in Figure 3.

Model Objective. Minimize the total cost of delivered power, calculated as the sum of generation and transmission costs to meet a fixed set of demands (loads) in each area, given costs for power generation in each area and rates to transmit the power between interconnected areas.

Subject to constraints that satisfy:

Generation capacity requirements. Generation does not exceed a maximum capacity for each unit or fall below a minimum level if one is specified.

An energy balance in each area. The sum of generation in each area plus power imported from other areas over the transmission network, adjusted for losses in generation and transmission, is equal to the demand in each area.

Flowgate requirements. The flow across the flowgates defining the electricity network does not exceed the maximum flowgate capacity or fall below the minimum flowgate level if one is specified.

Transmission system balance requirements. The total power injected into the transmission system equals the total power withdrawn from the transmission system, adjusted for losses.

The model inputs needed to compute the objective function and determine the constraints are:

- The variable cost of generation at each unit in each area.
- The capacity of each generating unit in each area (and the minimum run level if needed).
- The demand (load) in each area.
- The applicable transmission rate between each pair of interconnected areas.
- Power transfer distribution factors for each interconnection between control areas.
- Losses in generation and transmission.
- The maximum capacity of each flowgate.

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Figure 3. Power Transaction and Transmission Model Specification

Variables, Parameters and Limits: 9/

x_{ij}	=	transaction flow from area i to area j	$Fmax_m$	=	maximum flow at flowgate m
R_{ij}	=	transmission tariff rate ($/MWH) from area i to area j	$Fmin_m$	=	minimum flow at flowgate m
q_{ki}	=	production from unit k at area i	A	=	Reference area for measuring flow gate constraints, injections and withdrawals
D_i	=	demand at area i	F_{im}	=	the flowgate factors for an injection in area i and a withdrawal in area m
C_{ki}	=	cost ($/MWH) of unit k at area i	α	=	Fractional transmission losses in area interchange
$Qmax_{ki}$	=	maximum production of unit k at area i	β	=	Fractional transmission losses within each area
$Qmin_{ki}$	=	minimum production of unit k at area i			

Objective Function: Minimize Total Cost of Generation Plus Transmission

$$\sum_i \sum_k C_{ki}\, q_{ki} + \sum_i \sum_j R_{ij} x_{ij}$$

Subject to:

Energy balance for reference area

Injections: $x_{iA} - \sum_j x_{ij} = 0, \forall_i$

Withdrawals: $x_{Aj} - \sum_i x_{ij} = 0, \forall_j$

Flowgate constraints

Maximum: $\sum_i F_{im}(x_{iA} - x_{Ai}) <= Fmax_m, \forall_m$

Minimum: $\sum_i F_{im}(x_{iA} - x_{Ai}) >= Fmin_m, \forall_m$

Generator constraints

Maximum: $q_{ki} <= Qmax_{ki}, \forall_{k,i}$

Minimum: $q_{ki} >= Qmin_{ki}, \forall_{k,i}$

Area energy balance

$$\sum_k \alpha^* q_{ki} + \beta^* x_{Ai} - x_{iA} = D_i, \forall_i$$

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This information is used to determine the generation levels and transmission interchange between control areas that minimizes the sum of generation costs and transmission charges as specified above in the objective function. The key outputs from this algorithm are:

- Power production at each generating unit in each control area.
- Net power interchange between areas.
- Power flowing on each flowgate.
- Marginal cost of power in each area.

Implementing the Basic Model: Data Considerations

In principle, the sample algorithm in the last section could be implemented at a high level of detail, where areas were geographically small, for example, at a level of detail below a utility service territory. This level of detail could approach the level of detail used in detailed power flow and transmission system analysis. In practice, data limitations may make a such a detailed model generally impractical as a screening tool for merger analysis (although in specific cases, more detail can be developed as needed). A reasonable starting point for data considerations is the information currently required to conduct a delivered price test. As discussed above, one would expect many of the sources of information used for computer modeling to be the same as the sources for the non-model application of the delivered price test. Variable generation costs and capacities by area, area demands, interconnections between areas, transmission tariff rates could be the same in both analyses. A computer model would need data on a larger geographic area than a delivered price test for a single destination. However, most of the publicly available sources are not limited to single regions, but provide nationwide coverage. Sometimes this coverage is limited to a particular class of market participants—e.g., Investor-Owned Utilities (IOUs), Municipal utilities, etc. However, it is generally possible to compile nationwide data on the key variables needed in the analysis; consequently, data for the larger geographic areas that may be required for a computer model should be generally available and relatively easy to incorporate in the analysis.

The availability and format of data circumscribe the ways in which key variables in a model can be defined. For parameters that are common to calculations with or without a model the issues of definition are the same in either type of analysis. As an example, consider the question of what areas to use in an analysis. Answers to this question depend on how data are reported geographically, as follows:

- Generator locations can be assigned to specific geographic locations within control areas.
- Tariffs are filed by utility areas (or sometimes for a single holding company such as Southern Company).
- For load scheduling purposes, interconnections are most naturally defined by control area, and Form 714 data are reported on that basis.
- System lambda data are filed on a control area basis.
- Historical loads are most easily derived from the Form 714 filings which are reported on a planning area basis.

These data limitations suggest that areas for modeling purposes might be defined by combining control and planning areas. This definition would permit a modeling analysis to consider different time periods defined on the basis of hourly load data, and to estimate the system lambda corresponding to the load data on a basis that is consistent with the requirements for a delivered price test without a model. Staff seeks comment on this and related issues below.

PTDFs are needed in the model specified in the previous section, but would not be needed if the merger analysis did not use a computer model.[10] Recall that PTDFs relate power exchanges between areas to flows across flowgates. The sample model assumes that the areas in the model are the same ones used to define PTDFs. Although PTDFs are not needed in an analysis that does not use a computer model, they are nevertheless a valuable piece of information for any analysis that needs to examine the implications of loop flow and transmission limits.

Transmission limits are also important data inputs to the computer model. As discussed above, flowgate limits have not yet been defined for the flowgates identified in the NERC data on PTDFs. The best currently available information for estimating limits appears to be OASIS values for Total Transfer Capability (TTC) and Available Transfer Capability (ATC), and transmission capacities reported in various NERC studies and other systems assessments. Since these are the same sources that are needed for a delivered price test analysis, the model does not impose additional data requirements beyond those of the delivered price test. One caveat may be noteworthy, however. A computer model may be more sensitive to data limitations, because the model automatically enforces the transmission system limits on electricity trade. This automatic nature of the computer model is a great benefit if consistent and accurate data are available, because the model can automatically capture the effects of trade across an interconnected electricity grid. However, this characteristic of a computer model can also make results more sensitive to data imperfections than an analysis relying more directly on the analyst's judgment, and suggests that analysts should conduct studies to determine the sensitivity of market simulations results to a range of transmission limits.

Finally, a computer model simulation is a valuable tool for examining the consistency of the data used in the analysis. The model uses all the same information used in the current delivered price analyses for the key parameters: generation costs and capacities, transmission tariffs and limits, and destination market loads. From this information, the computer model simulates generation levels, generation costs, control area prices, and transmission flows between areas. It should be possible to reconcile these simulation results with corresponding reported information. For example, the simulation results (such as control area prices and the costs the marginal generator) should be consistent with reported values for system lambda. Inconsistencies may indicate deficiencies in either the model or the information sources, or both, and large inconsistencies need to be understood before proceeding with the analysis. This is particularly important for system lambda data, since the system lambda data may be used to set the destination market prices. If estimated prices from a simulation are not consistent with system lambda data, the cost information used in a delivered price test (such as the generation costs reported on Form 1) may not be consistent with the destination market prices. Since inconsistencies between estimated and reported values can also arise because of the limitations of the model itself, however, some degree of inconsistency may be inevitable. However, the model would still provide a valuable tool for linking the different sources of information used for the delivered price test and potentially corroborating the system lambda data as a destination market price indicator. As experience is gained in calibrating a model with other sources of information on prices and generation levels, judgments of what destination market prices to use in an analysis should improve.

Applying a Computer Model to Merger Analysis

The discussion has not yet considered the role of a computer model in a delivered price test. It is important to distinguish between the computer model itself and use of the output of the model for merger analysis and the delivered price test. A model simulates generation and power flows in the transmission network based on economic and electrical engineering principles. It is then applied to a particular analysis as defined by a particular procedure. Using a model as a tool in this way does not alter the basic objectives or principles underlying the delivered price test.

To assist the discussion of applying the model to a delivered price test, we divide this section into three parts, as follows:

- A Delivered Price Test Without a Model. The delivered price test is not intended to be applied in a rigid, inflexible manner. Accordingly, staff has tailored the basic steps described here to fit the circumstances in each case.
- Model Outputs Relevant to the Delivered Price Test. This part briefly reviews computer modeling methods and results that are important in the delivered price test. These features are described without reference to technical details of model design and data discussed in previous sections.
- A Delivered Price Test With a Model. A delivered price test with a model will follow the same basic pattern, but details of the procedure will change. This section describes where the model would fit in the context of a typical DPT application.

[10] This is the only data element required for the sample model that would not be needed without it. However, a more complex model might impose additional data requirements. These additional requirements are addressed in the last section of this attachment on questions for a technical conference.

Staff's Framework for a Delivered Price Test Without a Model

The competitive screen analysis focuses on one aspect of merger analysis: whether the merger would significantly increase concentration. The four steps in the competitive screen analysis are:

- Identify relevant products.
- Identify affected customers.
- Identify potential suppliers to affected customers.
- Analyze effect on concentration.

For purposes of comparing a delivered price test with and without a computer model, the key step is the identification of suppliers in the market. This step will be described in detail, but other steps will be also be briefly described for completeness. These descriptions are not meant as a fixed prescription, and we do not mean to imply that there is a single way to conduct a delivered price test. Rather, they describe a set of choices we have found appropriate in previous cases. These choices are guidelines that staff believes can be improved upon as analysis evolves. Their purpose is to distill experience and provide reasonable common ground as guidance, without restricting innovation in future applications.

Identify Relevant Products. Although other products can be appropriate, the relevant product for the delivered price test has typically been short-term energy. Short-term energy has been further differentiated by time period. For most purposes, staff has divided time periods into nine time categories, defined by season and hourly load conditions: winter, summer and spring/fall seasons, with peak, shoulder and off-peak periods being identified for each season. Short-term energy is then analyzed as a separate relevant product for each of the temporal categories.

Identify Affected Customers. Customers have generally been identified based on the facts of each case, the Applicants' filing, and analyses filed by intervenors. The result has been the identification of destination markets with higher probabilities of negative effects. Each destination markets has been analyzed separately for each time period.

Identify Suppliers to Affected Customers. Identifying suppliers to each destination market in each time period involves several choices and related calculations. The identification starts with a decision on how to limit the total group of suppliers included; that is, with how many ''wheels'' away a supplier must be in order to be excluded from consideration. Generally, three wheels has been deemed adequate, but no rigid number of wheels can be determined *a priori*, so the boundaries need to be fitted to the facts of each case. The main remaining components in supplier identification are:

- Competitive price in the destination market.
- Generation costs and capacities.
- Transmission prices and transmission system capability.
- ''Native'' loads.

A general summary how each of these components has been included in the delivered price test is given below.

Competitive price in the destination market. The destination market system lambda provides a default indicator that can be calculated for each of the time periods considered. However, differences in methods underlying the system lambda and well as differences in reporting (such as inclusion or exclusion of purchases) mean that system lambda data should to be compared with other indicators such as published spot prices for consistency. One approach to the problem of uncertainty in any estimate of the competitive price is to analyze concentration for different price levels, in order to determine how sensitive the concentration results are over a plausible range of prices.

Generation costs and capacities. The primary source of information for the capacity and variable cost of generation has been the FERC Form 1 and related forms.[11] These data are available for individual generating plants, but do not provide information on specific units when there are multiple units at a plant. However, it does provide information by prime mover type (*e.g.*, fossil steam, internal combustion) and type of fuel. For purposes of variable cost estimation, this level of detail is a reasonable approximation to unit level information in most cases.

Generation capacity is adjusted for availability, based on estimates of planned and forced outages. Planned and forced outage rates should be based on historical outages, and varied at least by fuel type. If more detailed data are not available on the temporal patterns of outages, outage rates should be applied to represent typical patterns. For example, forced outages are applied equally to all time periods, unless another allocation can be supported. Planned outages are assigned to spring/fall where they would be most expected, except where more explicit scheduling patterns can be supported.

Transmission prices. In general, staff has used firm ceiling rates from open access tariffs. Generally, the maximum applicable hourly rate, in $/MWh, is used. In cases where discounted rates a generally available and posted on OASIS, these discounted rates are used.

Transmission rate structures are undergoing changes, so no single approach is always the best one to use. Where new rate structures have been adopted, the new rate structure should be used. For example, MAPP rates are distance-based, and these current regional rates are used for transmission analysis involving MAPP companies.

In order to determine the transmission costs for a supplier to reach a destination market, it is necessary to trace a ''contract path'' between the supplier and the destination market. The basic information source for identifying the individual companies in these interconnections has been the FERC Form 714. Where there are multiple paths between the supplier and the destination, staff has chosen to assign suppliers to the path with the lowest transmission cost.

[11] For example, the Rural Utility Service Form RUS–12 provides information on generators owned by cooperatives, and the Energy Information Administration Form EIA–412 provides information on municipals.

Transmission capacity. There are two different publicly available sources that can be used to estimate transmission capacity: NERC Regional Reliability Council transmission assessment studies and OASIS reports of Total Transfer Capability (TTC) and Available Transfer Capability (ATC). Staff has used both of these sources, but the specific uses have been based on the strengths and weakness of each source. NERC data provide better supporting detail and can be used for estimation of simultaneous transmission capabilities. However, NERC reports generally report simultaneous transmission capability at the regional or sub-regional level, not at the more detailed geographic area reported on OASIS. OASIS data provide a desirable level of detail (the control area and some sub-control-area detail), but the reporting is not generally on a simultaneous basis and reporting has not fully matured. For example, different OASIS sites report differing TTC/ATC capacities between areas over the same path. Therefore, OASIS data, while detailed, need to be reviewed closely for use in estimating transmission capacity in the delivered price test.

The total generation capacity on a particular path from a supplying area to the destination market is determined by the suppliers assigned to that path. When the available transmission capacity on a path is less than the total generation capacity assigned to the path, it is necessary to allocate capacity to the suppliers comprising the path. The merger policy statement does not endorse any particular method for making this allocation, but the two approaches used by staff are to reduce each supplier's capacity pro rata and to select suppliers in order of generation cost.

Native load estimation. When the measure of capacity used is available economic capacity, an estimate of native load in each area is needed. This estimate is used to reduce the generation capacity available for sales to the destination markets that are being analyzed. For this purpose, FERC Form 714 data on hourly loads can be used to estimate the load in each time period. Because these data are reported on the basis of ''planning areas'', some adjustments to these data are necessary for use in estimating native load by control area.

Analyze effect on concentration. The final step in the analysis is to examine the pre- and post-merger concentrations and compare them to the appropriate thresholds. These concentrations are based on the estimated supplier shares from the supplier identification step, for pre-and post-merger combinations of the following cases:

- Products—short term energy.
- Periods—nine periods by season and load conditions.
- Capacity measure—economic capacity (supplier capacity deliverable at 105% of the competitive price) and available economic capacity (subtracting native load from a supplier's economic capacity).

Model Outputs Relevant to the Delivered Price Test

The steps in supplier identification described above could be conducted using a

computer program that uses information on generation costs and capacities, transmission costs and capacities, and other inputs. Such a program would provide a list of suppliers and capacities making up the supply to each market. Without a computer model of the market and transmission grid, these programs cannot take into account certain factors that are important in determining what suppliers can deliver power economically to a particular destination. The two main factors not accounted for are:

- Interactions between suppliers and loads. In a competitive environment, decisions about which suppliers will serve which loads will be driven by opportunity costs, in particular the opportunity cost to suppliers of serving one load rather than another. Because there can be many possible combinations of supplies and loads, some form of computer model could be helpful in estimating such combinations.
- Transmission flows from exchanges of power between areas. Because of the properties of electricity, exchanges of power between areas affect flows throughout the transmission grid. Any approximation of these effects may require a computer model to make the many calculations needed to estimate electric power flows.

Developing and using a computer model involves a number of choices about the structure of the model, the level of detail, the sources of information, and other issues. These issues are discussed elsewhere in this attachment. The main question to raised here is what information the computer program provides to the analyst. Once this question is answered, the discussion turns to the question of how that information can be used in a delivered price test.

For purposes of this discussion, the computer program is assumed to be a simple representation of dispatch of generators to meet a fixed set of loads in a single time period. The program is assumed to simulate the economic dispatch of power over an electric transmission network, by finding the dispatch of generators and exchanges of power between areas that gives the lowest total cost of producing and transmitting the power. Output from this computer program would include generation levels, the quantity of power exchanged between areas, flows on the transmission grid, and the marginal cost of power in each area. Each of these computer model outputs is described briefly below:

- Generation levels. For each generating unit, the computer model estimates the level of output of each generator. It does not estimate which generator sells to which load, but only how much power is generated by each generator when dispatch of that power is at least overall cost.
- Power exchanged. For each pair of interconnected areas, the model gives the net quantity of power exchanged between the areas under economic dispatch.
- Flows on the transmission grid. For each of the transmission facilities represented in the model, the model outputs the quantity of power flowing through that facility. These flows will be limited by any transmission capacity limits that have been input to the model.
- Marginal costs for power. For each area, the model would find the marginal cost of power under economic dispatch. For purposes of this analysis, this cost can be interpreted as the market clearing price for the area.

These model outputs can be used to apply the model in a delivered price analysis. This application is discussed in the next section.

A Delivered Price Test With a Model

One use of a computer model is to use it in a delivered price test analysis. A computer model would be used only in the supplier identification step. The model could be helpful in two parts of this analysis: determining the destination market price and identifying the suppliers that can deliver to each destination market. The role of a computer model in each of these steps is described below:

- Determine destination market price. The default approach to market price determination would still be the system lambda data. However, a computer model could be used here to help corroborate the price used for the destination. As discussed above (p. 14), a computer model could be used to simulate a destination market price for the loads in each time period. This simulated price would not be a substitute for a price estimated from system lambda data, but could be an additional factor in determining how to establish the price and whether to examine a range of market prices rather than a single estimate.
- Identify suppliers to the destination market. A computer model could be used to determine what suppliers could deliver to the destination market. It could simulate the supplier identification procedure of the delivered price test. In the delivered price test, suppliers are considered in the market as long as they can deliver to the destination market at a price less than or equal to a threshold price equal to 5% above the destination market price. A computer model could simulate the same test by considering only the load in the destination market (i.e., assuming all other loads to be zero). Under these conditions, the computer model would be run with increasing destination market demand until the market price reached threshold price. All suppliers running at this price would be identified as supplying the destination market.

In addition to these steps, adjustments to supplier capacity that can be delivered to a destination may be appropriate. One possible adjustment could be to consider other destinations that provide selling opportunities for suppliers and the likelihood that supplier's opportunities may alter their capacity available for delivery to a particular destination market. A computer model is one tool that could be used to assess the effect of these alternatives in a delivered price test. Staff seeks comments on whether these types of adjustment may be appropriate in a delivered price test and how a model could be used for this purpose.

Finally, computer models hold additional potential for application in other areas of the competitive analysis of mergers. In the next section, staff seeks comment on these and other issues.

Issues/Questions for a Technical Conference

Below are questions for comment and perhaps also discussion at a technical conference. Commentors should also raise any other issues they believe need to be considered. In considering these questions or in raising further issues, it is important to specify whether the model is intended primarily as a screening tool or as a detailed and full analytical tool. In the former case the model must therefore strike a balance between detail (with the presumption of greater accuracy and precision) and ease of application within the requirements for a screen.

Questions are listed in five groups: basic model structure, implementing the basic structure, data issues, application to merger analysis and process issues.

Basic Model Structure

The sample model assumes the general form of a mathematical programming problem. Is this the most appropriate technique to simulate economic equilibrium problems in the electricity market? Please be explicit about any proposed alternatives.

The sample model is structured as a linear program. Would another mathematical programming form be better (for example, a quadratic program with piecewise linear supply curves)?

Demands are assumed to be fixed in the sample program, so the demand side of the market is not represented in the sample model. Should demands be made responsive to price? If so, what is the appropriate price elasticity? Should the objective function then be to maximize social welfare (the sum of producer plus consumer surplus)?

The sample model uses distribution factors to estimate power transmission flows. Is this approach adequate? Should Commission staff rely on transmission distribution factors supplied by others (either NERC or another third party) or perform its own transmission system analysis to derive distribution factors for market analysis?

In the sample model, the generator cost functions are represented as a constant variable cost for a unit, even though unit efficiencies vary over the operating range of a generating unit. Is a formulation with a constant variable cost sufficient for purposes of a screening model? Are there alternative formulations of the cost function that can be easily implemented with available information?

How should generating unit availabilities and losses be represented in the model? Could availabilities be treated outside the model, as adjustments to available capacity for each time period studied? Should losses be represented only for transmission flows, or for all generation and transmission, and should different loss factors be supplied for each area? Should losses associated with generation or load within each area be treated differently from losses associated with transmission exchanges or flows across areas? Should losses be transaction based or flow based?

How should generation and transmission reserve requirements be modeled? How should transmission reserve margin (TRM) and capacity benefit margin (CBM) be used?

What additional adjustments are required to account for generation operating reserves, generation planning reserves, or transmission reserves?

Are there other operating conditions that would need to be represented in a model for screening purposes? For example, would a model need to represent operating costs for startup or ramping in order to capture whether particular unit might be available to respond to price increases? Are there any special design considerations for hydropower that need to be incorporated in the model, and how can these best be added?

Alternative Implementation of Basic Model

Is a geographic level of detail corresponding to control areas the best level of detail for purposes of a screening model? If a greater level of detail is necessary, please explain how this detail can be represented with public sources of data or how it can be made part of the filing requirements. Also explain how a more complex analysis with a detailed model could be conducted within the time requirements of a screening analysis. If geographic areas larger than control areas are recommended, please explain how the approach could adequately capture competitive issues required in a merger screen.

The model represents transactions between control areas. Transactions between control areas follow a contract path and pay for each control area transfer between source and destination. As rate structures change and power pools evolve, these rate structures will also change. What design elements should be incorporated to ensure that the model is sufficiently flexible to accommodate these evolving structures?

How should firm sales and contracts be represented in the modeling structure? For example, should generation capacity be reassigned from the selling region to the purchasing region? If capacity is reassigned, which generating units should be associated with the reassignment? Should the transmission capacity be made unavailable for both scheduling and use, that is, should it be assumed that the purchaser is obligated to use the power rather than resell it, so capacity will be used and not available for short-term trading in the model?

The model can simulate a market (minimize costs) over any arbitrary area for which data are available. Should the overall area be broad, for example, the Eastern Interconnection, or should it be limited to a smaller area surrounding the parties to a merger? Discuss how trade with areas outside the area represented in the model should be analyzed and incorporated in the model.

Should different modeling structures be used to simulate the different characteristics of power trading and power flows for different regions? For example, is the sample model considered equally applicable to the analysis of the Eastern Interconnection and WSCC? If not, what key differences between regions should be reflected in the structure of the model, and how should they be represented?

Data Issues

Are there alternatives to using FERC Form 1 data (and data from related public sources) for generator costs and capacities that provide comparable geographic and company coverage?

What are the best data for estimating the fuel cost component of variable cost? Should historical costs, such as those reported on Form 1 be used? Or should other estimates, such as spot prices, be used? If a single heat rate is used for each unit to convert fuel costs to a cost per unit of electricity, should that heat rate be taken from Form 1? Or are other heat rates, such as those filed by unit on the Energy Information Administration Form 860, a better estimator of the cost of power from the unit?

Should variable cost include non-fuel operating and maintenance costs? What components should make up non-fuel operating costs? Can these costs be estimated from Form 1 data with sufficient accuracy for a model? If they can, what methods should be used for estimating these costs from Form 1 data? If they cannot be estimated from Form 1 costs, what sources of information should be used in their estimation?

Should NERC PTDFs and flowgate limits (if available) be used? What are the strengths and weaknesses of using the NERC PTDFs and flowgate limits? If flowgate limits associated with NERC-calculated PTDFs are available, can they be used in the way they are represented in the sample model discussed in this attachment? If they should be incorporated in a model using an approach that is different from the one described in this attachment, what should that approach be?

If NERC flowgate limits are unavailable, is the approach of using PTDFs and flowgate limits to represent the physical network still practical? If the PTDF approach is practical in the absence of flowgate limits provided from NERC, how should other sources of transmission limit information (such as OASIS TTC or ATC data or system reliability studies) be used to estimate flowgate limits? If the PTDF approach is not practical, how should actual power flows and transmission limits be modeled?

Environmental factors can influence the variable cost of operating plants. For example, the variable cost of operating coal plants is affected by the cost of SO_2 allowances, and environmental programs in California and the Northeast could have a significant impact on costs. Are these costs adequately captured by publicly available sources, such as the reported costs on Form 1, or do they require separate cost estimation?

Application to Merger Analysis

Can the model be straightforwardly applied to simulate the supplier identification step of a delivered price test that is consistent with a delivered price test performed without a model? First, consider the delivered price test as it is described and applied currently, without adjustments to supplier capacity. Then consider how a model might be used to adjust supplier capacity for the presence of loads at other destination markets, and how such adjustment could be made in a manner consistent with the purposes of the delivered price test.

In addition to using a model in a delivered price analysis, what are the other areas of market definition or of the analysis of the competitive effects of mergers where a computer model could be used? Comments may address the general use of computer models in antitrust analysis, such as their use in a hypothetical monopolist test or their use in simulating dominant firm behavior. However, comments should address how these applications might function as a screening tool and in the Policy Statement. In your comments, specify what these areas of application are and what benefits are provided by using the model, how the model would be used in the analysis (in as much detail as possible), and how use of the model can be made consistent with the practical constraints of time and resources available in the screening context.

Process of Model Development and Maintenance

The staff believes that a computer model can be a feasible part of a horizontal screen, and will aid the analysis. The model may also have the potential to expedite the analysis by providing agreed-upon standard methods that can be applied in merger analysis. Are these beliefs sound, or are there limitations in principle or practice that make the use of models infeasible as part of a horizontal merger screen?

What should the Commission require with respect to computer modeling in merger analysis? Should it endorse a specific computer model, a particular modeling approach (such as an economic dispatch model), or only a general framework? Or should it only seek to provide guidance on how a model should be used if applicants choose to include one in their application?

Are there existing models that meet the requirements for use in a horizontal screen? Explain how any candidate model could be used by staff, applicants and/or intervenors in the context of a merger application? Address issues of technical adequacy, practical issues such as complexity and ease of use, and procedural issues such as the proprietary nature of third-party commercial software products. If there are other existing models, should the Commission staff acquire a existing model, or should Commission staff develop a model for its own use and the use of applicants and intervenors?

If the Commission staff were to develop a model rather than acquire an already existing model, what development approach should be taken? Should the model be developed by Commission staff based on technical discussion and input from industry, by industry groups with Commission oversight, or some other way? If the Commission adopted the approach of issuing guidelines only, but not developing a single model for general use by staff and applicants, would independent development of models by others provide models of sufficient quality and standardization for merger analysis purposes?

How should a model be tested prior to use in specific merger cases? If a model has been used in other contexts, under what conditions should that use be regarded as sufficient to validate its use as part of a horizontal screen analysis? If the Commission staff were to develop or adopt a

new model for use in merger analysis, how should it be tested to ensure that the design criteria have been met?

How should a model and associated databases be maintained and updated? What process should be followed to identify needed modifications to the model and create new versions of the computer code? Should a fixed set of data inputs be identified, in order to avoid this potential difficulty and provide consistent a starting point for analysis (assuming applicants can file additional data for further analyses if they choose)? As an alternative, should applicants be permitted to substitute the most recent data from the same sources even if these data have not previously tested in the model? Or should a standard set of model inputs be maintained and updated as a group? If a standard set of inputs is maintained, should Commission staff be directly responsible for the maintenance of these data or can this responsibility be carried out by third parties?

[FR Doc. 98–10687 Filed 4–23–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 06, 1998 Through April 10, 1998 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 FR dated April 11, 1998 (62 FR 16154).

Draft EISs

ERP No. D–AFS–L67036–OR Rating EO2, Nicore Mining Project, Implementation, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Josephine County, OR.

Summary: EPA expressed environmental objections based on lack of information or alternatives, the potential cumulative impacts of additional mine patents in the area, a failure to meet the intent of the Aquatic Conservation Strategy in the President's Forest Plan, a lack of a detailed reclamation plan, a lack of a monitoring plan and potential sediment impacts to Rough and Ready Creek.

ERP No. DR–BLM–K67040–CA Rating EO2, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Plan of Operations, Right-of-Way, Conditional Use Permit, US COE Permit and Reclamation Plan Approvals, El Centro Resource Area, California Area District, Imperial County, CA.

Summary: EPA expressed environmental objections based on potential significant environmental degradation to waters of the United States, and requested additional alternatives analyses and data. EPA also expressed serious concerns that the project could interfere with basic rights of Native Americans to practice their religious beliefs, and asked BLM to provide information on its policies, guidelines and standards with respect to this issue.

Final EISs

ERP No. F–AFS–J65251–CO Arapaho and Roosevelt National Forests and Pawnee National Grassland, Implementation, Land and Resource Management Plan, Boulder, Clear Creek, Gilpin, Grand, Larimer and Weld Counties, CO.

Summary: EPA review finds the alternative selected in the FEIS to be responsive to the Forests and Grasslands need and to environmental considerations for Plan Implementation.

ERP No. F–AFS–J65276–CO Dome Peak Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Eagle Ranger District, Glenwood Spring, Eagle and Garfield Counties, CO.

Summary: EPA review has not identified any potential environmental impacts.

ERP No. F–COE–G39031–LA Mississippi River—Gulf Outlet (MRGO) New Lock and Connecting Channels Replacement and Construction for Connection to the Mississippi River, Implementation, Orleans and St. Bernard Parishes, LA.

Summary: EPA expressed lack of objections to the recommend plan and have no other comments to offer.

ERP No. F–NPS–K61144–HI Ala Kahakai ''Trail By the Sea'' National Trail Study, Implementation, Hawaii Island, Hawaii County, HI.

Summary: Review of the Final was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–K90025–CA Monterey Bay National Marine Sanctuary Management Plan, Updated Information, To Amend the Designation Document and Regulations to Allow Jade Collecting in the Sanctuary, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: April 21, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–10990 Filed 4–23–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–1]

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 April 13, 1998 Through April 17, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980122, Draft Supplement, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasbility Study and Bethany Beach and South Bethany Interim Feasbility Study, Additional Information, Storm Damage Reduction and Construct a Protective Berm and Dune, Sussex County, DE, Due: June 08, 1998, Contact: Steve Allen (215) 656–6559.

EIS No. 980128, Draft EIS, BLM, WY, Newcastle Resource Management Plan, Implementation, Updated Information, Evaluates Alternatives for the Use Public and Federal Lands and Resources in Portions of Wyoming, Crook, Niobrara and Weston Counties, WY, Due: July 23, 1998, Contact: Floyd Ewing (307) 746–4453.

EIS No. 980129, Final EIS, FHW, TN, I–40 Reconstruction, I–40/I–240 Directional (Midtown) Interchange to TN–300 Interchange, Funding and Possible COE 404 Permit, Shelby County, TN, Due: May 26, 1998, Contact: James E. Scapellato (615) 736–5394.

EIS No. 980130, Final EIS, AFS, CO, South Quartzite Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Rifle Ranger District, Grizzly Creek Rare II Area, Garfield County, CO, Due: May 26, 1998, Contact: David T. Van Norman (970) 927–5715.

EIS No. 980131, Final EIS, AFS, CA, Emigrant Wilderness Management

Direction, Implementation, Stanislaus National Forest, Tuolume County, CA, Due: May 26, 1998, Contact: Dave Martin (209) 965–3434.

EIS No. 980132, Draft Supplement, AFS, ID, Deadwood Ecosystem Analysis '96 Project, New Information on New Alternative, Implementation, Boise National Forest, Lowman Ranger District, Boise and Valley Counties, ID, Due: June 08, 1998, Contact: David D. Rittenhouse (208) 364–4100.

EIS No. 980133, Draft EIS, JUS, WV, Federal Correctional Institution near the City of Glenville, Construction and Operation, Gilmer County, WV, Due: June 08, 1998, Contact: David J. Dorworth (202) 514–6470.

EIS No. 980134, Draft EIS, FHW, NM, US 84/285 Highway Transportation Improvements from Alamo Drive in Santa Fe to Viarrial Street in Pojoaque, Right-of-Way Acquisition, NPDES Permit and COE Section 404 Permit, Santa Fe County, NM, Due: June 08, 1998, Contact: Gregory D. Rawlings (505) 820–2027.

EIS No. 980135, Final EIS, BLM, MT, Golden Sunlight Mine Expansion, Implementation of Amendment 008 to Operating Permit No. 0065, COE Section 404 Permit, Whitehall, Jefferson County MT, Due: May 26, 1998, Contact: David Williams (406) 494–5059.

EIS No. 980136, Final EIS, AFS, CA, Chico Genetic Resource Center for Pest Management Program, Implementation, Mendocino National Forest, Willow, Butte County, CA, Due: May 26, 1998, Contact: Dennis Weber (503) 326–7171.

EIS No. 980137, Draft EIS, AFS, WA, I–90 Land Exchange between Forest Service and Plum Creek, within the Vicinity of the Wenatchee, Mt. Baker-Snoqualmie and Gifford Pinchot National Forests, Kittitas, King, Pierce, Lewis and Cowlitz and Skamania Counties, WA, Due: June 19, 1998, Contact: Floy Rogalski (509) 674–4411.

EIS No. 980138, Draft EIS, IBR, WA, Programmatic EIS—Yakima River Basin Water Enhancement (Phase 2) Project, Implementation, Benton, Yakima and Kittitas Counties, WA, Due: July 22, 1998, Contact: Ms. Lola Sept (208) 378–5032.

EIS No. 980139, Final Supplement, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Construction, Operation and Maintenance, Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM, Due: May 26, 1998, Contact: Bill Bottomly (970) 240–5337.

EIS No. 980140, Draft EIS, FHW, MI, I–96 East Howell Interchange Project, Transportation Improvements, Funding, Major Investment Study, Cities of Howell and Brighton, Livington County, MI, Due: June 28, 1998, Contact: James A. Kirschensteiner (517) 377–1880.

EIS No. 980141, Final EIS, AFS, AK, Cascade Point Access Road, Construction, Maintenance and Operation, Road Easement within National Forest System land in the vicinity of Echo Cove, EPA Permit, COE Section 10 and 404 Permits, Juneau, AK, Due: May 26, 1998, Contact: Jennette C. de Leeuw (907) 790–7445.

Dated: April 21, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–10991 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400129; FRL–5787–5]

Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2-day meeting of the Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology. This will be the fifth meeting of the Toxics Data Reporting (TDR) Committee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on May 27–28, 1998, from 8:30 a.m. to 5 p.m. Written and electronic comments in response to this notice should be received by May 13, 1998.

ADDRESSES: The meeting will be held at: Double Tree National Airport, 300 Army Navy Drive, Arlington, VA, telephone number: (703) 416–4100.

Each comment must bear the docket control number ''OPPTS–400129.'' All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, telephone: (202) 260–0675, fax number: (202) 401–8142, e-mail: vail.cassandra@epamail.epa.gov or Michelle Price, telephone: (202) 260–3372, fax number: (202) 410–8142, e-mail: price.michelle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

At the 2-day meeting, the TDR Committee will focus mainly on discussing options for burden reduction associated with the TRI program. The meeting will include discussion of the renewal of the Information Collection Request for the Alternate Reporting Threshold Certification Statement (Form A) and possible modifications to the Form A or the alternate threshold to increase burden reduction for eligible facilities. Some time will also be spent at the May meeting following up on items discussed at the March 19–20 TDR meeting. One of the follow-up items is continued discussion on possible Committee recommendations on ways to more clearly present release data to the public to distinguish between the various methods of disposal while still making it possible to present meaningful statistics on a national basis about releases. Also, at the March meeting, the Committee broke up into four groups and came up with suggestions for overall revisions to the Form R. At the May meeting, the

Committee will discuss a draft of a consolidated version of those ideas.

Information on availability of meeting summaries from previous TDR meetings will be available on the TRI Home Page. The address of the TRI Home Page is http://www.epa.gov/opptintr/tri. This information can be found under the heading ''TRI Stakeholder Dialogue.'' In addition, the agenda and an issue paper outlining topics for discussion at the May 27–28 Committee meeting will also be available at this same site prior to the meeting. Oral presentations or statements by interested parties will be limited to 5 minutes. Interested parties are encouraged to contact Cassandra Vail, to schedule presentations before the Committee.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPPTS–400129'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPPTS–400129.'' Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: April 17, 1998.

Cassandra Vail,

Designated Federal Official, Office of Pollution Prevention and Toxics.

[FR Doc. 98–10979 Filed 4–23–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 20, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(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 May 26, 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., NW., 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.: 3060–0756.

Title: Procedural Requirements and Policies for Commission Processing of Bell Operating Company Applications for the Provision of In-Region, InterLATA Services Under Section 271 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal governments.

Number of Respondents: 75.

Estimated Time Per Response: 250 hours average time per response.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 18,820 hours.

Needs and Uses: In a Public Notice released 9/19/97, the Commission revised various procedural requirements and policies relating to the Commission's processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to section 271 of the Communications Act of 1934, as amended. Section 271 provides for applications on a state-by-state basis. The Public Notice requires that applicants file an original and 11 copies of each application, together with one copy on a computer diskette. The applications each will consist of a stand-alone, principal document with supporting documentation such as records of state proceedings, interconnection agreements, affidavits, etc. Each application will also include written consultations from state regulatory commissions and the U.S. Department of Justice.

OMB Control No.: 3060–0355.

Title: Rate of Return Reports.

Form No.: FCC Forms 492, 492–A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 107.

Estimated Time Per Response: 8 hours average time per response.

Frequency of Response: Recordkeeping requirement; on occasion and annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 856 hours.

Needs and Uses: Filing of FCC Form 492 and FCC Form 492–A is required by Section 65.600 of the FCC Rules. Filing of the FCC Form 492 on an annual basis is required from each local exchange carrier or group of affiliated carriers which is not subject to Sections 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492–A report with the Commission for the calendar year. These carriers are also required to file within 15 months after the end of each calendar year a report reflecting any

corrections or modifications. The forms are necessary to enable the Commission to monitor the access tariffs and price cap earnings, and to enforce rate of return prescriptions. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. The Commission does not specify a retention period.

The data is used by staff members for enforcement purposes and by the public in analyzing the industry. The reports are also used by the Commission in the tariff review process and provide both the Commission and the carriers with an early warning system if rate adjustments are necessary to correct significant targeting errors.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–10929 Filed 4–23–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 20, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission.

OMB Control No.: 3060–0828.

Expiration Date: 10/31/98.

Title: State Forward-Looking Cost Studies for Federal Universal Service Support (Public Notice).

Form No.: N/A.

Respondents: State, Local or Tribal Government.

Estimated Annual Burden: 47 respondents; 19 hour per response (avg.); 893 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. On May 8, 1997, the Commission released the Report and Order on Universal Service (Universal Service Order) in CC Docket 96–45 that established new federal universal service support mechanisms consistent with the universal service provisions of Section 254. In the Universal Service Order, the Commission stated that it would use cost studies filed by state commissions to determine non-rural carriers' forward-looking cost of providing universal service if those studies met the criteria specified in the Universal Service Order. The Commission also stated that it would work together with the states and the Joint Board to develop a uniform cost study review plan that would standardize the format for presentation of cost studies in order to facilitate review by interested parties and the Commission. The Public Notice on State Forward-Looking Cost Studies presents this format. The Public Notice sets forth the information needed to evaluate whether a state's cost study complies with the criteria set forth in the Universal Service Order. To enable the Commission to make its determination in a timely fashion, we also set forth the manner in which this information should be presented. The format is to be used by all states submitting cost studies and should simplify and standardize the submission and review of state cost studies for the Commission, the states, and other interested parties. Obligation to respond: Voluntary. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–10930 Filed 4–23–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency 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, April 28, 1998, 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: Assessment Request of the Financing Corporation for the Second Half of 1998.

Memorandum re: First Quarter 1998 Corporate and National Liquidation Fund Investment Portfolios Status Report.

Memorandum and resolution re: Statement of Policy on Development and Review of FDIC Regulations and Policies.

Discussion Agenda

Memorandum and resolution re: Final Rule Regarding Deposit Insurance Simplification.

Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 1998.

Memorandum re: SIAF Assessment Rates for the Second Semiannual Assessment Period of 1998.

Memorandum re: General Counsel Opinion Regarding Interest Charges by Interstate State Banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

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: April 21, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–11027 Filed 4–21–98; 4:37 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1214–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1214–DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 9, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and tornadoes beginning on April 8, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Jefferson, St. Clair, and Tuscaloosa Counties for Individual Assistance and Categories A and B under the Public Assistance program.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–10958 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1214–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1214–DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include Categories C through G under the Public assistance program in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1998:

Jefferson, St. Clair, and Tuscaloosa Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10959 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Santa Rosa County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10943 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Houston County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10944 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Bryan County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–10956 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Echols, Lanier and Turner Counties for Individual Assistance and Public Assistance.

Bryan County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10957 Filed 4–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D. C. 20573.

Lion Cargo Brokers Inc., 8055 N.W. 77th Court, Medley, FL 33166, Officers: Ramon Portu, Vice President, Manuel A. Lescano, Vice President.

Dated: April 21, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–10963 Filed 4–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of BB&T Bankcard Corporation, Columbus, Georgia (in organization).

Board of Governors of the Federal Reserve System, April 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10892 Filed 4–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The K&Z Company LLC, Brooklyn, New York; to become a bank holding company by acquiring at least 51 percent, but no more than 75 percent, of the voting shares of The First National Bank of Lisbon, Rochester, New York.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Hometown Bancshares, Inc., Middlebourne, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank of Tyler County, Middlebourne, West Virginia.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Jefferson State Bancorp, Medford, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Southern Oregon, Medford, Oregon.

Board of Governors of the Federal Reserve System, April 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10993 Filed 4–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-10365) published on pages 19493 and 19494 of the issue for Monday, April 20, 1998.

Under the Federal Reserve Bank of Boston heading, the entry for New England Community Bancor, Inc., Windsor, Connecticut, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. New England Community Bancorp, Inc., Windsor, Connecticut; to acquire 100 percent of the voting shares of Olde Port Bank & Trust Company, Portsmouth, New Hampshire.

Comments on this application must be received by May 15, 1998.

Board of Governors of the Federal Reserve System, April 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10994 Filed 4–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 11, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Bayerische Vereinsbank AG, Munich, Federal Republic of Germany; to acquire VB Structured Finance, Inc., New York, New York, and thereby

engage in leasing activities, pursuant to § 225.28(b)(3) of the Board's Regulation Y; and in advisory activities, pursuant to § 225.28(b)(6)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10992 Filed 4–23–98; 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, April 29, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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: April 22, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11064 Filed 4–22–98; 10:14 am]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Proposed Extension and Clearance of Information Collections Under the Paperwork Reduction Act; Comment Request for the Updated Model Qualified Trust Certificates and Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and comment period, OGE plans to submit updated executive branch qualified trust model certificates and draft documents for three-year extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. In addition, OGE intends to submit, as part of the same overall package, a new set of model blind trust communications formats for paperwork review and approval for the first time. In all, a total of twelve OGE model certificates and documents are involved.

DATES: Comments by the public and agencies on this proposed paperwork extension and clearance notice are invited and should be received by July 8, 1998.

ADDRESSES: Comments should be sent to William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—''Qualified trust model certificates and draft documents paperwork comment'').

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037. A copy of all of the draft updated model trust documents and certificates may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (the ''Ethics Act''), is the sponsoring agency for model certificates and draft trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app., § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. Approval of OGE can be sought by Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials for Ethics Act qualified blind or diversified trusts. The various model certificates and trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering the qualified trusts.

The Office of Government Ethics is planning to submit, after this first round notice and comment period, updated versions of eleven qualified trust certificates and model documents (all included under OMB control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and the agencies. The current paperwork approval for the certificates and model documents is scheduled to expire at the end of August 1998. The proposed updating changes are minor improvements to the various forms that result from practice with the qualified trust program over the past several years.

In addition, OGE has determined that a new twelfth model forms set, entitled Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications) and which consists of standard trustee reporting formats and instructions for communicating with OGE, will be of value in administering the Ethics Act qualified trust program. Accordingly, OGE will seek initial three-year paperwork approval therefor from OMB.

Furthermore, OGE proposes to make a revision to the procedural paperwork notices to all of the model certificates and draft trust documents. Pursuant to the 1995 revisions to the Paperwork Reduction Act, OGE would add a statement to the model forms that an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number. A parenthetical reference would also be made to the location of that number (on the top of the first page or in the heading of the various model documents). The caption of the public burden information section would be changed to indicate the inclusion of the Paperwork Reduction Act statement as well. In addition, OGE would add the OMB paperwork control number, 3209–0007, to the headings of the model certificates, as codified in appendixes A and B to part 2634.

The various model trust certificates and documents as proposed to be modified are available to the public upon request as indicated in the ''For Further Information Contact'' section above.

There are two categories of information collection requirements which OGE plans to submit, each with its own related reporting certificates or model documents which are subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The OGE regulatory

citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust administration—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) and (b), 2634.408, 2634.409 and appendixes A and B of part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C—OGE will revise these appendixes as noted above in a final rule once OMB paperwork clearance for this overall package is obtained); and

ii. Qualified trust drafting—5 CFR 2634.401(c)(1)(i) & (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the nine implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities).

As noted above, OGE will seek a three-year extension of OMB paperwork approval for all of these certificates and documents, except for the new Blind Trust Communications set (item ii (A) above) as to which a first-time three-year paperwork clearance will be sought. Once completed, the new communications formats and, as now redetermined by OGE, the confidentiality agreements (items ii (I) and (J) above) would not be available to the public due to the fact that they contain sensitive, confidential information. All the other completed model trust certificates and draft documents are publicly available based upon proper Ethics Act request (by filling out an OGE Form 201 access form).

The total annual public reporting burden represents the time involved for completing qualified trust certificates and documents drafts, which are processed by OGE. The burden is based on the amount of time imposed on private citizens. Virtually all filers/document users are private trust administrators and other private representatives who help to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimates below for the various trust certificates and model documents are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed certificates (private citizens): 10; OGE burden hours (20 minutes/certificate): 3.

B. Certificate of Compliance: Total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

ii. Model Qualified Trust Drafts:

A. Blind Trust Communications: Total Users (executive branch): 35; Private citizen users (100%): 35; OGE-processed drafts (private citizens): 210 (based on an average of six communications per user per year); OGE burden hours (20 minutes/communication): 70.

B. Model Qualified Blind Trust Draft: Total Users (executive branch): 10; Private citizen users (100%): 10; OGE-processed drafts (private citizens): 10; OGE burden hours (100 hours/draft): 1,000.

C. Model Qualified Diversified Trust Draft: Total users (executive branch): 15; Private citizen users (100%): 15; OGE-processed drafts (private citizens): 15; OGE burden hours (100 hours/draft): 1,500.

D.–H. Each of the five remaining model qualified trust modified drafts involves: Total users (executive branch): 2; Private citizen users (100%): 2; OGE-processed drafts (private citizens): 2, multiplied by 5 (five different drafts) = 10; OGE burden hours (100 hours/draft): 200, multiplied by 5 (five different drafts) = 1,000.

I.–J. Each of the two model confidentiality agreements involves: Total users (executive branch): 2; Private citizens users (100%): 2; OGE-processed agreements (private citizens): 2, multiplied by 2 (two different drafts) = 4; OGE burden hours (50 hours/agreement): 100, multiplied by 2 (two different drafts) = 200.

Based on these estimates, the total number of forms expected annually at OGE is 294, with a cumulative total of 3,785 burden hours.

Public comment is invited on each aspect of the model qualified trust certificates and trust document drafts, and underlying regulatory provisions, as set forth in this notice, including specifically views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing model qualified trust certificates and draft documents (as updated) and request for initial paperwork clearance for the new model communications package. The comments will also become a matter of public record.

Approved: April 17, 1998.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

[FR Doc. 98–10889 Filed 4–23–98; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 62 FR 63952, December 3, 1997) is amended to reflect changes in Chapter PF within Part P, Program Support Center, Department of Health and Human Services. The Program Support Center is abolishing the *Information Technology Service* in its entirety.

Program Support Center

Under *Part P, Section P–10, Organization,* change the following:

Under *Chapter PF, Information Technology Service (PF),* delete the title and functional statement for the *Information Technology Service (PF)* in its entirety.

Under *Part P, Section P–20, Functions,* change the following:

Under *Chapter PF, Information Technology Service (PF),* delete the titles and functional statements for the *Office of the Director (PFA), Division of Computing Services (PFB),* and the

Division of Advanced Applications Development (PFE) in their entirety.

Dated: April 10, 1998.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 98–10927 Filed 4–23–98; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review: Comment Request: Extension

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging is announcing an opportunity for public comment on the continued collection of certain information by the agency. Under the paperwork Reduction Act of 1995, Federal agencies are required to publish collection of information in the **Federal Register,** including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements relating to the submission, by AoA grantees, of an annual Certification of Maintenance of Effort form on all Title III grants.

SUPPLEMENTARY INFORMATION:

Title: Certification of Maintenance of Effort.

Description: The Certification of Maintenance of Effort form will be used by the Administration on Aging to verify the amount of State expenditures and make comparisons with the three previous years' expenditures to assure that the States are in compliance with 45 CFR 1321.49. This information will be used for federal oversight of the Title III Program.

Respondents: State Agencies on Aging.

Number of Respondents: 57.

Average Number of Responses per Respondent: 1.

Average Burden Hours: 1/2 hour per State Agency.

Additional Information: Copies of the collection may be obtained by writing to the Administration on Aging, Office of Executive Secretariat, 330 Independence Avenue, SW, Washington, D.C. 20201, Attn: AoA Reports Clearance Officer. Written comments and recommendations for the proposed information collection should be sent directly to the following address: Administration on Aging, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW, Washington, D.C. 20201 ATTN: Margaret A. Tolson.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98–10937 Filed 4–23–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging, Department of Health and Human Services, is submitting the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511): Supplemental Form to the Financial Status Report (SF–269), Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

Type of Request: ''Reinstatement, without change.''

Use: To continue an existing information collection, Supplemental Form to the Financial Status Report, from Title III grantees to use in reporting information on programs funded by Title III as required under section 304, section 307, and section 308) of the Older Americans Act, as amended;

Frequency: Semiannually.

Respondent: State Agencies on Aging.

Estimated number of responses: 57.

Estimated Burden Hours: ½ hour per State agency.

Additional Information or Comments: The reporting system would become effective in fiscal year 1998. The reporting form would include the following elements:

- Use of Program Income;
- Recipient share of outlays;
- State Administrative Activities;
- Area Plan Administration;
- Unobligated Funds; and
- Disbursed Program Income.

Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Office of Regulatory Affairs, ATTN: Allison Herron Eydt, OMB Desk Officer, Room 10325, Washington, DC 20503.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98–10995 Filed 4–23–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Advisory Committee on Immunization Practices (ACIP) Working Group on Influenza.

Times and dates: 8 a.m.–5:30 p.m., May 11, 1998; 8 a.m.–3:30 p.m., May 12, 1998.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Influenza Working Group was formed to assist the Committee in expanding the current ACIP influenza immunization recommendations to include the use of new influenza vaccines and antiviral agents expected to be licensed by the Food and Drug Administration within the next 2 years.

Matters to be Discussed: Agenda will include presentations on the potential health benefits, social and economic effects, immunologic effects, and concerns related to annual influenza immunization of healthy children; development of live attenuated influenza vaccine (LAIV); immunologic, virologic, and clinical studies on LAIVs; and a review of the safety and effectiveness of a LAIV. Other matters of relevance to the working group may be discussed.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Gloria A. Kovach, Committee Management Specialist, CDC, 1600 Clifton Road, NE, M/S D–50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: April 20, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10920 Filed 4–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Program Announcement No. ACF/ACYF 98–05; Fiscal Year 1998 Discretionary Announcement for Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of FY 1998 Head Start availability of financial assistance and request for applications.

SUMMARY: The Administration on Children, Youth and Families announces financial assistance to be competitively awarded to local public and private non-profit entities—including current Head Start grantees—to provide Head Start services to pre-school age children in geographical areas currently unserved by Head Start. Head Start programs provide comprehensive child development and family support services to low-income families. The purpose of the Head Start program is to enhance children's physical, social, emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency.

The funds available will be competitively awarded to eligible applicants to: (1) serve Head Start-eligible children living in geographical areas that are not currently served by Head Start; (2) serve Head Start-eligible children living on Federally-recognized Indian reservations where a Head Start program does not currently operate; and (3) serve Head Start-eligible children of migrant farm workers in geographical areas that are not currently served by a Migrant Head Start program.

DATES: The closing date for receipt of applications is 4:30 p.m. EDT on July 6, 1998.

FOR FURTHER INFORMATION CONTACT: A copy of the program announcement and necessary application forms can be obtained by contacting: Head Start Competition, ACYF Operations Center, 225 Jefferson Davis Highway, Suite 415, Arlington, VA 22202. The telephone number is 1–800–351–2293. The fax number is 1–703–416–6077.

Copies of the program announcement can be downloaded from the Head Start web site at: www.acf.dhhs.gov/programs/hsb.

SUPPLEMENTARY INFORMATION:

Eligible Applicants: Applicants eligible to apply to become a Head Start program are local public and private non-profit agencies. (For Indian reservations, eligible applicants are the Tribal governments of unserved reservations that wish to initiate a Head Start program or agencies designated by these Tribal governments.)

Project Duration: Awards will be on a competitive basis and will be for a one-year period. The project period is indefinite.

Federal Share of Project Costs: Grantees that operate Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds: Approximately $4 million is available to fund programs that will serve approximately 800 children.

Anticipated Number of Projects to be Funded: It is estimated that up to 20 projects will be funded.

Statutory Authority: The Head Start Act, as amended, 42 U.S.C. 9831 et seq.

Catalog of Federal Domestic Assistance: Number 93.600, Head Start.

Dated: April 8, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–10989 Filed 4–23–98; 8:45 am]

BILLING CODE 4184–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Times: The meeting will be held on May 11, 1998, 9 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Robert J. Doyle, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations and vote on a premarket approval application for a computer aided detection system for screening mammograms.

Procedure: On May 11, 1998, from 9 a.m. to 12 m., and from 1 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 4, 1998. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m., and for an additional one half hour near the end of the Committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 4, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 11, 1998, from 12 m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information. (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this information.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 20, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–10971 Filed 4–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; 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: Science Board to the Food and Drug Administration.

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 May 19, 1998, 9 a.m. to 3:30 p.m.

Location: Doubletree Hotel, Plaza Room, 1750 Rockville Pike, Rockville, MD.

Contact Person: Susan K. Meadows, Office of Science (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4591, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Information will be presented to the board regarding: (1) FDA's research and science programs, (2) the process for peer review and findings from the Subcommittee for the Center for Biologics Evaluation and Research Review, (3) the status of the Biomaterials Forum project (a process for information exchange addressing issues in biomaterials science), (4) the activities of the Science Board Subcommittee on Toxicology, and (5) a proposed model for support for FDA Science.

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 May 1, 1998. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 1, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 17, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–10970 Filed 4–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Fraud Alert: Fraud and Abuse in Nursing Home Arrangements With Hospices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth a recently issued OIG Special Fraud Alert concerning fraud and abuse practices involving nursing home arrangements with hospices. For the most part, OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the Medicare anti-kickback statute. This Special Fraud Alert, issued to the health care provider community and now being reprinted in this issue of the **Federal Register**, specifically identifies and highlights some vulnerabilities in nursing home arrangements with hospices and instances of potential kickbacks between nursing homes and hospices to influence the referral of patients.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Counsel to the Inspector General, (202) 610–0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) issues Special Fraud Alerts based on information it obtains concerning particular fraudulent and abusive practices within the health care industry. These Special Fraud Alerts provide the OIG with a means of notifying the industry that we have become aware of certain abusive practices which we plan to pursue and prosecute, or bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as an effective tool to encourage industry compliance by giving providers an opportunity to examine their own practices.

Special Fraud Alerts are intended for extensive distribution to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, the OIG has published in the **Federal Register** the texts of 8 previously-issued Special Fraud Alerts (December 19, 1994, 59 FR 65372; August 10, 1995, 60 FR 40847; and June 17, 1996, 61 FR 30623), and we have indicated our intention of publishing future Special Fraud Alerts in this same manner as a regular part of our dissemination of such information.

With regard to nursing home arrangements with hospices, this newly-issued Special Fraud Alert discusses (1) the nature of hospice care and who is eligible to receive such care; (2) the reimbursement for hospice care provided by nursing homes; (3) the vulnerabilities in nursing home arrangements with hospices; (4) several suspected kickback arrangements that are designed to induce Medicare or Medicaid referrals. A reprint of this Special Fraud Alert follows.

II. Special Fraud Alert: Fraud and Abuse in Nursing Home Arrangements With Hospices (April 1998)

Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections.

To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify segments of the health care industry that are particularly vulnerable to abuse. This Special Fraud Alert focuses on the interrelationship between the hospice and nursing home industries and describes some potentially illegal practices the OIG has identified in arrangements between these providers.

What Is Hospice Care and Who Is Eligible To Receive It?

Medicare's hospice benefit provides palliative care to individuals who are terminally ill. Palliative care focuses on pain control, symptom management, and counseling for both the patient and family. Medicare hospice payments increased from about $958 million for Fiscal Year 1993 to over $1.8 billion for Fiscal Year 1995. Although the hospice benefit is still a relatively small portion of total Medicare Part A expenditures (about 1.5 percent), it has grown considerably over the past several years.

In order to elect the hospice benefit, a Medicare beneficiary must be entitled to Medicare Part A services and certified as terminally ill, which is defined as a medical prognosis of a life expectancy of 6 months or less if the illness runs its normal course. A beneficiary who elects to enroll in a hospice program waives his or her rights to all curative care

related to his or her terminal illness. Medicare will continue to pay for services furnished by the patient's non-hospice attending physician and for the treatment of conditions unrelated to the terminal illness.

The hospice must have a written plan of care which covers physician and nursing services; physical, occupational, and speech therapy; medical social services; home health aides and homemakers; short-term inpatient care; counseling; respite care; and medical supplies, including drugs and biologicals. Certain of the hospice services (''core services'') must be provided directly to the beneficiary by employees of the hospice, while other non-core hospice services may be provided in accordance with contracts with other providers. However, the hospice must retain professional management for all contracted services.

Reimbursement for Hospice Care Provided in Nursing Homes

Medicare does not have a separate payment rate for routine hospice services provided in a nursing home. Because hospice services are typically provided to patients in their homes, the routine home care hospice rate does not include any payment for room or board. For services provided to patients in nursing homes, hospices receive the Medicare routine home care rate, which is a fixed amount per day for the services provided by the hospice, regardless of the volume or intensity of the services provided. Accordingly, where the hospice patient resides in a nursing home, the patient remains responsible for payment of the nursing home's room and board charges.

If, however, a patient receiving Medicare hospice benefits in a nursing home is also eligible for Medicaid, Medicaid will pay the hospice at least 95 percent of the State's daily nursing home rate, and the hospice is then responsible for paying the nursing home for the beneficiary's room and board. The specific services included in the daily rate payment are determined by a State's Medicaid program and may vary from State to State.

In addition to the room and board payment, a hospice may contract with the nursing home for the nursing home to provide non-core hospice services (i.e., those services which the hospice is not required by law to provide itself) to its hospice patients.

Vulnerabilities in Nursing Home Arrangements With Hospices

Hospice services may be appropriate and beneficial to terminally ill nursing home residents who wish to receive palliative care. However, arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents. An exclusive or semi-exclusive arrangement with a nursing home to provide hospice services to its residents may have substantial monetary value to a hospice. In these circumstances, some nursing home operators and/or hospices may request or offer illegal remuneration to influence a nursing home's decision to do business with a particular hospice.

Hospice patients residing in nursing homes may be particularly desirable from a hospice's financial standpoint. First, a nursing home's population represents a sizeable pool of potential hospice patients. Second, nursing home hospice patients may generate higher gross revenues per patient than patients residing in their own homes because nursing home residents receiving hospice care have, on average, longer lengths of stay than hospice patients in their homes. Also, there may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs. A recent OIG report found that residents of certain nursing homes receive fewer services from their hospice than patients in their own homes. Since hospices receive a fixed daily payment regardless of the number of services provided or the location of the patient, fewer services may result in higher profits per patient.

However, a hospice's access to nursing home patients depends on the nursing home operator. Nursing home operators may restrict residents to one or two hospice providers. While an exclusive or semi-exclusive arrangement can promote efficiency and safety by permitting the nursing home operator to coordinate care, screen hospice caregivers, and maintain control of the premises, it also enhances the value of the nursing home operator's decision. In these circumstances, some nursing home operators or hospices may request or offer illegal inducements to influence the selection of a hospice.

Paying or Receiving Kickbacks in Order to Induce Medicare or Medicaid Referrals

Because kickbacks can distort medical decision making, result in overutilization, and have an adverse effect on the quality of care patients receive, they are prohibited under the Federal health care programs, including Medicare and Medicaid. Under the anti-kickback statute, it is illegal to knowingly and willfully solicit, receive, offer, or pay anything of value to induce referrals of items or services payable by a Federal health care program.

The OIG has observed instances of potential kickbacks between hospices and nursing homes to influence the referral of patients. In general, payments by a hospice to a nursing home for ''room and board'' provided to a Medicaid hospice patient should not exceed what the nursing home otherwise would have received if the patient had not been enrolled in hospice. Any additional payment must represent the fair market value of additional services actually provided to that patient that are not included in the Medicaid daily rate.

Specific practices which are suspected kickbacks include:

- A hospice offering free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice.
- A hospice paying ''room and board'' payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice.
- A hospice paying amounts to the nursing home for ''additional'' services that Medicaid considers to be included in its room and board payment to the hospice.
- A hospice paying above fair market value for ''additional'' non-core services which Medicaid does not consider to be included in its room and board payment to the nursing home.
- A hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice.
- A hospice providing free (or below fair market value) care to nursing home patients, for whom the nursing home is receiving Medicare payment under the skilled nursing facility benefit, with the expectation that after the patient exhausts the skilled nursing facility benefit, the patient will receive hospice services from that hospice.
- A hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.

Parties that violate the anti-kickback statute may be criminally prosecuted or subject to civil monetary penalties, and also may be subject to exclusion from the Federal health care programs.

What To Do if You Suspect Fraud Involving Arrangements Between Nursing Homes and Hospices

If you have information about nursing homes and hospices engaging in any of

the activities described above, contact any of the regional offices of the Office of Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Field offices	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617–565–2660
New York	NY, NJ, PR, VI	212–264–1691
Philadelphia	PA, MD, DE, WV, VA, DC	215–861–4586
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS	404–562–7603
Chicago	IL, MN, WI, MI, IN, OH, IA, MO	312–353–2740
Dallas	TX, NM, OK, AR, LA, CO, UT, WY, MT, ND, SD, NE, KS	214–767–8406
Los Angeles	AZ, NV, So. CA	714–246–8302
San Francisco	No. CA, AK, HI, OR, ID, WA	415–437–7960

To Report Suspected Fraud, Call or Write

1–800–HHS–TIPS (1–800–447–8477), Department of Health and Human Services, Office of Inspector General, P.O. Box 23489, L'Enfant Plaza Station, Washington, D.C. 20026–3489.

Dated: April 15, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–10907 Filed 4–23–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Substance Abuse Prevention and Treatment Block Grant Application Format: FY 1999–2001—0930–0080 (Revision)—The Public Health Service Act (42 U.S.C. 300x21–35 & 51–64) authorizes block grants to States for the purpose of providing substance abuse prevention and treatment services. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the FY 1999 Substance Abuse Prevention and Treatment (SAPT) Block Grant cycle, SAMHSA will provide States with slightly modified application forms and instructions. These changes affect the portion of the application that asks for information related to section 1926 (sales of tobacco to minors). The application no longer requires a description of sampling methodologies and procedures for identifying and selecting tobacco outlets to be sampled throughout a State, unless a change to such methodologies or procedures has occurred in the previous year. The application provides for more detailed information on the results and validity of the random unannounced inspections, and it will request greater detail on the number and results of actual enforcement activities that a State has undertaken. At the request of the Department, SAMHSA is including an additional tobacco-related question in Attachment 6 of the application. This question requires States to briefly describe collaboration between each State's Tobacco and Health Office (ASTHO representative) and Single State Authority for Substance Abuse (NASADAD representative). Because Federal funds for tobacco prevention and control efforts are, in most cases, awarded to different State-level agencies, it is necessary for the Department and SAMHSA to verify and understand interactions at the State level on youth tobacco prevention and enforcement. SAMHSA has modified the race/ethnicity categories in Form 9 to comply with recent revisions to OMB Directive No. 15. These modifications are not expected to increase respondent burden.

The annual burden estimate for the SAPT Block Grant Application Format is shown below:

Number of respondents	Responses per respondent	Hours per response	Total hours
1[1]	1	530	530
59	1	563	33,217
Total			33,747

[1] Red Lake Indian Tribe (exempt from Tobacco Regulation requirements).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 17, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10921 Filed 4–23–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–14]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Consolidated Plan for Community Investment.

Office: Community Planning and Development.

OMB Approval Number: 2506–0117.

Description of the Need for the Information and its Proposed use: Title I of the National Affordable Housing Act of 1990 and the Housing and Community Development Act of 1974, as amended, requires that jurisdictions develop and implement a Comprehensive Housing Affordability Strategy (CHAS), and a Community Development Plan (CD Plan). The CHAS and the CD Plans are required and must be submitted as a condition for receiving funds made available under Title I of the Housing and Community Development Act of 1974, as amended, Title II of the National Affordable Housing Act (HOME), specific programs under the United States Housing Act of 1937, and the Stewart B. McKinney Homeless Assistance Act.

Form Number: None.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Consolidated plan:							
Localities	1,000		1		316		316,025
States	50		1		959		47,950
Performance report:							
Localities	1,000		1		100		100,000
States	50		1		240		12,000

Total Estimated Burden Hours: 475,955.

Status: Reinstatement, with changes.

Contact: Theodore Leavengood, HUD, (202) 708–2504 x4451; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 16, 1998.

[FR Doc. 98–10908 Filed 4–23–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–15]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Economic Development Initiative (EDI) Grant Program.

Office: Community Planning and Development.

OMB Approval Number: 2506–0153.

Description of the Need for the Information and its Proposed Use: Economic Development Initiative (EDI) grants are used to enhance the security of the Section 108 guaranteed loan or to improve the feasibility of proposed projects through techniques such as interest rate subsidies, loan loss reserves, debt services reserves and write down of the cost of particular projects. Eligible applicants are Community Development Block Grant (CDBG) entitlement units of general local government, and non-entitlement units of general local government which are eligible to receive Section 108 loan guarantees. The information collection is required to assist HUD in selecting applicants to receive EDI grant funds and to document program compliance.

Form Number: SR–424.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	150		1		40		6,000
LOCCS Access	60		52		1		3,120
Recordkeeping and Reporting	60		52		1		3,120

Total Estimated Burden Hours: 12,240.

Status: Reinstatement, without changes.

Contact: Paul D. Webster, HUD, (202) 708–1871; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 16, 1998.

[FR Doc. 98–10909 Filed 4–23–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–07]

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: April 24, 1998.

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; TTY 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: April 16, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–10557 Filed 4–23–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM/MT/PL–98–010–1990–00–P]

Final Environmental Impact Statement for the Golden Sunlight Mines, Inc.; Amendment 008 and Mine Life Extension

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the Montana Environmental Policy Act, the Bureau of Land Management (BLM) and the Montana Department of Environmental Quality (DEQ), as lead agencies, have prepared, through a third-party contractor, a Final EIS on the impacts of the Golden Sunlight Mines, Inc., implementation of Amendment 008 and the extension of the mine life through 2006. The Final EIS presents a preferred alternative derived from seven alternatives, including the company Proposed Action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the Proposed Action. The Final EIS discloses the

possible environmental consequences associated with each alternative.

DATES: A Record of Decision will be prepared no earlier than 30 days after the Notice of Receipt for the Final EIS is published in the **Federal Register**.

ADDRESSES: Copies of the Final EIS will be available from the Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, telephone 406–494–5059; or the Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 50620–0901, telephone 406–444–3276.

Public reading copies will be available for review at the following locations: (1) Bureau of Land Management, Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC; (2) Bureau of Land Management, External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, Montana; (3) Bureau of Land Management, Butte District Office, 106 North Parkmont Street; and (4) State of Montana, Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana. Text of the Final EIS will be posted at the Department of Environmental Quality Web site: www.deq.mt.gov/eis.htm.

FOR FURTHER INFORMATION CONTACT: Greg Hallsten, Team Leader, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901, telephone 406–444–3276; or David Williams, Team Leader, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, telephone 406–494–5059.

SUPPLEMENTARY INFORMATION: The Golden Sunlight Mine (GSM) began large-scale operations to mine and process gold-bearing ore in 1982 following completion of an Environmental Impact Statement by the Montana Department of State Lands (DSL) in 1981. Several minor amendments were processed by DSL and BLM between 1983 and 1990.

In 1988 GSM applied for a major expansion of operations (Amendment 008). Following completion of a mitigated Environmental Assessment in 1990, GSM was authorized to proceed with the expansion. Amendment 008 included 31 stipulations attached to the Decision Record for the EA. These stipulations were designed to address a variety of environmental issues developed in the EA. This decision was appealed to the Interior Board of Land Appeals (IBLA) by several environmental groups in 1990. In 1993 the IBLA ruled largely in favor of the agencies. In 1992 these same groups appealed the approval of Amendment 008 in Montana State court. On September 1, 1994, the District Court Judge ruled that DSL must prepare an EIS for the impacts associated with Amendment 008. Following the court ruling the plaintiffs, GSM and DSL, negotiated a Settlement Agreement that allowed mining to continue until the completion of an EIS.

In compliance with the District Court Decision, the agencies began preparation of an EIS in 1995.

Total disturbance is approximately 2,336 acres at this time. Under the Proposed Action the mine's permitted disturbance would expand to include an additional 517 acres of GSM land, 75 acres of BLM-administered land, and 35 acres of school trust (state) land. Operations would continue until approximately 2006.

The Golden Sunlight Mine is a conventional truck-and-shovel open-pit mine. Approximately 60,000 to 70,000 tons of rock are excavated per day, totaling approximately 22 million tons per year. Only 2.5 million tons of this total are ore, the remainder being waste rock. Approximately 320 million tons of waste have been placed in waste rock dumps. The ore is processed in a vat cyanide process. Gold-bearing cyanide solutions are treated by carbon adsorption to recover the gold. The recovered gold is ultimately returned to solution for electrowinning onto steel wool, which is then smelted down to recover gold as doré. Following processing, the mill stream is piped as a slurry to Impoundment No. 2, a lined tailings impoundment. Impoundment No. 1 is an unlined facility which did experience some leakage in the early 1980s. This was corrected through a series of pumpback wells and the impoundment is currently undergoing the early stages of reclamation.

Proposed reclamation of the waste rock dumps includes a mix of 2H:1V and 3H:1V slopes. Because the waste rock at GSM has high potential for ''acid rock drainage'' or low pH runoff/effluent, effective reclamation of these wastes is crucial to limiting the reactions that produce acid rock drainage. The reclamation plan calls for a cover system that includes approximately 24 inches of neutral waste rock and 19 to 24 inches of cover soil. Extensive monitoring of several slopes reclaimed since 1990 to 1992 has helped the mine and the agencies determine what reclamation practices have been most effective. Surface water management is another critical factor in reclamation success and is an important part of the reclamation plan. Long-term water treatment is an integral part of the mine plan. GSM has posted a total bond of approximately 38 million dollars to cover reclamation costs.

Public participation has occurred throughout the EIS process. A Notice of Intent was published in the **Federal Register** on October 25, 1995. A public scoping meeting was conducted on October 17, 1995, to solicit comments for the scope of the EIS. Written scoping comments were accepted through November 10, 1995. A public hearing on the Draft EIS was held in Whitehall, Montana, on January 5, 1998, and written comments on the Draft EIS were accepted until January 21, 1998. In addition to 28 oral presentations at the public hearing, approximately 289 written comments were received. All comments, written and oral, were reviewed and considered in preparation of the Final EIS.

Dated: April 2, 1998.

Merle Good,

Headwaters Resource Area Manager.

[FR Doc. 98–10893 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Notice of Availability of the Final Supplement to the 1992 Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management, USDI, and Forest Service, Department of Agriculture.

ACTION: Notice of availability of a final supplement to the Final 1992 Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U. S. Forest Service (USFS) has prepared a Final Supplement (Supplement) to the 1992 Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) Project on federal lands in Colorado and New Mexico. TransColorado Gas Transmission Company is the proponent.

Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and

the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The Supplement addresses the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 ft.) of the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or proposed ROW route changes or minor realignments. The Supplement also addresses the impacts of the construction of minor realignments and the construction and use of relocated or additional temporary work areas, in unspecified locations. These unspecified temporary work areas and minor realignments are addressed to accommodate conditions that might be encountered during construction. Also addressed in the Supplement are proposed modifications to several environmental protection measures contained in the 1992 Right of Way (ROW) grant and Record of Decision (ROD).

The Supplement, and the 1992 TransColorado FEIS are available for public review at the following BLM and USFS offices: BLM Grand Junction District, BLM Montrose District (Montrose District Office, 2465 S. Townsend Avenue, Montrose, Colorado 81401), Montrose District, Grand Mesa, Uncompahgre, and Gunnison National Forests (2250 Highway 50, Delta, Colorado 81416), San Juan National Forest and BLM San Juan Resource Area (Federal Building, Room 102, 701 Camino Del Rio, Durango, Colorado 81301), and BLM Farmington District (1235 N. LaPlata Hwy., Suite A, Farmington, New Mexico 87401). Public reading copies are available at the federal depository libraries in Colorado and New Mexico and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado, and at TransColorado Offices in Salt Lake City and Montrose, CO.

DATES: The Final Supplement to the 1992 Final EIS will be available to the public for 30-days starting April 24, 1998. After the 30-day availability period, one Record of Decision (ROD) will be issued for all federal lands.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

SUPPLEMENTARY INFORMATION: After preparing Draft and Final Environmental Impact Statements, the BLM and the USFS signed Records of Decision on December 1, 1992 and issued a ROW grant and adjacent Temporary Use Permit (TUP) for subsequent construction, operation and maintenance of the 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 567), BLM issued a 50 foot-wide ROW grant on December 4, 1992, accompanied by a 25 foot-wide TUP, excepting 1.7 miles near Grand Junction, Colorado. The FERC issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998.

Public participation has occurred throughout the preparation of the Supplement. The Notice of Intent (NOI) to prepare this Supplement to the FEIS was published in the **Federal Register** on November 21, 1997. ''Open House'' forums were held from October 21 through December 10, 1997 at Norwood, Durango, Delta, Rangely, Dolores, and Grand Junction, Colorado. Field trips to locations on the San Juan National Forest were offered on November 15 and 22, 1997. The Draft Supplement was published on January 23, 1998, and was available for public comments for a 60-day period that closed on March 18, 1998. The BLM and USFS received 52 written comment letters and several oral comments at the public meetings held on February 17, 18, and 19, 1998 in Durango, Dolores, and Grand Junction, Colorado, respectively.

Dated: April 14, 1998.

Mark W. Stiles,

District Manager, Montrose District, Bureau of Land Management.

Dated: April 14, 1998.

Dale E. Trenda,

Range, Fire, and Timber Staff Officer, Grand Mesa, Uncompahgre, and Gunnison National Forests, Forest Service.

[FR Doc. 98–11007 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AZ–917/AZ–060; AZA 28350)

Notice of Availability of the Decision Record for the White Canyon Plan Amendment/Environmental Assessment for the Phoenix Resource Management Plan, Pinal County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The State Director has approved that portion of the proposed plan amendment for the designation and management of the White Canyon Area of Critical Environmental Concern (ACEC). In compliance with the Federal Land Policy and Management Act of 1976, as amended, and Section 102(2)(c) of the National Environmental Policy Act of 1969, the plan amendment revises designation and management decisions made through the Phoenix Resource Management Plan (RMP). The proposed modification to land tenure designations have been set aside and will be integrated with an environmental impact statement under preparation for the proposed Ray Land Exchange.

FOR FURTHER INFORMATION CONTACT: Shela McFarlin, Project Manager, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, AZ 85004, or telephone (602) 417–9568.

SUPPLEMENTARY INFORMATION: The Decision Record will amend the Phoenix RMP to modify the White Canyon ACEC designation as follows: (1) 300 non-wilderness federal acres will be retained as the White Canyon ACEC (within T3S, R12E, Section 23, NE ¼ and Section 25, NW ¼); (2) 1,620 wilderness acres formerly designated as ACEC will continue to be managed as wilderness under all appropriate guidelines, but will cease to be designated as ACEC; and, (3) BLM will seek to acquire 480 acres in Section 24 (T3S, R12E) to be managed upon acquisition as ACEC. Acquisition will be from the state of Arizona or subsequent land owners through appropriate mechanisms such as donation, friendly condemnation or exchange. New ACEC management prescriptions will replace the Phoenix RMP management actions and a coordinated resource management plan will be completed. Motorized travel will be limited to designated roads and trails. Surface occupancy for oil and gas leasing will be prohibited. The plan will

evaluate whether any ACEC areas not already under mining claims should be withdrawn.

Public reading copies may be reviewed at the following BLM locations:

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004

Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748–7208

Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 17, 1998.

Lonna O'Neal,

Acting State Director.

[FR Doc. 98–10951 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–91–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Phosphate Mine Expansion Dry Valley, Caribou County, ID

AGENCY: Bureau of Land Management, USDI and Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Department of Interior, Bureau of Land Management (BLM), Pocatello Resource Area and the Department of Agriculture, Forest Service (FS), Caribou National Forest, will jointly prepare an Environmental Impact Statement (EIS) for a proposal to expand FMC Corporation's active Dry Valley Phosphate Mine. The Dry Valley Mine is located about 17 air miles northeast of Soda Springs, Caribou County, Idaho. The proposed mining and reclamation activities for the expansion of the Dry Valley Mine would occur on existing Federal Phosphate Leases I–014184, I–0678 and I–011866, State of Idaho Leases 3823R and 7961, and private mineral rights. Surface ownership includes BLM, FS, State of Idaho, and private lands. The U.S. Army Corps of Engineers will be a cooperating agency in the preparation of the EIS.

SCOPING PROCEDURE: The scoping procedure to be used for this EIS has and will involve the following: a broad mailing asking for comments, issues and concerns to interested and potentially affected individuals, groups, Federal, State and local governments; news releases; and public scoping meetings. An initial mailing was done in February 1998, comments received by mid-March highlighted several issues associated with this proposal. Another comprehensive mailing to individuals, groups and agencies known to be interested will be conducted concurrent with publication of this notice in the **Federal Register**.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before May 26, 1998.

ADDRESSES: Send written comments to Bureau of Land Management, Pocatello Resource Area, 1111 N. 8th Ave., Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Jeff Cundick, Mining Engineer, Pocatello Resource Area, 1111 N. 8th Ave., Pocatello, Idaho 83201, phone: (208) 236–6860, or Jeff Jones, Geologist, Caribou National Forest, Soda Springs Ranger District, 421 W. Second South, Soda Springs, Idaho 83276, phone: (208) 547–4356.

The Bureau of Land Management (BLM) has received a proposal from FMC Corp. to expand its existing Dry Valley Phosphate Mine to the south. The 1920 Mineral Leasing Act, as amended, gives the primary responsibility for approval of mining and reclamation plans for solid leasable minerals, like phosphate, to the BLM when the proposed action is located on Federal leases, regardless of the surface owner or manager. This proposal covers a mixture of surface and mineral estate ownership, including Federal (FS and BLM), State and private.

SUPPLEMENTARY INFORMATION: When lands administered by the FS are involved, the FS will develop and submit recommendations to the BLM for those proposed on-lease activities, while activities off-lease will require FS Special Use Permit authorization. The BLM and FS do not have approval or recommendation authority where State surface and mineral estate or private surface and mineral estate exist, as is the case for portions of this project.

FMC Corp. has been mining at their Dry Valley Mine since 1992, and the present proposal is for the expansion of that mine on existing leases. Ancillary facilities including shop, office, railroad line with loading facility, stockpile area, etc. are currently in place and functioning for this mine. Those existing facilities would continue to be utilized for the proposed expansion. The proposed expansion consists of the mining of two pits, referred to as pits C and D. Pit A has already been mined and reclaimed; pit B has been partially mined. Reclamation and mining are concurrent in different parts of this pit development. Mining in pit B is projected to be complete by early 2000. The purpose of the mine expansion is to provide a continued supply of ore to FMC's Pocatello, Idaho processing plant. Mining in Pits A and B was approved in 1990.

FMC has completed extensive exploration drilling on pits C and D; sufficient to develop a proposed mine and reclamation plan and two alternatives. Under the proposed alternative, about 600 acres of surface disturbance would occur, just over 200 of which are Federally owned and almost entirely FS administered lands. As mining progresses, waste rock is generally placed as backfill into mined-out pits. However, external waste rock dumps will be required because the volume of waste rock swells as consolidated materials are fractured during the mining process. In the current proposal, about 166 acres are planned to be covered with waste rock dumps, about 90 acres on the National Forest and about 76 acres on FMC's private land. When mining is completed, the last portion of the mine pit is proposed to be left open. Fifty-three acres, all of which will be on NFS lands, would not be reclaimed or filled with overburden.

Preliminary and informal public scoping for the FMC Corporation's Dry Valley Mine expansion project was first conducted in 1998. During the consideration of issues to be analyzed in depth, and in the development of alternatives, the Pocatello Resource Area (BLM) and the Caribou NF preliminarily identified these issues.

1. Water quality. Potential water quality and quantity effects. Potential effects on water rights and possible mitigation measures.

2. Wetlands. Potential effects and mitigation for wetlands affected by the proposal or alternatives.

3. Range. Potential effects on developments used to manage livestock grazing currently occurring on the Federal lands involved.

4. Wildlife. Potential effects on wildlife and their habitats.

Four preliminary alternatives have been identified. Additional alternatives may be developed from the analysis and further scoping. The preliminary alternatives are:

- Alternative 1—The proposed action.
- Alternative 3—Do not mine the north portion of pit C to protect wetlands.
- Alternative 2—Reduce the size of the north end of pit C to reduce impacts to wetlands.
- Alternative 4—No Action.

Alternatives 2 and 3 address wetlands issues that occur primarily on lands in private ownership. Environmental effects to these lands will be addressed in the section 404, Clean Water Act permit issued by the U.S. Army Corps of Engineers and as part of the cumulative impact analysis in the EIS.

The EIS will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

The EIS will analyze the environmental effects of each alternative. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, potential mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The BLM and FS are seeking information and written comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. To assist the BLM and FS in identifying and considering issues and concerns related to the proposed action, comments for scoping, and later for the draft EIS, should be as specific as possible. Referring to specific pages or chapters of the draft EIS or the merits of the alternatives formulated and discussed in the statement is most helpful.

The estimated date for the completion of the draft EIS is January 1999. The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The final EIS is expected to be released in July, 1999.

The BLM Pocatello Resource Area Manager, who is the responsible official for the EIS, will then make a decision regarding this proposal for Federal lands on-lease, considering: FS recommendations; scoping comments; responses; anticipated environmental consequences discussed in the final EIS; and applicable laws, regulations, and policies. The Caribou National Forest Supervisor, who is the responsible official for Caribou National Forest administered lands not on-lease, will make a decision, based on the above, concerning the issuance of a FS Special Use Permit. An application for a section 404, Clean Water Act permit has been filed with the U.S. Army Corps of Engineers; a decision will be rendered by the corps to issue that permit and how to mitigate the impacts to affected wetlands.

The reasons for the decisions will be documented in a Record of Decision(s).

Dated: April 17, 1998.

Terry L. Smith,

Acting Area Manager, Pocatello Resource Area.

Dated: April 17, 1998.

Harold W. Klein,

Acting Forest Supervisor, Caribou National Forest.

[FR Doc. 98–10894 Filed 4–23–98; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1020–00, 1613P]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) Lewistown District Resource Advisory Council will meet May 19 and 20, 1998, at the Chinook Motor Inn, in Chinook, Montana.

The May 19 portion of the meeting will begin at 7:45 a.m. The topic of the day will be the Upper Missouri National Wild and Scenic River. There will be a series of discussions involving members of the public and BLM resource specialists. These discussions will include increased recreational use along the Upper Missouri; impacts on resources; user facilities; improved facilities; and using the limits of acceptable change method for resolving resource issues. There will be a public comment period at 11:30 a.m. This session will adjourn at 3 p.m.

The May 20 session will begin at 7:45 a.m. The council will resume their deliberations concerning off-road vehicle use on public lands. The council will also address implementation of the rangeland standards and guidelines. This session will adjourn at 3:30 p.m.

DATES: May 19 and 20, 1998.

LOCATION: Chinook Motor Inn, Chinook, Montana.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period as detailed above.

Dated: April 14, 1998.

Gary Slagel,

Acting District Manager.

[FR Doc. 98–10906 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held June 23 and 24, 1998, at the Golden Hills Resort and Conference Center, Lead, South Dakota. The session will convene at 8:00 a.m. on June 23rd and resume at 8:00 a.m. on the 24th. Agenda items include updates on the South Dakota Land Exchange, Noxious Weed Control Projects, review of the Belle Eldridge mine cleanup, and a field assessment of proposals by the city of Sturgis for Fort Meade.

The meeting is open to the public and a public comment period is set for 3:00 p.m. on June 23rd. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, District Manager, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: April 15, 1998.

Douglas J. Burger,

District Manager.

[FR Doc. 98–10914 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Tuesday and Wednesday, June 9 and 10, 1998, at the Bureau of Land Management's Alturas Field Office, 708 West 12th St., Alturas, CA.

SUPPLEMENTARY INFORMATION: On Tuesday, June 9, the council will convene at 10 a.m. at the parking area for the Lassen National Forest's Hat Creek Ranger District, 43225 East Highway 299, Fall River Mills, CA, then depart for a field tour to the Beaver Creek and Pit River areas. Field discussions will include implementation of Standards for Healthy Rangelands and Guidelines for Livestock Grazing; and land tenure adjustments in the Alturas Field Office's area of responsibility. On Wednesday, June 10, the council will convene at 8 a.m. for a business meeting at the BLM's Alturas Field Office, 708 West 12th St., Alturas, CA.

Agenda items include wild horse and burro management, an update on the Automated Lands and Minerals Records System, a fire planning update, an update on recreation fees, and reports from the BLM's Eagle Lake, Alturas and Surprise field managers. The meeting is open to the public. Public comments will be taken at 1 p.m. Wednesday. Members of the public are also welcome on the field tour, but they must provide their own transportation and lunch.

FOR ADDITIONAL INFORMATION: Contact Jeff Fontana, public affairs officer, at (530) 257–5381.

Linda D. Hansen,

Eagle Lake Field Manager.

[FR Doc. 98–10915 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–40–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 Thursday, May 7, 1998, at the Colorado Northwestern Community College in Rangely, Colorado.

DATES: Thursday, May 7, 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 Northwest Resource Advisory Council will meet on May 7, 1998, at the Colorado Northwestern Community College, 500 Kennedy Drive, Rangely, Colorado. The meeting will be held in the Weise Conference Center and will begin at 9 a.m. Agenda items include an update of the roadless inventory review, a discussion about proposed statewide recreation guidelines, and subcommittee reports on fire, land exchanges, and recreation.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. 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: April 15, 1998.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 98–10952 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in Cortez, Colorado.

DATES: The meeting will be held on Thursday, May 14, 1998.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The May 14, 1998, meeting will begin at 9:00 a.m. in the Johnson Building Conference Room, 925 South Broadway, Suite 101, Cortez, Colorado. The agenda will focus on recreation guidelines and management of cultural resources. Time will be provided for public comments at 9:15 a.m. A field trip to view cultural resource sites is planned for the afternoon; the public is invited to attend the field trip, but will have to provide their own transportation.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: April 17, 1998.

Mark W. Stiles,

District Manager.

[FR Doc. 98–10953 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; IDI–31786]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 5.03 acres of National Forest System land for the Forest Service's Salmon Canyon Copper Boating Site Recreation Area expires May 20, 1998, after which the land will be open to mining. The land has been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State

Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal has been published in the **Federal Register** (61 FR 25501, May 21, 1996), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires May 20, 1998. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T. 23 N., R. 16 E.,

A tract of land being that part of the SE¼ of unsurveyed sec. 26, more particularly described as follows: Beginning at Salmon River Road GPS control point No. 9, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod with NAD 83 latitude 45°18′00.9169″ North and longitude 114°33′33.7864″ West; thence North 75°15′58″ East, 2148.09 feet to the ordinary high water mark of the right bank of the Salmon River and AP–1, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod, the Point of Beginning; thence North 5°50′23″ West, 755.08 feet to AP–2, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod; thence North 89°54′35″ East, 640.79 feet to the ordinary high water mark of the right bank of the Salmon River and AP–3, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod; thence southwesterly along the ordinary high water line of the right bank of the Salmon River to AP–1 the Point of Beginning.

The area described contains 5.03 acres in Lemhi County.

At 9 a.m. on May 20, 1998, the land shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 15, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98–10835 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1430–01; AZA 30323]

Notice of Proposed Exchange of Lands in Navajo County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by Arizona Public Service (APS) and is referred to as the APS Exchange Project. The following described public land is being considered for disposal by the United States:

Gila and Salt River Meridian, Arizona

T. 18 N., T. 19 E.,
Sec. 14, NW¼NE¼SE¼.

The area described contains approximately 10 acres.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws, mineral laws, and mineral leasing laws for a period of one year beginning on January 19, 1998.

In exchange the United States will acquire a tract of Arizona Public Service private land having unique natural resources and located within the Tanner Wash ACEC (Area of Environmental Concern). The offered land is described as follows:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 19 E.,
Sec. 13, SW¼SW¼NW¼.

The area described contains approximately 10 acres.

More detailed information concerning the proposed exchange may be obtained from Darlene Haegele, Project Manager, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546, (520) 348–4400.

Interested parties may submit written comments concerning the proposed exchange to the Field Office Manager, Stafford Field Office at the above Safford address. Comments must be in writing and be postmarked within 45 days from the date of publication of this notice in the **Federal Register**.

It has been determined that the subject public land parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously.

In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described lands are hereby classified for disposal by exchange.

Dated: April 8, 1998.

Frank L. Rowley,

Acting Field Office Manager.

[FR Doc. 98–10913 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–08–1430–01; AZA–6318 and AZA–17792]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Maricopa County, Arizona, have been examined and found suitable for conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

(1) AZA–6318. Maricopa County Solid Waste Management Department is currently leasing the following described lands, located near the Town of New River, Maricopa County, for landfill purposes.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 E.
Sec. 17, S½NE¼SW¼

Containing 20 acres.

(2) AZA–17792. Maricopa County Solid Waste Management Department is currently leasing the following described lands, located near the Town of New River, Maricopa County, for landfill purposes.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 E.,
Sec. 17, N½NE¼SW¼.E½NW¼SW¼

Containing 40 acres.

The patents, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

FOR FURTHER INFORMATION CONTACT: Jim Andersen at the Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (602) 580–5570.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manger, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments

Interested parties my submit comments involving the suitability of the land for: A landfill, for Maricopa County. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: April 16, 1998.

Michael A. Taylor,

Field Manager.

[FR Doc. 98–10955 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

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. January 22, 1998.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 33 and 34, T. 1 S., R. 2 W., Boise Meridian, Idaho, Group 962, was accepted January 22, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, and the survey of lots 6 and 7 in section 4, T. 2 S., R. 2 W., Boise Meridian, Idaho, Group 962, was accepted January 22, 1998.

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: January 22, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–10968 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 16, 1998.

The supplemental plat prepared to subdivide lot 11 into lots 12 and 13 in section 18, T. 6 S., R. 5 E., Boise Meridian, Idaho, was accepted, January 16, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 16, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–11003 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–61608]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 60 acres of public land for 20 years to protect the public from possible health hazards. The land has been contaminated by previous smelting operations. This notice closes this land to operation of the public land laws including location and entry under the mining laws for up to two years. The land has been and remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before July 23, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On April 17, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 45 N., R. 7 E.,
Sec. 26, S½S½S½SE¼;
Sec. 35, N½N½NE½.

The area described contains approximately 60 acres of public land in Saguache, County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and

conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage this land.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 98–10947 Filed 4–23–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request for OMB Emergency Approval; Reinstatement, without change, of a previously approved collection for which approval has expired; State Identification Systems Formula Grant Program Application Kit.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by April 24, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Dennis Marvich, 202–395–3122, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same time period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until June 23, 1998. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Margaret H. Shelko, 202–514–6638, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531 or Dennis Marvich, 202–395–3122 OMB, Office of Information and Regulatory Affairs, Department of Justice Desk Officer, Washington, DC 20530.

Overview of this information:

(1) Type of Information Collection: Reinstatement of collection for which OMB Clearance has expired.

(2) Title of the Form/Collection: State Identification Systems Formula Grant Program Application Kit.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: The form number: None.

Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State Government
Other: None

The State Identification Systems Formula Grant Program was created by the Antiterrorism and Effective Death Penalty Act of 1996 to provide funds to enhance identification systems of criminal justice agencies a the state and local level.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

The time burden of the 52 respondents to complete the surveys is 30 minutes per application.

(6) An estimate of the total public burden (in hours) associated with the collection:

The total annual hour burden to complete applications for the State Identification Systems Formula Grant Program is 26 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 20, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10917 Filed 4–23–98; 8:45 am]

BILLING CODE 4410–18–M

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 determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas 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

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

Volume VII

None.

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, D.C. 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, D.C. this 16th day of April 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–10634 Filed 4–23–98; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP CD 90–92]

Determination of the Distribution of the 1991 Cable Royalties in the Music Category

AGENCY: Copyright Office, Library of Congress.

ACTION: Order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing resolution of a Phase II controversy and distribution of 1991 cable royalty funds in the music category. The Librarian is adopting the determination of the Copyright Arbitration Royalty Panel (CARP).

EFFECTIVE DATE: April 24, 1998.

ADDRESSES: The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

Recommendation of the Register of Copyrights

I. Background

Section 111 of the Copyright Act, 17 U.S.C., grants a compulsory copyright license to cable systems to retransmit the over-the-air signals of broadcast stations licensed by the Federal Communications Commission. Cable systems submit statements of account and royalty payments to the Copyright Office on a semi-annual basis. The royalties are deposited with the United States Treasury for subsequent distribution to owners of copyrighted works retransmitted by the cable systems.

Distribution of cable royalty fees is conducted in two phases. In Phase I, the fees are divided among categories of copyright owners. There are currently eight copyright owner claimant groups represented in Phase I proceedings: Program Suppliers (movies and syndicated television programs); Joint Sports Claimants (sports programs of the National Basketball Association, Major League Baseball, the National Hockey League, and the National Collegiate Athletic Association); the National

Association of Broadcasters (broadcast stations); the Devotional Claimants (religious programming); the Public Broadcasting Service (public television); National Public Radio (public radio); the Canadian Claimants (Canadian program owners); and the Music Claimants (songwriters and music publishers).

Phase II involves distribution of royalty fees to individual copyright owners within a category. This proceeding involves distribution to claimants within the music category.

On October 28, 1996, the Librarian announced the final Phase I distribution of cable royalties collected for 1990, 1991 and 1992. Of the total royalties collected (more than $500 million), 4.5% of the fees for each year was distributed to the music category.[1] 61 FR 55653 (October 28, 1996). Music Claimants, consisting of the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC), represented the music category and received the Phase I royalty distribution award. Order in Docket No. 93–3 CARP CD 90–92 (August 3, 1995).

On February 15, 1996, the Library of Congress published a notice requesting interested parties to comment on the existence of Phase II controversies for distribution of the 1990–1992 cable royalty funds. 61 FR 6040 (February 15, 1996). The parties who filed comments and Notices of Intent to Participate identified two unsettled categories that would require resolution before a CARP. The first controversy involved distribution of the 1991 cable royalty fees between James Cannings and Can Can Music (Cannings) and the Music Claimants. Music Claimants represent all songwriters and music publishers in the music category for distribution of the 1991 cable fees, with the exception of Cannings. The second controversy involved distribution of the 1990–1992 cable fees between the National Association of Broadcasters (NAB) and the Public Broadcasting Service (PBS). On June 3, 1997, NAB and PBS notified the Copyright Office that they had reached settlement concerning all matters related to their Phase II dispute over distribution of the 1990–1992 royalty funds, thus leaving a single dispute for resolution by a CARP.

On August 28, 1997, the Library convened a CARP to resolve the dispute between Cannings and the Music Claimants for distribution of the 1991 cable fees. 62 FR 45687 (August 28, 1997). After considering the evidence presented by the parties, the CARP delivered its written decision to the Librarian, as required by 17 U.S.C. 802(e), on February 26, 1998. The Panel awarded Cannings $63.74 and awarded the remainder of the 1991 fees[2] to the Music Claimants.

Cannings filed a petition to modify the decision of the CARP, as permitted by 37 CFR 251.55(a). The Music Claimants and Broadcast Music, Inc. (BMI) filed replies, as permitted by 37 CFR 251.55(b).

Section 802(f) of the Copyright Act provides that ''[w]ithin 60 days after receiving the report of a copyright arbitration royalty panel * * *, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel.'' 17 U.S.C. 802(f). Today's order of the Librarian fulfills this statutory obligation.

II. The Librarian's Scope of Review

The Librarian of Congress has, in previous proceedings, discussed his narrow scope of review of CARP determinations. See 62 FR 55742 (October 28, 1997) (satellite rate adjustment); 52 FR 6558 (February 12, 1997) (DART distribution order); 61 FR 55653 (October 28, 1996) (cable distribution order). The salient points regarding the scope of review, however, merit repeating.

The Copyright Royalty Tribunal Reform Act of 1993 created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review that result in final orders: the Librarian and the Court of Appeals for the District of Columbia Circuit. Section 802(f) directs the Librarian to either accept the decision of the CARP or reject it. If the Librarian rejects it, he must substitute his own determination ''after full examination of the record created in the arbitration proceeding.'' Id. If the Librarian accepts it, then the determination of the CARP has become the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP ''unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title.'' Neither the Reform Act nor its legislative history indicates what is meant specifically by ''arbitrary,'' but there is no reason to conclude that the use of the term is different from the ''arbitrary'' standard described in the Administrative Procedure Act, 5 U.S.C. 706(2)(A).

Review of the case law applying the APA ''arbitrary'' standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency is generally considered to be arbitrary when it:

(1) Relies on factors that Congress did not intend it to consider;

(2) Fails to consider entirely an important aspect of the problem that it was solving;

(3) Offers an explanation for its decision that runs counter to the evidence presented before it;

(4) Issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;

(5) Fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and

(6) When the agency's action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Mfrs. Ass'n v. *State Farm Mutual Auto Insurance Co.,* 463 U.S. 29 (1983); *Celcom Communications Corp.* v. *FCC,* 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA,* 758 F.2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a determination is ''arbitrary,'' prior decisions of the Court of Appeals for the District of Columbia Circuit reviewing the determinations of the former Copyright Royalty Tribunal have been consulted. The decisions of the Tribunal were reviewed under the ''arbitrary and capricious'' standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: while the Tribunal was granted a relatively wide ''zone of reasonableness,'' it was required to articulate clearly the rationale for its award of royalties to each claimant. *See Recording Industry Ass'n of America* v. *CRT,* 662 F.2d 1 (D.C. Cir. 1981); *National Cable Television Ass'n* v. *CRT,* 689 F.2d 1077 (D.C. Cir. 1982); *Christian Broad. Network* v. *CRT,* 720 F.2d 1295 (D.C. Cir. 1983); *National Ass'n of Broadcasters* v. *CRT,* 772 F.2d 922 (D.C. Cir. 1985). As one panel of the D.C. Circuit succinctly noted:

[1] The 4.5% figure was achieved through settlement negotiations between the Music Claimants and the other seven claimant groups.

[2] The remainder of the fees is 4.5% of the total cable fees collected for 1991 minus, of course, Cannings' award.

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully * * *

Christian Broad. Network, Inc. v. *CRT,* 720 F.2d 1295, 1319 (D.C. Cir. 1983), quoting *National Cable Television Ass'n* v. *CRT,* 689 F.2d 1077, 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same ''arbitrary'' standard used by the courts to review the Tribunal, he must be presented with a rational analysis of the CARP's decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a ''clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress.'' H.R. Rep. No. 286, at 13 (1993). Thus, to engage in reasoned decision-making, the CARP must ''weigh all the relevant considerations and * * * set out its conclusions in a form that permits [a determination of] whether it has exercised its responsibilities lawfully.'' *National Cable Television Ass'n* v. *CRT,* 689 F.2d 1077, 1091 (D.C. Cir. 1982). This goal cannot be reached by ''attempt[ing] to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record.'' *Christian Broad. Network, Inc.* v. *CRT,* 720 F.2d 1295, 1319 (D.C. Cir. 1983).

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination.

III. Review of the CARP Report

Section 251.55(a) of the rules provides that ''[a]ny party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination.'' 37 CFR 251.55(a). Replies to petitions to modify are due 14 days after the filing of petitions. 37 CFR 251.55(b).

Cannings, who appeared *pro se* in this proceeding on behalf of himself and Can Can Music, filed a petition to modify requesting that he be awarded his original claim of $2,400, plus interest. Music Claimants opposed Cannings' petition, and requested the Librarian affirm the decision of the Panel. BMI also filed a ''supplemental reply,'' asking the Librarian to clarify a statement made by the Panel in its report.

Section 251.55 of the rules assists the Register of Copyrights in making her recommendation to the Librarian, and the Librarian in conducting his review of the CARP's decision by allowing the parties to the proceeding to raise specific objections to a CARP's determination. As required by section 802(f) of the Copyright Act, if the Librarian determines that the Panel in this proceeding has acted arbitrarily or contrary to the provisions of the Copyright Act, he must ''after full examination of the record created in the arbitration proceeding, issue an order setting the * * * distribution of fees.'' 17 U.S.C. 802(f).

IV. Review and Recommendation of the Register of Copyrights

A. Determination of the Panel

The Panel's report articulates both the legal and factual basis for resolving this Phase II proceeding. The Copyright Act does not provide standards for determining how cable royalty fees are to be divided among various claimants, leaving that task instead to individual CARPs acting ''on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c).'' 17 U.S.C. 802(c). After examining the ''simulated market'' approach utilized by the Phase I CARP to divide the cable royalties among the various copyright owner categories, the Panel determined that a similar approach was warranted in this proceeding. The Panel stated:

> The evidence and arguments presented here focus essentially on market value. However, the opportunity for negotiations concerning what cable systems [sic] operators would have to pay for those segments of programs during which the works of each *individual* music claimant was performed has been superseded by the compulsory licensing system. Therefore it will be our task to hypothesize as realistic a simulated market for the works of individual music claimants as is consistent with the evidence presented.

Panel Report at 7.

After establishing a ''simulated market'' approach as its legal basis for determining the distribution, the Panel examined the factual basis for Cannings' and the Music Claimants' claims to the 1991 cable royalty fees. The Panel determined Cannings' claim to rest upon a single musical composition, ''Misery,'' that was transmitted on two occasions in 1991 as part of the ''Joe Franklin Show'' on broadcast station WWOR–TV. With respect to the Music Claimants, the Panel determined that they represented all other claimants in the music category and that, after determining Cannings' share of the royalties, all remaining monies belonged to the Music Claimants. Id. at 8.

After adopting this approach to the distribution, the Panel sought a means for determining Cannings' share of the 1991 cable royalties. The Panel rejected Cannings' claim of $2,400, which was based upon an independent arbitrator's award of $4,800 to Cannings for four performances of his musical work ''Reggae Christmas'' on WWOR–TV during the 1980's. This private arbitration award was the result of a dispute between Cannings and BMI when Cannings was a member of that performing rights organization. In making the award, the independent arbitrator did not issue a written statement of his findings of facts or conclusions, as is required in a CARP proceeding. The Panel stated:

> As a basis for Cannings' claim in this proceeding, the arbitration award, confirmed by the court or not, can carry no weight. Cannings expressly disavows any claim of collateral estoppel, but presents the award ''as precedent to support how to calculate his royalty distribution.'' However, we cannot defer to the award. To do so would mean abdicating our duty under § 802(c) of the copyright law to act ''on the basis of a fully documented written record * * *.'' We understand this duty to require our own examination and analysis of the evidence presented. While Cannings has made certain representations as to what evidence he presented to the arbitrator, we have no way of knowing how the arbitrator evaluated any of the evidence or what factors he considered in arriving at his award. We note, however, that the award was based on performances of a different song from the one the performance of which is the basis for the claim involved here. Were we privy to the arbitrator's analysis, we might legitimately assess its persuasiveness for purposes of this proceeding. Absent that, deference to his award would require us simply to adopt the arbitrator's ultimate valuation of four performances of a Cannings' song. This we cannot do.

Id. at 10.

The Panel also rejected Cannings' own analysis of the distribution formula used by BMI to pay its members for performances on network television broadcast stations. Cannings presented a distribution proposal that purported to adjust for the difference between the number of commercial television stations in the country and the number of cable systems that carry WWOR-TV. The Panel concluded that Cannings'

methodology did not shed light on the market value of musical performances on WWOR–TV as retransmitted by cable systems, because WWOR–TV is not a network and Cannings did not offer persuasive evidence that retransmissions of WWOR–TV are of equal value to retransmissions of network stations. Id. at 11.

The Panel also rejected Cannings' references to his prominence in the music industry as evidence of market value, noting that Music Claimants presented considerable evidence to rebut such prominence. The Panel stated that prominence in the music industry, if any, would only have a bearing on market value if such prominence affected a cable system's decision to carry WWOR–TV. It concluded that ''Cannings'' pre-1991 history of four performances on WWOR in six years does not suggest that such a consideration played a meaningful part here.'' Id. at 12.

Finally, the Panel asserted that all of Cannings' approaches are flawed because they do not evidence a consideration of the constraints imposed on each copyright owner's share by the fixed and finite nature of the fund being shared. Rather, Cannings' approach is geared toward hypothetical open market negotiations, and thus is not reflective of a compulsory license royalty pool. Id. at 12–13.

The Panel assessed Music Claimants' assertion that Cannings is entitled to no more than $9.99 for each of his two performances on WWOR–TV. Music Claimants derived this value from a durational analysis that extrapolated the value of all musical works aired on WWOR–TV during 1991 on a per minute basis. After calculating that each minute of music on WWOR–TV was worth $7.49, Music Claimants asserted that each performance of ''Misery'' was worth $9.99, because it lasted one minute and twenty seconds. The Panel, however, rejected Music Claimants' approach:

> The durational analysis is neither one that has been shown to have been used for distributions nor is there applicable precedent in contested proceedings for adopting such an approach. In fact, [Music Claimants] does not endorse this analysis as appropriate for resolving any allocation dispute not arising out of the specific circumstances of this case, stating rather faintly that where, as here, only two performances and a small amount in controversy are involved, ''the Panel may use the durational analysis as the basis for resolving [the] dispute.''

Id. at 15–16. The Panel also rejected Music Claimants' assertion that the 1992–1994 DART distribution proceeding, Docket No. 95–1 CARP DD 92–94, is precedent for using a durational analysis, noting that the mathematical distribution formula used in that proceeding was consistent with the Copyright Act's direction to base DART distributions upon transmissions and distributions of sound recordings. Id. at 17.

The Panel determined that the best ''simulated market'' for determining Cannings' share of the royalties in this proceeding is ''a market within which we have evidence that real-life transactions occur.'' Id. at 17. The Panel asserted that the only evidence in the record of a ''real-life'' market transaction for musical works is the methodology used by BMI for paying its affiliated songwriters and publishers. BMI paid a distant signal rate of $14.36 to the songwriter and to the publisher for a featured performance on WWOR–TV in 1991. The Panel determined the two performances of ''Misery'' to be featured performances. BMI increased its standard base rate in the third quarter of 1991, resulting in additional combined songwriter/publisher rate of $3.15. The Panel concluded that Cannings was entitled to $14.36 as a songwriter, $14.36 as a music publisher, and the additional combined songwriter/publisher rate of $3.15, for each of the performances of ''Misery'' in 1991. The total of these two performances amounted to $63.74, which is what Cannings would have received from BMI had he remained a member. Id. at 19. The Panel determined that BMI's own distribution methodology was superior to Music Claimants' durational analysis, and rejected Music Claimants' contention that Cannings should not have his award calculated in accordance with BMI's methodology because he rejected it while a member of BMI. Id. at 20.

In awarding Cannings $63.74, the Panel determined that he was not entitled to interest because interest ''has not been awarded in previous Phase II proceedings,'' and because the Panel ''found no supportable method to award or compute interest, nor has Cannings presented adequate grounds for such an award.'' Id. at 21.

B. Petitions To Modify

1. Cannings

Cannings filed a petition to modify the determination of the CARP. The Music Claimants did not file a petition to modify, but did file a reply to Cannings' petition. In addition, BMI filed what it styled as a ''supplemental reply'' requesting that the Librarian modify a certain statement of the Panel concerning the music durational analysis that BMI prepared. The Register recommends that BMI's ''supplemental reply'' be stricken as improperly filed.[3]

Cannings requests that the Panel's award of $63.74 be overturned and that he be awarded his original claim of $2,400, plus interest. The principal basis for his request is the circumstances surrounding the independent arbitrator's award he received in 1993 from a dispute with BMI over four performances of another Cannings' song, ''Reggae Christmas,'' on WWOR–TV during the 1980's while he was still a member of BMI. Cannings received $4,800 in that arbitration proceeding which, according to his calculation, means that a single performance of a Cannings work on WWOR–TV is worth a minimum of $1,200. Although Cannings cannot point to any written determination of his BMI award that explains the arbitrator's reasoning, he argues that the arbitrator must have accepted in its entirety as true his evidence and methodology for calculating the value of his performances. Cannings' methodology consisted of multiplying $1.50, the rate he submitted that BMI assigns to featured performances of musical works on network television, times 3000, the number of cable systems that Cannings alleged to be carrying WWOR–TV. He apparently submitted this methodology to the independent arbitrator in a June 3, 1993, letter. Cannings asserts that the Panel in this proceeding ''suppressed'' the June 3, 1993, letter, even though the Panel expressly admitted it into evidence, along with his other submissions to the independent arbitrator.

Cannings challenges the Panel's assertion that it must formulate a ''simulated market'' in order to calculate the value of his Phase II claim. Cannings asserts that the ''simulated market'' approach is contrary to CARP precedent, in contravention of 17 U.S.C. 802(c), though he offers no explanation as to how or why it is contrary, except to note that the Phase I CARP in the 1990–1992 cable distribution proceeding used the same approach in determining values for programming

[3] The appropriate manner to request modification of a CARP's decision or, as in this case, a statement made by the Panel, is to file a petition to modify in accordance with § 251.55(a). The purpose of replies is to allow parties to respond to assertions and arguments made by those submitting petitions to modify. BMI's ''supplemental reply'' does not challenge an assertion or argument raised by Cannings' petition, but rather challenges a statement made by the Panel. BMI should, therefore, have filed a petition to modify. Because it did not, its ''supplemental reply'' is improperly filed.

categories. Cannings also challenges the Panel's statement that BMI's distribution methodology is a potential model for determining the simulated market. Cannings argues that in making this statement, the Panel acknowledged that BMI's methodology did not provide the complete picture of a simulated market, and therefore should not be used at all.

Cannings submits that the Panel should not have used BMI's distribution methodology because the independent arbitrator did not use it in the 1993 distribution proceeding. He states that the $4,800 he received from the arbitrator is the only credible evidence of market value in this proceeding. In addition, Cannings asserts that $1.50 was not BMI's rate for a feature performance on a commercial station in 1991, though he does not state what he believes the rate to have been. Cannings does state that the $1.50 rate includes BMI's administrative costs and that, because he no longer is a BMI member, the rate should be adjusted upwards. Cannings, however, does not state what the proper rate should be.

With respect to the Panel's determination not to award Cannings interest on his claim, Cannings asserts that 17 U.S.C. 111(d)(2) provides that he is entitled to interest. Cannings also cites the provision of the Copyright Office distribution order (which distributed the Phase I monies to the Music Claimants after they notified the Office that they had reached settlement with the other Phase I parties) that states that as a condition of the distribution, Music Claimants agree to return any overpaid amounts with interest. Regarding calculation of the proper amount of interest owed, Cannings submits that he asked the Panel to award him interest from the date of initial investment with the U.S. Treasury of the 1991 cable funds by the Copyright Office, and that he provided the Panel with an ''Interest Rate Table'' obtained from the Copyright Office for each deposit of 1991 cable royalties made with the Treasury.

Finally, Cannings alleges that he was a victim of racial bias and discrimination in this proceeding because he is black and is a *pro se* litigant. He describes the chairperson of the Panel as acting ''impetuously'' toward him in the prehearing conference. No other facts or circumstances are offered as evidence of discrimination or bias.

2. Music Claimants Reply

Music Claimants assert that the award to Cannings is proper and clearly fits within the ''zone of reasonableness'' afforded CARP decisions.

Music Claimants state that the Panel properly rejected reliance upon the independent arbitration award because that private arbitration did not set a rate for distant signal performances on WWOR, but rather was a private contractual proceeding between BMI and Mr. Cannings brought pursuant to Mr. Cannings' BMI affiliation agreement. Music Claimants assert that the BMI arbitration is not recognized precedent in CARP proceedings and that to have blindly followed it would amount to an abdication of the Panel's responsibility to determine the correct distribution in this proceeding.

Music Claimants assert that Cannings' methodology for calculating the value of his two performances on WWOR–TV is fatally flawed and discriminatory, because it would result in the value of a Cannings performance being nearly forty times the value of an identically situated BMI affiliate whose work was performed on WWOR–TV. Music Claimants also state that the BMI distribution methodology used by the Panel in this proceeding is an accurate representation of market rate, and that it was correct for the Panel to use the distribution formula in determining the ''simulated market'' for works in this proceeding.

With respect to interest, Music Claimants argue that the Panel correctly refused him an interest award because Cannings failed to present credible evidence of entitlement. The Copyright Office ''Interest Rate Table'' submitted by Cannings is interest charged to cable operators for late compulsory license payments, not interest paid to individual copyright claimants in Phase II proceedings.

Finally, Music Claimants state that Cannings' charges of bias and discrimination are outrageous and unsupportable.

C. Review of the Panel's Determination

After reviewing the Panel's report and record in this proceeding, the Register concludes that the Panel did not act arbitrarily or contrary to the provisions of the Copyright Act in determining the value of Cannings' Phase II cable royalty claim as $63.74. Consequently, the Register recommends that the Librarian affirm the $63.74 award to Cannings, and directs the Music Claimants to pay him that amount.

1. The Value of Cannings' Claim

As summarized above, the centerpiece of Cannings' claim for $2,400 in Phase II cable royalties is the BMI arbitration proceeding involving a total of four performances of ''Reggae Christmas'' on WWOR–TV during the 1980's. The Panel rejected the BMI arbitration award as evidence of the value of a Cannings performance under the section 111 compulsory license because the BMI award was issued without explanation, was not a CARP or Copyright Royalty Tribunal proceeding, and involved a different musical work. The Register finds this determination of the Panel to be neither arbitrary nor contrary to the provisions of the Copyright Act. Private arbitration awards have no precedential weight in CARP proceedings. See 17 U.S.C. 802(c) (only prior CARP and Copyright Royalty Tribunal decisions, and rulings of the Librarian, have precedential value). The BMI arbitration award, and the circumstances surrounding it, are therefore probative in this proceeding only to the extent that the award sheds light on the value of two performances of ''Misery'' in 1991 on WWOR–TV. The Panel was well within its discretion to reject the BMI arbitration award as evidence, particularly where it involved a different work, performed in different years, and was made without any written explanation.[4]

The Panel did not act arbitrarily or contrary to the Copyright Act by adopting the approach of a ''simulated market'' in valuating Cannings'' claim. The Copyright Act does not offer guidance as to how cable compulsory license revenues are to be divided among copyright owners. The Phase I CARP for the distribution of 1991 cable royalties used a ''simulated market'' approach in dividing the royalties among Phase I claimants and, contrary to Cannings' assertion, there is no prohibition on the use of that approach in Phase II proceedings. In fact, while not describing it as such, the Copyright Royalty Tribunal took a decidedly marketplace value approach in making its cable Phase II awards. See e.g., 53 FR 7132 (March 4, 1988) (1985 cable Phase II).

The Panel selected BMI's internal distribution methodology as the best evidence of a simulated market in valuing the retransmission of musical works by cable systems. Cannings contends that the only evidence in the record of an actual marketplace transaction involving his works is the BMI arbitration award. Arbitration awards are not direct evidence of

[4] Cannings' assertion in his petition to modify that the evidence he submitted to the independent arbitrator was ''suppressed'' in this proceeding is belied by the fact that the Panel did accept Cannings' evidentiary submissions on the BMI arbitration and addressed them in its decision. See Panel Report at 9–10.

marketplace value. If arbitrations are surrogates for marketplace value at all, it is only because they become necessary where the market has failed—i.e. the buyer and seller are unable to negotiate the compensation paid. BMI's distribution methodology represents a consensus approach endorsed by thousands of BMI's songwriter and music publisher members. While there are undoubtably disgruntled BMI members who feel, like Cannings, that the compensation paid is too low, this is not conclusive evidence that BMI's distribution methodology is not probative evidence of the market value of cable retransmissions of musical works. The Panel was well within its discretion to credit BMI's distribution methodology and adopt its approach.

With respect to Cannings' allegations of racial bias and discrimination, Cannings has offered no evidence in support of these contentions, and the Register cannot find any evidence in the record suggesting bias or discriminatory action. Cannings' charge of ''impetuous'' behavior on the part of the Chairman of the Panel towards him during the pre-hearing conference neither proves nor suggests improper behavior, and there is no supportable reason for overturning the decision of the Panel on these grounds. If anything, the Panel was exceedingly flexible and accommodating in allowing Cannings to make his case in this proceeding.

In summary, the Register determines that the Panel did not act arbitrarily or contrary to the Copyright Act in valuing Cannings' Phase II claim at $63.74, and recommends that the Librarian adopt this determination.

2. Interest on Cannings' Award

Cannings requested that he be awarded interest on his claim, calculated from deposit of the 1991 cable royalties. Music Claimants assert that Cannings is not entitled to interest. The Panel did not award interest because it could not find any Copyright Royalty Tribunal precedent for doing so, and it could not find any ''supportable method to award or compute interest.'' Panel Report at 21.

The Register determines that it was reasonable for the Panel not to award Cannings interest on his claim. Under Tribunal precedent, copyright owners were not entitled to a distribution of royalties, or any interest that had accrued on those royalties, until the Tribunal affirmatively determined their entitlement. See 50 FR 6028 (February 13, 1985) (1979–82 cable distribution) (Tribunal not ''responsible for time value lost on an allocation which had not yet been determined''); 53 FR 7132 (March 4, 1988) (1985 Phase II cable distribution) (no interest given on dollar award to Asociacion de Compositores y Editores de Musica Latinoamericana). Consequently, there are no established grounds or methodology for awarding interest. Because there is no requirement that the Panel assess interest in this proceeding, the Register cannot conclude that the Panel acted arbitrarily or contrary to the Copyright Act by not awarding Cannings interest on his claim.

3. Award to Cannings

By Order dated August 3, 1995, the Copyright Office distributed the full amount of the music category's Phase I entitlement (4.5% of the total 1991 cable royalties) to the Music Claimants. Order in Docket No. 94–3 CARP CD 90–92). As a result, there were no funds retained to satisfy any Phase II award against the Music Claimants' royalties. However, the Order required reimbursement should an overpayment of royalties occur. The Music Claimants were overpaid $63.74, the amount of Cannings' award. The Register recommends that, in affirming the Panel's award, the Librarian order Music Claimants to pay Cannings $63.74 in satisfaction of his claim.

V. Order of the Librarian

Having duly considered the recommendation of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter of the Phase II controversy for the distribution of 1991 cable royalty fees, 17 U.S.C. 111, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's determination. The Librarian also dismisses the ''supplemental reply'' of BMI as untimely.

The Librarian orders that Music Claimants submit payment to James Cannings in the amount of $63.74, no later than May 15, 1998.

Dated: April 20, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–10923 Filed 4–23–98; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (98–057]

Proposed Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by the Office of Small and Disadvantaged Business Utilization as a method for determining if developmental assistance provided to small disadvantaged businesses by prime contractor's performance meets the standards established in NASA policy. The Agency's ability to manage the program effectively would be greatly diminished without receiving the described reports, which are part of the ongoing performance fee evaluation process.

DATES: All comments should be submitted on or before June 23, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.

Type of review: Extension.

Need and Uses: NASA requires reporting of small disadvantaged business subcontract awards in order to meet its Congressionally mandated goals.

Affected Public: Not-for-profit institutions.

Number of Respondents: 225.

Responses Per Respondents: 2.

Annual Responses: 450.

Hours Per Request: 13.

Annual Burden Hours: 5,850.

Frequency of Report: Biannually.

Eva L. Layne,

Office of the Chief Information Officer.

[FR Doc. 98–10949 Filed 4–23–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information, Robotics, and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

Date and Time: May 11–14, 1998, 8:30 am–5:00 pm.

Place: The River Inn, 924 25th Street, N.W., Washington, D.C. 20037.

Type of Meeting: Closed.

Contact Person: Dr. Gary Strong, Acting Deputy Division Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information and Data Management Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10888 Filed 4–23–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. IA97–068 and ASLBP No. 97–731–01–EA]

Atomic Safety and Licensing Board; Notice of Evidentiary Hearing

In the Matter of Aharon Ben-Haim, Ph.D., Upper Montclair, New Jersey, Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately); Before Administrative Judges: Charles Bechhoefer, Chairman Dr. Jerry R. Kline, Dr. Peter S. Lam, and Dr. Harry Rein, Special Assistant

April 20, 1998.

This proceeding concerns the request of Dr. Aharon Ben-Haim for a hearing with respect to the Order Superseding Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately), dated August 27, 1997, published at 62 Fed. Reg. 47224 (September 8, 1997). The parties to the proceeding are Dr. Ben-Haim and the NRC Staff. The issue to be considered is whether the Superseding Order should be sustained—in particular, whether the NRC Staff's currently effective suspension of Dr. Ben-Haim from serving as a consultant or otherwise being involved with respect to NRC-licensed activities should be continued for a period of five years from July 31, 1997, as a result of alleged deliberate violations of NRC requirements.

Notice is hereby given that, as set forth in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Proceeding), dated March 2, 1996, the evidentiary hearing in this proceeding will commence on Wednesday, May 27, 1998, beginning at 9:30 a.m., at Room 206 (second floor), 970 Broad Street (enter on Walnut Street), Newark, New Jersey 07102. The hearing will continue, to the extent necessary, on May 28–29, 1998, at that same location, beginning at 9:00 a.m. each day. (The sessions are expected to adjourn at approximately 5:00 p.m. daily.)

As provided by our March 2, 1998 Memorandum and Order, and consistent with 10 CFR 2.743(b)(3), written direct testimony of the parties need not be utilized, but the parties must file (mail) by Friday, May 15, 1998 (Monday, May 18, if express mail is utilized), lists of witnesses and documents they propose to use, together with statements of the qualifications of those witnesses (*curriculum vitae*). (If either of the parties elects to use written direct testimony, such statements should be filed (mailed) by the same dates.)

Notice is also hereby given that, in accordance with 10 CFR 2.715(a), the Licensing Board will hear oral limited appearance statements on Wednesday, May 27, 1998, at the outset of the hearing and in the aforementioned hearing room. A person not a party to the proceeding will be permitted to make such a statement, setting forth his or her position on the issues. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) These statements do not constitute testimony or evidence but may assist the Licensing Board and parties in defining the scope of the issues in the proceeding.

Requests to make oral statements may be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of each such request should also be submitted to Judge Charles Bechhoefer, Chairman of this Licensing Board, U.S. Nuclear Regulatory Commission, ASLBP, T–3 F23, Washington, D.C. 20555.

Documents relating to this proceeding are on file at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Commission's Region I office, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

Rockville, Maryland April 20, 1998.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–10932 Filed 4–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Central Maine Power Company; Millstone Nuclear Power Station, Unit 3, Notice of Consideration of Issuance of an Order Regarding Restructuring of Central Maine Power Company

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, an application regarding the proposed corporate restructuring of Central Maine Power Company (CMP), which holds a partial ownership interest in Millstone Nuclear Power Station, Unit 3. By application dated March 4,1998, CMP, by and through its counsel, Morgan, Lewis, and Bockius, informed the Commission that it is proposing to become a wholly owned subsidiary of a newly created holding company, HoldCo, which will be renamed later. Northeast Nuclear Energy Company will remain the licensed operator of Millstone Unit 3 and is not involved in the transaction. No direct transfer of the license or any interest therein will occur. Under the restructuring, the holders of CMP common stock will become the holders of the common stock of the holding company. After the restructuring, CMP will continue to be a public utility providing the same utility services as it did immediately prior to the restructuring, and will continue to be an ''electric utility'' under Commission regulations. According to the application, there will be no effect on the management, or sources of funds for operation, maintenance, or decommissioning, of

Millstone Unit 3 as a result of the corporate restructuring.

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 application dated March 4, 1998. This document 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 Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 20th day of April 1998.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Deputy Director for Licensing, Special Projects Office, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10926 Filed 4–23–98; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 12:30 p.m., Monday, May 4, 1998; 8:30 a.m., Tuesday, May 5, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: May 4 (Closed); May 5 (Open).

MATTERS TO BE CONSIDERED:

Monday, May 4—12:30 p.m. (Closed)

1. Status Report on Rate Case R97–1.
2. Docket No. MC97–5, Provisional Packaging Service.
3. Compensation Issues.
4. Personnel Matters.

Tuesday, May 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 6–7, 1998.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Quarterly Report on Financial Performance.
5. Capital Investments.
   a. Minneapolis, Minnesota, Metro Hub.
   b. Gilbert and Phoenix, Arizona, Delivery Distribution Centers (DDCs).
   c. Point-of-Service (POS) ONE—Stage One Additional Funding.
   d. Remote Computer Reader (RCR) Handwriting Recognition Upgrade.
6. Tentative Agenda for the June 1–2, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–11044 Filed 4–21–98; 5:03 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14138]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (RAPP International Finance Company B.V., 11½% Guaranteed Secured Notes Due 2000; 13¼% Guaranteed Secured Notes Due 2005)

April 17, 1998.

P.T. Riau Andalan Pulp & Paper (''Company''), of which RAPP International Company B.V., is a subsidiary, has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').[1]

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities are listed for trading on the Luxembourg Stock Exchange and, pursuant to a Registration Statement on Form 8–A that became effective at the time of issuance, the NYSE. Trading in the Securities commenced on the Luxembourg Stock Exchange and the NYSE on December 15, 1995.

In August, 1997, the Company completed a tender offer and consent solicitation for any and all of the Securities at a premium over the price at which they were then trading. Pursuant to the consent solicitation, the Company asked the holders of the Securities to agree to substantial amendments to the Indenture under which the Securities has been issued. Among other things, the amendments removed from the Indenture covenants of the Company (i) to maintain listing of the Securities on the NYSE, and (ii) to continue to file reports with the Commission even if the Company was no longer subject to the Commission's reporting requirements. In its offering/ solicitation document, the Company advised holders of the Securities that it intended to delist the Securities from the NYSE if the proposed amendments to the Indenture became operative.

As a result of the Company's tender offer, all but $6 million of the originally issued and outstanding $300 million in Securities were tendered by holders. These holders also consented to the proposed amendments to the Indenture. The Company has been unable to locate the holders who did not tender their Securities and consent to the proposed amendments, and the Company believes it would be impractical to locate them at the present time.Moreover, the Company believes the holders of the Securities are very small in number. In addition, the Company has represented that there is essentially no trading in, and therefore no market for, the Securities that remain outstanding.

On February 11,1998, the NYSE advised the Company that it is the policy of the NYSE not to object the voluntary applications to delist securities such as the one filed by the Company.

The Company has stated that its application relates solely to the withdrawal from listing of the Securities on the NYSE and shall have no effect upon the continued listing of the Securities on the Luxembourg Stock Exchange.

Any interested person may, on or before May 8, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order grating the application

[1] This release supersedes a prior Commission Order, for File No. 1–14138, Release No. 34–39876, April 15, 1998, which listed P.T Riau Andalan Pulp & Paper rather than RAPP International Finance Company B.V. as the issuer. This release clarifies that the Securities are listed under RAPP International Finance Company B.V. In light of this clarification, the Commission is republishing notice of this application.

after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–10896 Filed 4–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26859]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 17, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 12, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 12, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc., et al., (70–9193)

New Century Energies, Inc. (''NCE''), a registered holding company, Public Service Company of Colorado (''PSCo''), a gas and electric public utility subsidiary company of NCE, and NC Enterprises, Inc. (''NC Enterprises''), a nonutility subsidiary of NCE, each located at 1225 Seventeenth Street, Denver, Colorado 80202–5534, have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a) and (10) of the Act and rule 54 under the Act.

PSCo currently owns all of the issued and outstanding common stock of New Century International, Inc. (''NCI''), a nonutility subsidiary of NCE, which, in turn, owns a 50% interest in Yorkshire Power Group Limited, which, through a wholly owned subsidiary, Yorkshire Holdings plc, owns Yorkshire Electricity Group plc, a regional electric company operating in the United Kingdom,[1] NCI also owns a minority interest in Independent Power Corporation plc (''IPC''), a British company that is in the business of developing, owning, and operating foreign electric generating plants. Applicants state that IPC will be qualified to be a ''foreign utility company,'' as defined under section 33 of the Act.

Applicants propose that PSCo transfer its interest in NCI to NC Enterprises.[2] As consideration for the acquisition of the securities of NCI, NC Enterprises will issue a note (''Note'') to PSCo. The sale will be made at NCI's book value, which, as of December 31, 1997, was approximately $289.8 million.

The Note will have a twenty-year maturity and bear interest at a fixed annual rate equivalent to the annual rate of interest as of the date of execution of the Note on a U.S. Treasury bond with a twenty-year maturity plus 100 basis points. Interest only will be paid under the Note for the first three years, and thereafter, interest and principal will be paid annually with principal amortized over the remaining years of the Note (seventeen years) payable in equal annual installments. NC Enterprises will have the option to prepay the entire obligation, including accrued and unpaid interest, at any time, without any prepayment premium. Commencing on the first anniversary date of the Note, interest payments will be made on each subsequent anniversary date during which the Note is outstanding.[3]

[1] PSCo obtained authorization from the Commission under section 3(b) of the Act to acquire this indirect interest in Yorkshire Electricity Group plc. *See* Holding Co. Act Release No. 26671 (Feb. 19, 1997).

[2] By order dated August 1, 1997 (Holding Co. Act Release No. 26748) (''Merger Order''), PSCo was authorized to transfer its interest in NCI to NCE, NC Enterprises or e prime, inc., a nonutility subsidiary of NC Enterprises. Furthermore, the Merger Order authorized the transfer through the declaration of a dividend by PSCo to NCE, followed by a subsequent capital contribution of the securities of NCI by NCE to NC Enterprises or to e prime, inc. The proposal in this Application differs from the proposal authorized in the Merger Order.

[3] NC Enterprises plans to prepay the Note with the proceeds from capital contributions made by NCE upon the anticipated sale of common stock in 1998 and 1999, as proposed in a post-effective amendment to file no. 70–9007. (The supplemental order has not yet been issued in this matter.)

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10897 Filed 4–23–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0412]

TeleSoft Partners IA, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 3, 1997, an application was filed by TeleSoft Partners IA, L.P., 222 Sutter Street, 8th Floor, San Francisco, CA 94108, with the Small Business Administration (SBA) in accordance with Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 1996) for a license to operate as a small business investment company. Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0412 on March 24, 1998, to TeleSoft Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 20, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–10960 Filed 4–23–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, the Paperwork Reduction Act of 1995.

1. Response to Notice of Revised Determination—0960–0347. Form SSA–765 is used by claimants to request a disability hearing and/or to submit additional information before a revised reconsideration determination is issued.

The respondents are claimants who wish to file for a disability hearing in response to a notice of a revised determination for Old-Age, Survivors and Disability Insurance and Supplemental Security Income (SSI), under titles II and XVI of the Social Security Act.

Number of Respondents: 1,925.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 963 hours.

2. Notification of Projected Completion Date—0960–0429. Form SSA–891 is used by the Social Security Administration (SSA) and Disability Determination Services (DDS) components to inform the disability hearing units whenever a hearing case will not be completed and forwarded to the hearing unit as expected. This information is necessary to enable the hearing units to schedule hearings as promptly and efficiently as possible. The respondents are State DDSs and SSA components that make disability determinations for the Agency.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 8 hours.

3. Subpoena—Disability Hearing—0960–0428. The information on Form SSA–1272–U4 is used by SSA to subpoena evidence or testimony needed at disability hearings. The respondents are comprised of officers from Federal and State DDSs.

Number of Respondents: 36.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 18 hours.

4. Student's Statement Regarding Resumption of School Attendance—0960–0143. The information on Form SSA–1386 is used by SSA to verify full-time attendance at educational institutions and to determine eligibility for student benefits. The respondents are student beneficiaries currently receiving SSA benefits.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Average Burden: 13,300 hours.

5. Real Property Current Market Value Estimate—0960–0471. The information on Form SSA–2794 is used by SSA to determine the value of non-home real property owned by applicants for or recipients of SSI. The respondents are persons experienced in estimating the current market value of real property.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 1,813 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503 (SSA).

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

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: April 17, 1998.

Frederick W. Brickenkamp,

Forms Management Officer, Social Security Administration.

[FR Doc. 98–10791 Filed 4–23–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of Consular Affairs

[Public Notice 2792]

30-Day Notice of Proposed Information Collection; Nonimmigrant Visa Application (Form OF–156)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Office of Consular Affairs, Visa Services.

Title of Information Collection: Nonimmigrant Visa Application.

Frequency: On occasion.

Form Number: OF–156.

Respondents: Aliens.

Estimated Number of Respondents: 8,000,000.

Average Hours Per Response 1 hour.

Total Estimated Burden: 8,000,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, D.C., 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 11, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–10912 Filed 4–23–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 2788]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Office of Defense Trade Controls, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the two letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the

Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 9, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

FILE

United States Department of State

Washington, D.C. 20520

MAR 26 1998

Dear Mr. Speaker:

Pursuant to section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the transfer to Israel of technical data for the manufacture of Forward Nose Landing Gear (ANLG) doors and Leading Edge Extensions (LEX) for the F/A-18 aircraft.

The United States Government is prepared to license the export of these items having undertaken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-48-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

FILE

United States Department of State

Washington, D.C. 20520

MAR 26 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the manufacture, service and assembly of the Improved Extended Forward Avionics Bays (IEFABS) for the AH-64 Apache helicopter in The Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-50-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98–10903 Filed 4–23–98; 8:45 am]
BILLING CODE 4710–25–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on May 13, 1998, at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Education, 600 Independence Avenue, SW., Barnard Auditorium, Room 2413, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5057; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on May 13, 1998, at the U.S. Department of Education, 600 Independence Avenue, SW., Barnard Auditorium, Room 2413, Washington, DC, 10 a.m. The agenda will include:

- An update on the status of the Fuel Tank Harmonization Working Group effort
- A proposed new task concerning Flight Time Limitations and Rest Requirements
- A vote on a proposed Use of Computer Technology for Accessing Information Used in Aviation Operations, Maintenance and Support advisory circular
- An update on the status of the Overflights of the National Parks effort
- Administrative issues

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by May 4, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** A copy of the proposed advisory circular being put to a vote and background on the proposed new task may also be obtained from that person.

Issued in Washington, DC, on April 20, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–10936 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

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 Special Committee (SC)–182 meeting to be held May 12–14, 1998, starting at 9:00 a.m. The meeting will be held at the Garden Beach Hotel—La Pinede, 15/17 BD Baudonin—BP 89, 06162 Juan Les Pins, Cedex, France (phone 33 4 92 93 57 57, fax 33 4 92 93 57 56).

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Reports: a. Joint RTCA SC–182/EUROCAE Working Group-48 Meeting (2/4–6/98); b. Meeting with Members of Certification Authorities Software Team (2/18/98); (4) Comments on Draft MOPS; (5) Comments on *Defining a Framework for an Avionics Computing Resource;* (6) Working Group Sessions; (7) Working Group Reports; (8) Other Business (8) Date and Place of Next Meetings (09/9–11/98, EUROCAE, Paris, France; 12/09–11/98, RTCA, Washington, DC.)

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 April 17, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–10935 Filed 4–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33574 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33574 [1] to permit the trackage rights to expire, as they relate to the operation on the Shawnee Junction segment, on July 15, 1998, as they relate to the operation on the Fish Lake segment, on September 1, 1998, and as they relate to the Lewisville/Longview segment, on July 31, 1998, in accordance with the agreement of the parties.[2]

[1] On March 24, 1998, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant BNSF limited overhead trackage rights between the following points: (1) Shawnee Junction, WY, in the vicinity of UP's milepost 271.4 (North Platte Subdivision) and Northport, NE, in the vicinity of UP's milepost 117.3 (North Platte Subdivision), a distance of approximately 154 miles (Shawnee Junction segment); (2) Fish Lake, WA, in the vicinity of UP's milepost 354.7 (Spokane Subdivision) and Attalia, WA, in the vicinity of UP's milepost 215.7 (Spokane Subdivision), a distance of approximately 139 miles (Fish Lake segment); and (3)(a) Lewisville, AR, in the vicinity of UP's milepost 390.3 (Pine Bluff Subdivision) and Big Sandy, TX, in the vicinity of UP's milepost 525.0, on the Pine Bluff Subdivision (milepost 112.95 Dallas Subdivision), and (b) Longview, TX, in the vicinity of UP's milepost 89.6, on the Dallas Subdivision (milepost 0.0 Palestine Subdivision) and Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision), a distance of approximately 260 miles (Lewisville/Longview segment). The trackage rights are scheduled to expire effective July 15, 1998, for the Shawnee Junction segment, effective September 1, 1998, for the Fish Lake segment, and effective July 31, 1998, for the Lewisville/Longview segment. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33574 (STB served Apr. 6, 1998). The trackage rights operations under the exemption became, or will become, effective on April 1, 1998, for the Shawnee Junction segment, on July 1, 1998, for the Fish Lake segment, and on June 15, 1998, for the Lewisville/Longville segment.

[2] Trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is sought. *See Milford-Bennington*

Continued

DATES: This exemption is effective on May 24, 1998. Petitions to reopen must be filed by May 14, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33574 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039, and (2) Joseph D. Anthofer, Esq., Union Pacific Railroad Company, 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: April 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10961 Filed 4–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33581]

Lake County Railroad—Modified Rail Certificate

On March 24, 1998, Lake County, OR [1] filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate, as Lake County Railroad (LCR), a 54.45-mile line of railroad, known as the Lakeview Branch, extending from milepost 458.60 in Alturas, CA, to milepost 513.05 in Lakeview, OR.[2]

The involved rail line was abandoned by Southern Pacific Transportation Company (SPT) in *Southern Pacific Transportation Company—Abandonment—in Modoc County, CA and Lake County, OR,* Docket No. AB–12 (Sub-No. 84) (ICC served Oct. 20, 1985). LCR acquired the line from SPT, and subsequently contracted with Great Western Railway of Oregon (GWR) to operate the line as a short line operator.[3]

According to LCR, the lease agreement entered into between LCR and GWR on May 1, 1991, as amended on May 5, 1991, December 7, 1994, and on or about October 1, 1995, was terminated on November 1, 1997.

LCR provides freight service between Lakeview and Alturas, and connects with Union Pacific Railroad Company at Alturas. Operations by LCR over the 54.45-mile line commenced on November 1, 1997.[4]

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

LCR indicates that no subsidy is involved and that there are no preconditions for shippers to meet in order to receive rail service.

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line Railroad Association: American Short Line Railroad Association, 1120 G Street, NW., Suite 520, Washington, DC 20005.

Decided: April 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10962 Filed 4–23–98; 8:45 am]

BILLING CODE 4915–00–P

Railroad Company, Inc.—Trackage Rights Exemption—Boston and Maine Corporation and Springfield Terminal Railway Company, Finance Docket No. 32103 (ICC served Sept. 3, 1993).

[1] Lake County is a political subdivision of the State of Oregon and therefore is considered a ''State'' as defined at 49 CFR 1150.21.

[2] On April 8, 1998, Lake County submitted supplemental information as required by 49 CFR 1150.23.

[3] *See The Great Western Railway Co.-Modified Rail Certificate,* Finance Docket No. 30777 (ICC served Feb. 26, 1986).

[4] According to 49 CFR 1150.23(a), operations may commence immediately upon the filing of the notice for a modified certificate. Lake County has not explained why it did not file its notice before November 1, 1997. However, it does not appear that the late filing was due to any intent to avoid the regulatory requirements and Lake County now has submitted all of the requisite information.

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Program Test: Importer Compliance Monitoring Program

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test regarding the Importer Compliance Monitoring Program (formerly known as the Importer Self-Governance Program) with limited participation. The program is intended to promote compliance with Customs laws and regulations regarding cargo processing and will afford mutual benefits to both Customs and the import community. Public comments concerning any aspect of this planned test are solicited.

EFFECTIVE DATES: The program test will commence no earlier than July 1, 1998, and will continue through June 30, 1999. Written requests to participate in, and comments on, the program test must be received by June 1, 1998.

ADDRESSES: Written requests to participate in the program test, and written comments regarding any aspect of the planned test, should be addressed to William F. Inch, Regulatory Audit Division, U.S. Customs Service, 1300 Pennsylvania Ave., N.W., Room 6.3A, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: William F. Inch, (202) 927–1100; Joseph C. Palmer, (312) 353–1213, Ext. 106; or Richard A. Fuller, (281) 985–6781.

SUPPLEMENTARY INFORMATION:

Background

Since passage of the Customs Modernization provisions (107 Stat. 2170) contained in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), the primary goal of the trade compliance process has been to maximize importer compliance with U.S. trade laws, while facilitating the importation and entry of admissible merchandise. To meet these challenges, Customs has undertaken a comprehensive effort to review, improve, and redesign the trade compliance process using established business practices, re-engineered tools, and new methodologies that improve customer service without compromising the enforcement aspect of the Customs mission.

One of the new methodologies developed is the compliance assessment procedure. This procedure allows Customs to determine the level of

compliance based on an overall assessment of a company's import operations. While the compliance assessment procedure provides both Customs and the company with an accurate benchmark concerning the adequacy of systems/internal controls and the degree of importer compliance, it focuses primarily on the company's last business year prior to the time the compliance assessment was conducted.

Over time, however, events can occur within a company (*e.g.*, mergers, system changes, loss of key personnel) that may potentially have an effect on its compliance. Accordingly, the Importer Compliance Monitoring Program (ICMP; formerly known as the Importer Self-Governance Program) was developed to allow interested importers to assess their own compliance with Customs laws and regulations. Over the past several months and after public consultations, Customs has identified necessary policies and procedures as bases to test this new program, pursuant to § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)), which permits the implementation of a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise. The purpose of this document is to describe the proposed operation of the ICMP and to invite comments on, and requests to participate in, the planned ICMP test.

Proposed Importer Compliance Monitoring Program

In general, the ICMP is designed to enhance the cargo processing of participating importers. The ICMP is voluntary and does not require a company to have undergone or be scheduled for a Customs compliance assessment. Once notified of acceptance into the program, a consultation process will begin with Customs. This is necessary to ensure that all parties have a mutual understanding of the importer's business practices and the importer's corresponding relationship to the program.

Similar to a compliance assessment performed by Customs, the ICMP is a systemic overview of a company's import operations and includes both process and transactional reviews of those operations. Ideally, a group independent of the company's importing function should conduct these reviews; use of outside professionals for this purpose is not required but may be done at the discretion of the importer. Process reviews include an annual preparation or updating of the flowchart and narrative of the company's import process. In addition, a macro test of value information is conducted to ensure that the company's import transactions and those recorded in Customs systems are in general agreement. Transactional reviews utilize statistical sampling methodologies that are fully coordinated with Customs during the consultation process. Sampling errors will be evaluated based on the number of errors and their materiality and, where applicable, a compliance improvement plan will be prepared and submitted to Customs outlining actions taken or proposed to correct the cited deficiencies. Reports of sampling errors may be treated as prior disclosures under Part 162 of the Customs Regulations. Test participants are expected to retain all applicable documentation pertaining to these reviews. As necessary, Customs will validate the importer's ICMP process and transactional reviews.

Draft Program Manual

For those companies interested in participating in this test, as well as those companies wishing only to provide comments to Customs, a draft ICMP manual will be available on Customs Internet Website. The Universal Resource Locator (URL) or address for the Customs Internet Website is http://www.customs.ustreas.gov. The manual provides detailed ICMP policies and procedures, including additional information regarding anticipated program benefits accruing to both participants and Customs. Customs welcomes any and all comments regarding this document and its contents.

Selection of Test Participants

The test will continue for a period of one year. No more than 50 companies will be allowed to participate in the ICMP test, and Customs will select the participants in accordance with the criteria set forth below.

There are three primary selection criteria that will be applied in the following order:

(1) Companies residing within the Top 250 importers ranked by entered value in descending order within a Primary Focus Industry (PFI) that have a Customs assigned Account Manager;

(2) Companies residing within the Top 250 importers ranked by entered value in descending order within a PFI that do not have a Customs assigned Account Manager; and

(3) Companies not ranked within the Top 250 importers of any of the PFI's will be selected on the basis of the highest total entered value.

Under criteria (1) and (2), if companies have the same numerical ranking in different PFI's, then the company with the highest total entered value will be selected.

Customs will notify each company in writing of its acceptance or nonselection to participate in this test no later than June 15, 1998; companies not selected will be informed of the general reason(s) for non-selection. If an applicant is denied participation, the applicant may appeal in writing to Director, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, within 10 days of notification by Customs.

To assure the best results possible for evaluation purposes, it is anticipated that those companies selected to participate in the ICMP test will complete all related requirements during the one-year test period. However, because of the voluntary nature of this program, a company may discontinue its participation in the test at any time.

Removal From Test Participation

During the one-year test period, the appropriate field director of Regulatory Audit may remove a company from participation in the test for misconduct involving the following:

(1) Failure by the company to comply with ICMP requirements; or

(2) The presence of documented or alleged fraud, other investigative activity, or failing to follow applicable Customs laws and regulations.

Any decision proposing to remove a company from participation in the test may be appealed in writing to the Director, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 within 30 days of such action. The notice of proposed removal will apprise the company of the facts or conduct warranting removal. Should the company appeal the notice of proposed removal, it should address the facts or conduct charges contained in the notice and state how it does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the removal may be effective immediately.

Program Consultation

One of the cornerstones of the ICMP is consultation afforded the importer by Customs. Prior to beginning the test, Customs will meet with each selected participant to discuss the company's

import operations. At this meeting, the nature and frequency of work to be accomplished during the test period will be identified, thus, assuring effective planning and assignment of company and Customs resources and timely completion of the test.

Comments and Evaluation of Test

Customs will review all public comments received concerning any aspect of the proposed program test and finalize requirements and procedures in light of those comments before commencing the test. Approximately 90 days after conclusion of the test, evaluations of the test will be conducted and final results will be made available to the public upon request.

Dated: April 20, 1998.

William F. Inch,

Director, Regulatory Audit Division.

[FR Doc. 98–10886 Filed 4–23–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Ronson Consumer Products Corporation''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''RONSON CONSUMER PRODUCTS CORPORATION,'' Ronson Consumer Products Corporation is a wholly owned subsidiary of Ronson Corporation and is located at 3 Ronson Road, Woodbridge, New Jersey 07095.

The application states that the trade name is used in connection with lighters and parts thereof, including pieces of sparking metal/flints, lighter fluid and liquefied petroleum gas for use in lighters, multi-purpose igniters and the like, packaged chemical liquids such as multi-use spray lubricants, general purpose sport removers, leather, vinyl and rubber surface protectants/cleaners, electric shavers, cigar piercers, cigar and cigarette holders, pipe holders, broilers, electric knives, electric blenders, electric can openers, electric powered toothbrushes, other small electric appliance and writing instruments.

The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before June 23, 1998.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Ronald Reagan Building—3rd Floor, Washington, D.C. 20229

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., (Reagan Building—3rd Floor), Washington D.C. 20229 (202–927–2330).

Dated: April 17, 1998.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 98–10925 Filed 4–23–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Ronson Corporation''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''RONSON CORPORATION,'' used by Ronson Corporation, a corporation organized under the laws of the State of New Jersey, located at Corporate III, Campus Drive, P.O. Box 6707, Somerset, New Jersey 08875.

The application states that the trade name is used in connection with lighters and parts thereof, including pieces of sparking metal/flints, lighter fluid and liquefied petroleum gas for use in lighters, multi-purpose igniters and the like, packaged chemical liquids such as multi-use spray lubricants, general purpose sport removers, leather, vinyl and rubber surface protectants/cleaners, electric shavers, cigar piercers, cigar and cigarette holders, pipe holders, broilers, electric knives, electric blenders, electric can openers, electric powered toothbrushes, other small electric appliance and writing instruments.

The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATES: Comments must be received on or before June 23, 1998.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Ronald Reagan Buiding —3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., (Reagan Building —3rd Floor), Washington, D.C. 20229 (202–927–2330).

Dated: April 17, 1998.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 98–10924 Filed 4–23–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L.104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Treasury Direct Forms.

DATES: Written comments should be received on or before June 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third

Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Treasury Direct Forms.

OMB Number: 1535–0069.

Form Number: PD F 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191, 5201, 5235, 5236, 5261, 5381.

Abstract: The information is requested to issue and maintain treasury Bills, Notes, and Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 431,632.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 58,628.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 20, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–10916 Filed 4–23–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning Financial Management Policies.

DATES: Written comments should be received on or before June 23, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0000. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony Cornyn, Risk Management Division, Research and Analysis, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5727.

SUPPLEMENTARY INFORMATION:

Title: Financial Management Policies.

OMB Number: 1550–

Form Number: Not Applicable.

Abstract: This information collection requires that savings associations' management establish policies and procedures for managing interest rate risk. These requirements provide OTS with the information necessary for determining the safety, soundness of the savings association.

Current Actions: OTS is seeking clearance for an existing collection in use without an OMB Number.

Type of Review: Approval of an existing collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1215.

Estimated Time Per Respondent: 58.16 average burden hours.

Estimated Total Annual Burden Hours: 70,660 burden hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 20, 1998.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10981 Filed 4–23–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Measurement Survey for the Examination Process.

DATES: Written comments should be received on or before June 23, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0087. These submissions may be hand delivered to

1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Daniel Bagus, Central Regional Office, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (312) 917–5008.

SUPPLEMENTARY INFORMATION:

Title: Measurement Survey—Examination Process.

OMB Number: 1550–0087.

Form Number: OTS Form.

Abstract: This information collection is used to survey those institutions who recently underwent an OTS examination. The survey's purpose is to determine the effectiveness of the examination process.

Current Actions: OTS is seeking an extension of a currently approved collection.

Type of Review: Extension of an existing collection without change.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 3013.

Estimated Time Per Respondent: .25 average burden hours.

Estimated Total Annual Burden Hours: 753.25 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 20, 1998.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10986 Filed 4–23–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 63, No. 79
Friday, April 24, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 97-D005]

Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

Correction

In rule document 98–8417 beginning on page 15316, in the issue of Tuesday, March 31, 1998, make the following corrections:

204.7303 [Corrected]

1. On page 15317, in the second column, in section 204.7303(a)(2), in the third line from the bottom, ''ccr.edi,disa.mil/ccr/cgi-bin status.pi'' should read ''ccr.edi.disa.mil/ccr/cgi-bin/status.pl''.

2. On the same page, in the same columm, in section 204.7303(a)(4), in the sixth line, ''225.2204–7004'' should read ''252.204–7004''.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5823–7]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Voluntary Standard for Light-Duty Vehicles

Correction

In the issue of Tuesday, August 26, 1997, on page 45289, in the third column, in the correction of rule document 97–12366, in the first line, ''(3)(b)(ii)'' should read ''(b)(3)(ii)''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

5 CFR Chapter XXV

RINs 1090-AA38, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior

Correction

In rule document 97–27069 beginning on page 53713, in the issue of Thursday October 16, 1997, make the following correction:

§ 3501.104 [Corrected]

On page 53719, in the second column, the section heading should read as follows:

§ 3501.104 Prohibited interests in mining.

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering Services, Architectural Services, and Surveying and Mapping Services

Correction

Proposed rule document 98–8996 was inadvertently published in the Rules and Regulations section of the issue of Tuesday, April 7, 1998, beginning on page 16882. It should have appeared in the the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–19]

Establishment of Class D Airspace: Fayetteville (Springdale), AR

Correction

In rule document 98–9210 beginning on page 17092, in the issue of Wednesday, April 8, 1998, make the following corrections:

§ 71.1 [Corrected]

1. On page 17093, in the first column, in § 71.1, in the eighth line, ''AWS'' should read ''ASW''.

2. On the same page, in the same column, in the same section, the 13th line, ''(Lat. 36°18′55″N., long. 094°18′25″W.)'' should read ''(Lat. 36°16′55″N., long. 094°18′25″W.)''.

BILLING CODE 1505-01-D

federal register

Friday
April 24, 1998

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 120 and 101

Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice; Food Labeling: Warning Notice Statements; Labeling of Juice Products; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 120

RIN 0910–AA43

[Docket No. 97N–0511]

Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to adopt regulations to ensure the safe and sanitary processing of fruit and vegetable juices and juice products. The proposed regulation, if adopted, will mandate the application of Hazard Analysis and Critical Control Point (HACCP) principles to the processing of these foods. HACCP is a preventive system of hazard control. FDA is proposing these regulations because there have been a number of outbreaks of illness, including some directly affecting children, associated with juice products and because a system of preventive control measures is the most effective and efficient way to ensure that these products will be safe. Elsewhere in this issue of the **Federal Register**, FDA is publishing a warning label proposal for packaged juice.

DATES: Submit written comments by July 8, 1998. For information on the proposed compliance dates for small businesses and very small businesses see the **SUPPLEMENTARY INFORMATION** section of this document.

Submit written comments on the information collection requirements by May 26, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments regarding information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

The agency proposes to make any final rule based upon this proposal effective 1 year after its date of publication in the **Federal Register**. However, by its terms, the final rule will not be binding on small businesses as defined in proposed § 120.1(b)(1) until 2 years after the date of publication of a final rule in the **Federal Register**; and for very small businesses as defined in proposed § 120.1(b)(2), the final rule will not be binding until 3 years after the date of its publication in the **Federal Register**.

I. Concerns With Juice

A. Microbial Outbreaks

The Seattle-King County Department of Public Health and the Washington State Department of Health reported on October 30, 1996, an outbreak of *Escherichia coli* O157:H7 infections epidemiologically associated with drinking a particular brand of unpasteurized apple juice, or juice mixtures containing unpasteurized apple juice, purchased from a coffee shop chain, grocery stores, and other locations (Ref. 1). A case was defined as hemolytic uremic syndrome (HUS) or a stool culture yielding *E. coli* O157:H7 in a person who became ill after September 30, 1996, after drinking the particular brand of juice within 10 days before illness onset. There were at least 66 cases of illness, with 14 cases of HUS and the death of one child, associated with this outbreak (Ref. 2). Cases occurred in British Columbia, California, Colorado, and Washington. *E. coli* O157:H7 isolates cultured from a previously unopened container of the particular brand of apple juice had a deoxyribonucleic acid (DNA) ''fingerprint'' pattern (restriction fragment length polymorphism) indistinguishable from case-related isolates (Ref. 1).

Various juices have been documented as vehicles for causing outbreaks from microorganisms. A 1967 outbreak from contaminated water added to orange juice concentrate affected approximately 5,200 persons and was caused by an unidentified virus and possibly other contaminants (Refs. 3 and 4). About 300 people became ill from *Salmonella typhimurium* in cider made from apples, including some that had been picked up from the ground in an orchard fertilized with manure, in a 1974 outbreak in New Jersey (Ref. 5). A 1991 outbreak of *Vibrio cholerae* was associated with coconut milk contaminated during manufacturing in Thailand (Ref. 6). There have been two *Cryptosporidium* outbreaks related to drinking apple cider, the first in Maine in 1993 and the other in New York State in 1996. In the first case, the apples used for cider came from trees near a cow pasture (Ref. 7), and in the second case, water used for rinsing came from a well that tested positive for coliforms (Ref. 8). In 1995 there was an outbreak in Florida that was caused by *Salmonella hartford* in unpasteurized orange juice (Ref. 9).

E. coli O157:H7 has been recognized relatively recently as a human pathogen and has been a source of a number of outbreaks related to juice. Thirteen and possibly 14 children had bloody diarrhea and developed HUS in Toronto, Canada, between September 15 and 25, 1980. The children's illnesses were associated with drinking fresh apple juice. The children's stools were examined for enteropathogenic *E. coli*, *Campylobacter*, *Salmonella*, *Shigella*, and *Yersinia*. None of these organisms were found. *E. coli* O157:H7 is the suspected causative organism. Conclusive testing for that organism was not done because *E. coli* O157:H7 was not recognized as a human pathogen before 1982 (Ref. 10).

A 1991 *E. coli* O157:H7 outbreak in southeast Massachusetts conclusively showed that fresh-pressed unpasteurized apple juice can transmit *E. coli* O157:H7 bacteria. In this outbreak, 23 individuals had diarrhea, 16 had bloody diarrhea, and 4 developed HUS (Ref. 11).

In Connecticut, a 1996 outbreak of *E. coli* O157:H7 illness was associated with drinking a particular brand of apple cider. There were 14 cases of illness (including 7 hospitalized), with 3 cases of HUS associated with the outbreak (Ref. 8).

There was a small outbreak of *E. coli* O157:H7 illness in Washington State in 1996 that was related to apple cider made at a church event. This outbreak occurred during the same time as the unpasteurized apple juice outbreak described in previous paragraphs. The apples were washed in a chlorine solution, but it was not reported how much chlorine was used. Six people became ill, but no estimate was given on how many people may have drunk the apple cider (Ref. 12).

FDA's recall data also provide evidence of microbial hazards in juice. There were 85 cases of illness in 1994 resulting in a recall of orange juice that had fermented and contained *Bacillus cereus* and yeast (Ref. 13).

State investigations provide additional evidence of microbial hazards in juice. A 1989 outbreak in New York was caused by the presence in orange juice of *Salmonella typhi* that originated from an infected worker and

resulted in 69 illnesses with 21 individuals hospitalized (Ref. 14). The State of Washington reported that in 1993 one individual was hospitalized from home-made carrot juice found to contain *Clostridium botulinum* (Ref. 15). A 1993 Ohio outbreak caused by yeast or some other unknown toxicant in orange juice resulted in 23 illnesses (Ref. 16). A home-made watermelon drink contaminated with *Salmonella* spp. caused illness in 18 individuals in a 1993 Florida outbreak (Ref. 17). The State of Colorado reported two outbreaks of gastrointestinal illness from fresh squeezed orange juice at a mountain resort (Ref. 18). There were food handlers that were ill in both Colorado instances, and a virus was suspected as the causative agent.

The evidence shows that certain juices have been the vehicle for outbreaks of foodborne illnesses. Although fruit juice is acidic, and thus would generally be considered to inhibit the growth of most microorganisms, most juice-related outbreaks have been associated with fruit juices.

B. Illnesses From Nonheat-treatable Hazards

Illnesses that have been caused by hazards that can not be reduced to acceptable levels by heat treatments have also been associated with juice. Tin in canned tomato juice caused illness in 113 individuals in 1969 (Ref. 19). Soil nitrate had resulted in a high nitrate content in the tomatoes, and this high nitrate content accelerated detinning in the cans. In 1984, 11 persons became ill from consuming elderberry juice prepared by staff of a religious/philosophic group that contained poisonous parts of the plant (Ref. 20). A 1990 guanabana juice outbreak was caused by the presence of toxic guanabana seed material and caused illness in nine individuals (Ref. 21). A 1997 outbreak was caused by tin in pineapple juice (Ref. 22).

In 1992 an 18-month-old child with a blood lead level of 36 micrograms per deciliter (µg/dL) was found in a routine county health department blood lead monitoring program. Investigation of this incident by the county health department revealed that the only significant source of lead exposure for this child was lead in imported fruit juice packed in 12-ounce, lead-soldered cans (Ref. 23). Analysis by the State health department of multiple flavors of the fruit juices in lead-soldered cans available to the child found lead levels ranging from 160 to 810 parts per billion (ppb). An exposure assessment performed by the county health department estimated that the child consumed about three cans of these fruit juices per day and estimated that the child's daily lead intake from these fruit juices was approximately 600 µg/day (Ref. 23). As a result of this incident, FDA announced an emergency action level of 80 ppb for lead in fruit beverages (such as juices, nectars, and drinks) packed in lead-soldered cans (58 FR 17233, April 1, 1993). The agency subsequently banned the use of lead-soldered cans (60 FR 33106, June 27, 1995).

Recalls also provide evidence of nonheat-treatable hazards in juice. In 1988 a fruit punch drink was recalled because of the presence of tin caused by the acidity of the drink reacting with the tin coating of the cans (Ref. 24). The product had been packaged in the wrong container.

There were 10 recalls between 1990 and 1995 for fruit juice or beverages containing fruit juice because of the presence of food ingredients that were inadvertently added to the product, not declared on the label, or not suitable for the food. Food ingredients involved with these recalls were natamycin (Ref. 25), sulfites (Ref. 26), FD&C yellow No. 5 (Refs. 27 through 33), and salt (Ref. 34).

Five recalls between 1991 and 1997 were caused by improper sanitation procedures or faulty equipment. In 1991 sodium hydroxide from a clean-in-place system contaminated the caps of a citrus punch drink (Ref. 35). In 1992 three persons became ill, with 1 hospitalized, from a sodium hydroxide sanitizing agent that got into fruit drink product containers during cleaning (Ref. 36). In 1993 cracks in a heat exchanger allowed an orange flavored soft drink containing pear juice to come in contact with copper pipe fittings and, thus, to become contaminated with copper (Ref. 37). In 1994 milk was found in orange juice from filler lines that were not cleaned between milk and juice production (Ref. 38). In 1997 the presence of an alkaline cleaning solution in a berry juice caused gastrointestinal distress in several persons (Ref. 39).

Companies have recalled fruit drinks because pieces of glass or plastic were found in their products. The presence of glass in products is typically caused by the use of glass bottles, which can chip or shatter during the production process (Refs. 40 through 42). The plastic was present from the company's practice of draping plastic bags over the side of the bottle loading bin (Ref. 43).

One company recalled apple-prune juice and prune juice in 1996 because of unacceptable levels of lead (Refs. 46 and 47). The cause was contaminated imported prune juice.

In response to the establishment of maximum levels for patulin in apple juice by several foreign governments, FDA initiated a sampling survey to determine the levels commonly found in domestic and imported apple juice. Patulin may be present in juice made from moldy apples. In March 1997 the agency found inordinately high levels of patulin in apple juice from a processor in Washington State (Ref. 48). The level of patulin found in the product was sufficient to pose a health hazard, especially considering the fact that apple juice is commonly used by infants and young children (Ref. 49). All affected products that had left the plant had been used in the manufacture of fermented apple cider. Patulin could not be detected in fermented product, and it was assumed that the patulin was destroyed through the fermentation process.

Therefore, as the foregoing discussion reveals, the evidence demonstrates that juice and juice beverages are susceptible to chemical and physical hazards as well as microbiological hazards.

C. Underreporting

There is wide agreement that the laboratory-confirmed cases from outbreaks and recalls understate the actual number of juice-related cases, but no consensus exists on the size of the understatement. Individuals may not manifest all symptoms or have severe enough symptoms to necessitate medical attention. Medical personnel may simply treat an individual's symptoms without determining the underlying cause. The laboratory-confirmed cases only represent those cases where individuals sought medical attention, and where medical personnel performed the necessary testing and reported the case to a government agency.

While the actual number of juice-related illnesses is unknown, FDA has derived an estimate of the total number by multiplying the average number of laboratory-confirmed cases by factors that account for under-reporting. The factors are based on the relationships between annual outbreak cases and published estimates of the number of foodborne illnesses. For example, using these adjustment factors, it is estimated that the average 16 annual laboratory-confirmed cases of *Salmonella* represents 4,900 to 7,600 actual cases (Ref. 50). For *E. coli* O157:H7, an average 22 laboratory-confirmed cases per year may actually represent 2,200 to 4,300 total juice-related cases (Ref. 50). Therefore, the agency assumes that the

actual number of illnesses from the outbreaks described in sections I.A and I.B of this document is much greater than the confirmed number of illnesses. (For a more complete discussion of these estimates, see the agency's preliminary regulatory impact analysis and Ref. 50)

D. Pesticides

Pesticides are usually applied to plants to combat insects, plant diseases, and weed growth to assist in the growth of the fruit or vegetable. A food is considered adulterated under section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B) if pesticide residues are present above the Environmental Protection Agency (EPA) established tolerances, or if EPA has not established a tolerance for use of the pesticide on the particular plant. FDA annually monitors a wide variety of foods for pesticide residues.

In 1994 FDA sampled 1,411 domestic fruits and fruit products, including apple juice and other fruit juices, for pesticide residues and found that less than 1 percent were violative for being over tolerance and less than 1 percent were violative for having no tolerance (Ref. 51). None of the 122 samples of apple juice or 44 samples of other fruit juices were violative. Out of 1,795 samples of domestic vegetables and vegetable products tested, FDA found that less than 1 percent of samples were over tolerance, and that 2 percent were violative for having no tolerance.

FDA also tested 1,940 imported fruits and fruit products in its 1994 pesticide residue monitoring program. Less than 1 percent of the items tested were over tolerance and 3 percent were violative for having no tolerance. None of the 110 fruit juices sampled were violative. The agency sampled 2,460 imported vegetables and vegetable products and found that less than 1 percent were violative for being over tolerance and 4 percent for having no tolerance.

In its 1995 pesticide monitoring program FDA found less than 1 percent of 1,437 samples of domestic fruits and fruit products to be violative for being over tolerance and 1 percent to be violative for having no tolerance (Ref. 52). Of the 110 apple juices and 22 other fruit juices sampled, only a single apple juice sample was found to be violative, because of the presence of a pesticide with no established tolerance. Analysis of 1,585 samples of domestic vegetable and vegetable product produced results similar to the results found in 1994, i.e., less than 1 percent of samples were over tolerance, and approximately 2 percent were violative because there were no tolerances for the pesticide residues that FDA found.

The agency sampled 1,757 imported fruits and fruit products for pesticides in 1995 and found that less than 1 percent were violative for being over tolerance, and that 3 percent were violative for having no tolerance. Of the 19 apple juices and 52 other fruit juices tested, 2 apple juice samples were violative because they contained pesticides for which there were no established tolerances. The agency sampled 2,535 imported vegetables and vegetable products and found that 1 percent were violative for being over tolerance, and that 3 percent were violative for having pesticide residues for which there was no tolerance. Some of these samples contained both residues over tolerance and residues with no tolerance.

Although there are no documented outbreaks caused by unlawful pesticide residues, chronic exposure to pesticide residues that do not conform to EPA tolerances increase risks to the public health. Therefore, juice processors must determine whether the possible presence of unlawful pesticide residues is a hazard that is reasonably likely to occur.

E. FDA's Public Meeting

As a result of the October 1996 apple juice outbreak from *E. coli* O157:H7, FDA held a public meeting on December 16 and 17, 1996 (hereafter referred to as the juice meeting) (see notice of meeting (61 FR 60290, November 27, 1996)), to review the current science, including technological and safety factors, relating to fresh juices and to consider measures necessary to provide safe fruit juices to the public. Interested persons were given until January 3, 1997, to submit written comments on the notice. On January 2, 1997 (62 FR 102), FDA extended the comment period to February 3, 1997, in response to several requests for an extension.

The purpose of the juice meeting was to provide a forum for an information exchange on current industry practices for the production of juice products and on developments in the science underlying the production of safe juices. Experts from industry, academia, and the regulatory and consumer sectors presented information on illnesses and the epidemiology of outbreaks arising from contaminated juices; concerns about emerging pathogens; the *E. coli* O157:H7 outbreak in October 1996 caused by contaminated apple juice; procedures for processing juices; and new and existing technology to remove or decrease the number of pathogens or other contaminating microorganisms. Time was available for questions and comments from all attendees.

The meeting provided an opportunity to: (1) Consider how FDA's regulatory program for fresh juice and juice products should be revised,(2) discuss and exchange information on relevant safety issues, (3) to identify research needs where appropriate, (4) consider whether additional consumer education is necessary, and (5) consider whether other measures are needed to reduce the risk of future outbreaks of illness from juice.

FDA received over 180 comments from industry (with a number of these describing themselves as small businesses), consumers, consumer organizations, trade organizations, scientific/technical companies, academic institutions or organizations, State agencies, a local government agency, and members of Congress. Although most of the comments concerned apple juice specifically, many comments pertained to juices in general, and some referred only to citrus juices. Most comments were concerned with changes in processing to improve the safety of juices. Among the changes suggested were requiring pasteurization of juices, requiring HACCP, or establishing current good manufacturing practices (CGMP's) in juice processing. The agency has attempted to address the comments made at the meeting or submitted in response to the **Federal Register** notice in this proposal. If there are any significant concerns that the agency has not addressed, these concerns should be brought to the agency's attention in comments on this proposal.

The Fresh Produce Subcommittee (FPS) of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) attended the public meeting. The FPS met after the public meeting and made recommendations to the NACMCF. The NACMCF subsequently met to discuss the issues that were raised at the meeting. Based on information that was presented at the meeting and on the FPS's expertise, the full NACMCF made several recommendations (Ref. 53). The NACMCF stated that there are many aspects that affect pathogen control, such as agricultural practices; product handling; equipment used; growing location, including produce obtained from below ground (carrots), on ground (e.g., tree drops), or picked from trees; pH; acidulants; method of processing; degree of animal contact; refrigeration; packaging; and the distribution system. It stated that, in determining the best control mechanisms, it is important to remember that the conditions for

microbial survival differ from those for growth. The NACMCF recognized that, while the risks associated with specific juices vary, there are safety concerns associated with juices, especially unpasteurized juices.

The NACMCF concluded that: (1) The history of public health problems associated with fresh juices indicates a need for active safety interventions, and (2) for some fruit (e.g., oranges), the need for intervention may be limited to surface treatment, but for others, additional interventions may be required (e.g., pasteurization of the juice).

The NACMCF recommended to FDA the use of safety performance criteria instead of mandating the use of a specific intervention technology. In the absence of known specific pathogen-product associations, the NACMCF recommended the use of *E. coli* O157:H7 or *Listeria monocytogenes* as the target organism, as appropriate. This recommendation was based on the premise that these organisms are two of the most difficult to control (i.e., by juice acidity or heat lethality), and that, by controlling them, other pathogenic organisms will likely be controlled. The NACMCF suggested that a tolerable level of risk may be achieved by requiring interventions that have been validated to achieve a cumulative 5 log reduction in the target pathogen or a reduction in yearly risk of illness to less than 10^{-5}, assuming consumption of 100 milliliters (mL) of juice daily.

In addition, the NACMCF stated that HACCP and safety performance criteria should form the general conceptual framework to ensure the safety of juices, and that control measures should be based on a thorough hazard analysis. The NACMCF also stated that validation of the process must be an integral part of this framework. The NACMCF recommended mandatory HACCP for all juice products, and that processors should implement and strictly adhere to industry CGMP's. The NACMCF also recommended industry education programs addressing basic food microbiology, the principles of cleaning and sanitizing equipment, CGMP's, and HACCP.

The NACMCF recommended further study in several areas:

(1) The efficacy of new technologies and intervention strategies for safety;

(2) The contamination, survival, and growth of pathogens on produce with or without breaks in skin, with or without areas of rot, and within the core;

(3) How produce becomes contaminated with human pathogens, including the relevant microbial ecology during production and processing of juice. In particular, the NACMCF stated that there is an urgent need for these types of studies on *E. coli* O157:H7 in apple juice;

(4) The baseline incidence of human pathogens on fruits and vegetables, particularly on those used in juice processing; and

(5) Labeling information needed for consumer understanding and choice of safer juices and juice products.

On the basis of all the testimony presented at the December 16 and 17, 1996, meeting, the NACMCF agreed that there is a need to understand the differences among all juice and juice products (e.g., citrus versus other). A significant problem identified by the NACMCF is that consumers presently do not have a means to clearly differentiate between unpasteurized and pasteurized products, and that terms used to refer to juice products do not always have universal meanings. For example, the term ''cider'' is perceived to be an unpasteurized product whereas the term ''juice'' is often perceived to be pasteurized.

The NACMCF also stated that traditional heat treatments given to juices and juice products have been designed to achieve shelf stability, to remove water (i.e., concentration), or to affect other quality-related factors, and that these treatments, commonly referred to as ''pasteurization,'' are greatly in excess of a process needed to inactivate foodborne pathogens.

Because of the lack of sufficient data to evaluate the effectiveness of labeling statements as safety interventions or to inform consumer choice, the NACMCF stated that it could not strongly endorse labeling as an interim safety measure.

Although the NACMCF did not endorse labeling as an interim safety measure, elsewhere in this issue of the **Federal Register** FDA is proposing interim labeling measures for packaged juice. The agency sets forth its reasons for proposing to adopt these measures in that proposal.

II. Consideration of How to Address Problems

A. Current Regulation of Juice

FDA has established labeling regulations and standards of identity for a number of juices. 21 CFR 101.30 pertains to percentage juice declaration for beverages that contain fruit or vegetable juice. Common or usual name regulations for nonstandardized beverages that contain fruit or vegetable juice are found in 21 CFR 102.33. Standards of identity are found in part 146 (21 CFR part 146) for a number of fruit juices and beverages and in part 156 (21 CFR part 156) for tomato juice. The standard of identity for pasteurized orange juice (§ 146.140) states that ''The orange juice is so treated by heat as to reduce substantially the enzymatic activity and the number of viable microorganisms.'' Pasteurized orange juice must be labeled as such.

In the 1997 Food Code, FDA articulated its policy regarding unpasteurized apple juice (Ref. 54). The code states that food establishments (e.g., nursing homes) that serve apple juice, apple cider, or other beverages that contain apple juice to segments of the population that are highly susceptible to disease (e.g., the elderly) should serve juice that has been pasteurized or that is in a commercially sterile, shelf-stable form, in a hermetically sealed container.

B. The Current Inspection System

Juice processors, like other food processors, are subject to periodic unannounced, mandatory inspection by FDA. This inspection system provides the agency with a picture of conditions at a facility at the time of the inspection. However, assumptions must be made about conditions at the facility before and after that inspection, as well as about important factors beyond the facility that have a bearing on the safety of the finished product. The reliability of these assumptions over the intervals between inspections can create questions about the adequacy of the system.

FDA's inspections are based, in part, upon its regulations on CGMP in the manufacturing, packing, or holding human food in part 110 (21 CFR part 110). For the most part, these regulations set out broad statements of general applicability to all food processing on matters such as sanitation, facilities, equipment and utensils, processes, and controls. HACCP-type controls are listed as one of several options available to prevent food contamination (§ 110.80(b)(13)(i)), but they are not integral to the controls outlined in the regulations.

The inspection and surveillance strategies that FDA uses ascertain a manufacturer's knowledge of hazards and preventive control measures largely by inference (i.e., based on whether a company's products are in fact adulterated, or whether conditions in a plant are consistent with CGMP). It is the manufacturer's responsibility to ensure that its products are in compliance with the act. However, in the face of new pathogens, such as *E. coli* O157:H7, and the risk of illness associated with these pathogens, especially for children, the elderly, and

the immunocompromised, FDA tentatively concludes that, at least for juices, new measures to control microbial, chemical, and physical hazards are necessary to ensure that finished products comply with the act's standards.

C. Alternatives

Comments from the juice meeting suggested several alternatives to ensure that juice products are safe. These alternatives are discussed in sections II.C.1 through II.C.6 of this document along with their impact on the current situation with juice.

1. Increased Inspection

Continuous visual inspection of juice production is not a viable alternative because few hazards associated with juice are detectable through visual inspection.

Another possibility is to direct significant additional resources toward increasing the frequency of FDA's inspection of juice manufacturers, as well as increasing the agency's sampling, laboratory analysis, and related regulatory activities with respect to these products. While many samples of domestic and imported juice products are collected each year for analysis in FDA laboratories, and this sampling is designed to represent a broad range of products and to target known problems, the product sampled represents only a small fraction of the total poundage of the juice products consumed in this country. Substantially more expenditures would be needed to increase laboratory analyses to statistically significant levels.

Even if the funds for increased FDA inspection and increased sampling and analysis were available, this approach alone would not likely be the best way for the agency to spend its limited resources to protect the public health. Reliance on end-product testing involves a certain amount of inefficiency and enormous sample sizes and testing on a lot-by-lot basis are necessary to overcome that inefficiency. Therefore, this option has significant limitations.

Some comments from the juice meeting stated that juice safety would be improved through more local/State inspection rather than Federal inspection.

FDA agrees that more local/State inspection would help to ensure the safety of juices, particularly where because FDA lacks jurisdiction, there is no connection between the juice products and interstate commerce. However, FDA is not in a position to mandate that State and local regulatory agencies conduct additional inspections with their limited resources. Further, FDA cannot mandate that a State ensure that a firm is complying with FDA's regulations. Therefore, increased local/State inspection for juice is not an option upon which FDA can rely.

2. CGMP's

Many comments from the juice meeting urged the implementation of industry CGMP's or sanitation standards to increase the safety of juices. Some comments provided State rules, model CGMP's, or sanitation guidelines for FDA's consideration. Other comments stated that there is a need for more industry education on sanitation and hygiene.

CGMP regulations have a twofold purpose: (1) To provide guidance on how to reduce insanitary manufacturing practices and on how to protect against food becoming contaminated, and (2) to set out objective requirements that enable industry to know what FDA expects an investigator to find when he or she visits a food plant (51 FR 22458 at 22459, June 19, 1986). CGMP's consist generally of broad statements on sanitation, facilities, equipment and utensils, processes, and controls that are of general applicability to food processing. Therefore, FDA issuance of CGMP's for juice would be an approach that could assist manufacturers in the production of safe juices.

FDA encourages the juice industry to use CGMP's to help ensure the safety of their juices. As stated previously, the NACMCF recommended that processors implement and strictly adhere to industry CGMP's. However, the use of CGMP's alone may not be adequate to ensure that juices are safe because of the broad based nature of CGMP's. CGMP's are directed at plantwide operating procedures and do not concentrate on the identification and prevention of food hazards. Therefore, the agency tentatively concludes that CGMP's, although useful, will not be adequate, without additional measures, to ensure the safety of juices.

3. Mandatory Pasteurization

The majority of the comments from the juice public meeting pertained to pasteurization of juice. A number of comments urged FDA to mandate pasteurization or other equivalent treatment of fruit juice to ensure its safety. One person who commented reported that customers of his apple cider had not complained about a difference in flavor when he implemented pasteurization. One comment requested a 2-year grace period for small businesses before implementation if pasteurization were to be required. Another suggested that pasteurization be required for apple cider only if CGMP's and HACCP fail. One comment suggested that pasteurization be required only for apple juice, because of the difficulty in cleaning apples as compared to other fruits.

However, most comments opposed mandatory pasteurization of juices because of: (1) The expense of pasteurization equipment, (2) preference by some consumers for the flavor of unpasteurized over pasteurized juice, (3) the safety record of juices, and (4) degradation of nutritional value from heat treatment. Many comments from small businesses claimed that they would be forced to close their operations if pasteurization were required. Some comments also stated an economic need for the use of dropped apples (''drops''), with one recommending the use of only hand-picked (rather than machine-picked) drops. Other comments stated that the use of drops should be prohibited, at least in unpasteurized juices.

FDA is aware of the significant safety advantages of pasteurizing juice as well as of the reasons that some processors choose not to pasteurize their products. Pasteurization is a heat treatment used to kill the vegetative forms of specific bacteria in liquid or semi-liquid food products. Pasteurization is an effective and proven technology to ensure that juice does not contain pathogens. However, there may be other methods that are equally effective. Thus, the NACMCF recommended the establishment of safety performance criteria for appropriate target organisms rather than the establishment of a specific intervention technology. The NACMCF stated that safety performance criteria would be most effective.

For example, whole oranges with an intact skin may be processed so that pathogens on the surface of the fruit are destroyed. Because pathogens are not reasonably likely to be present in the interior of an orange, surface treatment could be adequate to ensure the safety of the juice. This example illustrates that if FDA were to mandate pasteurization, such action could have the effect of limiting the development of new technologies that are as effective as pasteurization in particular circumstances but less intrusive and less expensive.

Therefore, the agency tentatively concludes that relying on safety performance criteria, as recommended by the NACMCF, is an approach preferable to pasteurization. However, if the use of safety performance criteria

does not significantly decrease the number of microbial outbreaks caused by juice, the agency may consider adopting a regulation that mandates pasteurization.

The agency disagrees with the comments that stated that it should require that apple juice be pasteurized because apples can be difficult to clean. FDA recognizes that pastuerization is a process that has been validated to meet NACMCF's recommendations. Manufacturers may be able to use other technologies and practices provided that their process is validated to achieve a 5-log reduction in the target pathogen. Therefore, reliance on safety performance criteria is a better long-term approach because it provides for the development of new technologies.

A number of comments at the juice meeting urged FDA to consider alternatives to pasteurization to increase the safety of juices. Alternatives suggested by the comments included extreme isostatic pressure, high pressure sterilization, ultra short time-heat exchanger processing, ohmic heating, aseptic packaging, modified atmosphere packaging, ultrafiltration, high temperature and high pH adjustment of wash-water, ultrahigh hydrostatic pressure, electric pulses, electromagnetic field, pulsed light, ultraviolet (UV) water treatment, UV treatment with photoreactivation, electron beam sterilization, irradiation, ozonated water treatment, microbiocidal additives (benzoate, sorbate), and pH adjustment. The comments recommended that sanitizers or ingredients for washes include use of chlorine, chlorous acid, chlorine with emulsifiers, trisodium phosphate, peroxyacetic acid, peracetic acid, or dimethyl dicarbonate.

The agency agrees that there may be a number of agents that can reduce the number of microorganisms present in juice. As the NACMCF recommended, a tolerable level of risk may be achieved by interventions that have been validated to achieve a cumulative 5 log reduction in the target pathogens or a reduction in yearly risk of illness to less than 10^{-5}, assuming consumption of 100 mL of juice daily. However, the NACMCF did not specify the manner in which this risk reduction should be accomplished, only the target that must be reached. In section IV.M of this document the agency will discuss its proposed approach as to how this performance standard will apply to juice.

4. Labeling

A number of comments suggested that labeling to distinguish pasteurized from unpasteurized juice would enable consumers to make an informed choice. One of the comments requested warnings to those ''at-risk,'' one urged the publication of warnings in the newspaper, and another wanted labeling with no warning. Rather than labeling, one comment suggested point of sale information. One comment urged FDA not to require labeling to distinguish pasteurized from unpasteurized juices.

The NACMCF recommended research on labeling information needed for consumer understanding and choice of safer juice products. The NACMCF concluded that, while the risks associated with specific juices vary, there are safety concerns associated with juices generally, especially unpasteurized juices.

Labeling whether a product is pasteurized or unpasteurized is useful information that the agency encourages processors to place on labels. However, such labeling would not inform purchasers of unpasteurized product that children, the elderly, and the immunocompromised are ''at-risk'' from consuming the product. Without effective consumer education, the label statements ''pasteurized'' and ''unpasteurized'' are likely to have relatively little meaning to consumers and could even cause confusion because some consumers might select unpasteurized juice, considering it more ''healthy'' because it is less processed. Finally, a labeling requirement that focuses only on whether a product is pasteurized or unpasteurized does not take into account technologies other than pasteurization that are adequate to control pathogens, and, thus, such a requirement could be viewed as restricting the development of new technologies.

The agency outlined interim measures in a notice published August 28, 1997 (62 FR 45593), and elsewhere in this issue of the **Federal Register**, FDA is issuing a proposal on labeling for packaged juice. These labeling measures attempt to provide information on the risks that juice that has not been processed to control for pathogens poses to children, the elderly, and the immunocompromised. The agency is proposing that the labeling measures be superseded when these juice products are processed under adequate HACCP programs or are otherwise processed to destroy pathogens (e.g., pasteurization).

It is possible for firms that manufacture juice to control for pathogens. Labeling a product to alert consumers to possible harmful effects from its consumption must not substitute for a manufacturer adequately addressing those concerns during processing. FDA is reluctant to rely on labeling as a safety measure and does so only when its analysis of the countervailing factors reveals that, on balance, labeling provides the most reasonable approach to protecting the public health. Juice is a product that is typically consumed by children, as well as adults. Therefore, FDA tentatively concludes that, for juice, manufacturers need to implement controls for pathogens to ensure that their products are safe and not rely solely on labeling, except as an interim measure. FDA requests comment on this tentative conclusion.

5. Education

Other comments from the juice meeting suggested that education would increase the awareness associated with the safety of juices and of all foods. Some comments suggested that more industry education or training was needed. Other comments wanted more consumer education, especially for those at highest risk from foodborne disease.

The NACMCF recommended that the industry be educated on basic food microbiology, the principles of cleaning and sanitizing equipment, CGMP's, and HACCP. FDA agrees that industry education can serve a valuable role in controlling potential food hazards and encourages the industry to take an active part in educating its employees and utilizing up-to-date technologies. The agency will assist the industry in its education effort.

Concerning consumer education, the agency has launched several initiatives to inform consumers about the potential hazards presented by juice to at-risk individuals (see 62 FR 45593, August 28, 1997). However, no matter how extensive a consumer education initiative the agency undertakes, it is doubtful that consumer education will reach all at-risk consumers. Therefore, consumer education alone will not be adequate to inform the at-risk population of the potential hazards of consumption of juice that has not been processed to control pathogens. Given that effective processing methods are available, primary reliance needs to be placed on them to ensure the safety of juice.

6. The HACCP Option

Many of the attendees at the juice meeting urged FDA to mandate HACCP for juice processors, whereas others were opposed. A number of the attendees urged use of CGMP's together with HACCP. Some attendees at the juice meeting recommended that microbiological criteria or performance

standards be used in addition to HACCP, with two suggesting a 5 log reduction for *E. coli* O157:H7.

The NACMCF concluded that HACCP and safety performance criteria can provide the general conceptual framework needed to ensure the safety of juices, and that validation of the HACCP plan for the juice process (i.e., ensuring that the process is adequate to control hazards) must be an integral part of this framework. The NACMCF stated that processors should establish HACCP control measures based on a thorough hazard analysis.

HACCP is a preventive system of hazard control that places the responsibility for identifying safety problems with the manufacturer. Use of the HACCP system means that a firm is engaged in continuous problem prevention and problem solving, rather than relying on facility inspections by regulatory agencies or consumer complaints to detect a loss of control. HACCP provides for real time monitoring to assess the effectiveness of control. A HACCP system put in place by a manufacturer for a particular facility is unique and must reflect the type of juice, its method of processing, its packaging, the facility in which it is prepared, and the intended consumers.

As discussed previously, there is sufficient evidence to demonstrate that there are significant problems with the presence of pathogens in some juice products. Pathogens in juice can be controlled by heat treatment. However, there may be other treatments that meet the same performance standard that are equally effective (e.g., multiple barriers, surface treatment of intact fruit). The use of a HACCP system provides flexibility to a processor to use alternative pathogen control methods and, thus, encourages the development of new technologies but does not dictate either their development or use. Moreover, not only is HACCP effective in controlling microbiological hazards, it also is effective in preventing chemical and physical hazards. Thus, HACCP is particularly well-suited for the juice industry given, as discussed previously, the range of hazards that must be addressed in processing juice.

The agency agrees with the comments that urged use of CGMP's together with HACCP. CGMP's form the foundation upon which a HACCP system is built. Therefore, CGMP's are integral to the HACCP approach.

Because there are significant concerns with the microbial safety of juices, HACCP systems must control pathogens. As will be discussed in section IV.M of this document, FDA is proposing a 5 log reduction in target pathogens, as the NACMCF recommended, as a necessary step in a HACCP plan for juice. Validation of a HACCP system must ensure that the process that is employed is adequate to control the relevant pathogens, in addition to chemical and physical hazards. Validation of performance standards consists of determining the ability of the pathogens in question to resist acid and other chemical or heat treatment and the ability of the process applied to overcome that resistance. The agency requests comment on this approach to safety performance criteria. FDA also requests comment on the benefits of requiring a general HACCP approach as opposed to those of specifically requiring pasteurization.

7. Alternative Approach

An alternative approach to mandating HACCP would be to draw a distinction between untreated apple cider and all other juices. Manufacturers of apple cider would be provided a permanent option choosing between labeling or implementing a HACCP program with a 5-log pathogen reduction. All juices other than untreated apple cider would be provided a permanent option of choosing between labeling, implementing a HACCP system, or achieving a 5-log pathogen reduction as discussed in section M of this document, entitled ''Pathogen Reduction.'' The agency requests comments on this alternative approach to a mandatory HACCP program.

D. Decision to Propose HACCP

The evidence discussed in section I.A of this document shows that juices have been a vehicle for pathogens that have caused a number of foodborne illnesses. Pathogens can be controlled through heat treatment. Information set forth in sections I.B and I.D of this document, however, demonstrates that there are many hazards that can occur with juice and juice beverages that cannot be controlled through heat treatment. Although not all of the problems discussed in section I of this document are caused by hazards that could be considered reasonably likely to occur in many juice operations, through the use of HACCP programs, a firm can evaluate its process to determine if the problem could have been controlled.

As discussed in section I.E of this document, the NACMCF stated that HACCP and safety performance criteria can form the general conceptual framework needed to ensure the safety of juices. FDA has evaluated each of the seven alternatives that have been suggested for dealing with the problems with juice. While the agency finds that these alternatives are by no means mutually exclusive, FDA has tentatively concluded that a preventive system, such as HACCP, appears to offer the most effective way to control the significant microbial hazards, along with other hazards, that have become a problem with juice.

Increased inspection, while having some beneficial impact on the safety of juices, is resource intensive to the agency. Even if funds were available to the agency for this purpose, increased inspection would likely not be the best way for the agency to utilize its resources to protect the public health. It is ultimately the responsibility of manufacturers to ensure that their products are safe. A preventive approach, such as HACCP, on the other hand, enhances a processor's ability to make safe products because HACCP concentrates on examining all aspects of production, identifying hazards that are reasonably likely to occur in that production process, and establishing measures that will control or minimize those hazards. HACCP also enhances FDA's inspections because it allows the agency to inspect the production facility more efficiently and then to verify that the firm is operating in accordance with the firm's HACCP plan, and it provides some assurance that any problems that have occurred have been identified and appropriately addressed.

CGMP's, the second alternative to HACCP, are plantwide operating procedures. Although FDA supports the use of CGMP's, it tentatively concludes that use of CGMP's alone would not be sufficient to control the problems with juices because CGMP's do not concentrate on the identification and prevention of food hazards. Nonetheless, CGMP's are necessary to provide the foundation on which a HACCP system is built. Therefore, the agency tentatively concludes that, while CGMP's are important to a HACCP system, they are not an adequate alternative to HACCP.

Mandating pasteurization, the third suggested alternative to HACCP, would reduce many microbial hazards in juices but would eliminate the incentive to develop alternative methods (e.g., use of multiple barriers, surface treatment of fruit) that can accomplish the same purpose. FDA does not want to limit innovative approaches to achieving food safety. HACCP, on the other hand, allows and encourages firms to explore more technologically efficient and more cost-efficient ways of managing all of the hazards that they face. Moreover, pasteurization only controls microbial hazards. HACCP systems can control all

food hazards that are reasonably likely to occur.

Labeling was also suggested as an alternative. FDA acknowledges that, from a public health protection standpoint, there are certain advantages to labeling. Elsewhere in this issue of the **Federal Register**, FDA is proposing to require certain labeling, in the form of a warning statement, for packaged juice products that have not been processed to control, reduce, or eliminate pathogenic microorganisms that may be present in such juices. Such labeling will serve to reduce the risk of foodborne illness. However, such reduction will occur only to the extent that consumers read and understand the labeling. Accordingly, the agency has tentatively concluded that mandating HACCP for most juice products will provide more comprehensive public health protection by greatly reducing the number of juice products that contain dangerous pathogens.

Importantly, manufacturers do have the ability to process juice to control pathogens. Labeling a product to alert consumers to possible harmful effects from its consumption is not a substitute for a manufacturer adequately addressing those concerns during processing. Juice is a product consumed by children, as well as by adults. FDA is reluctant to rely on labeling as a safety measure and does so only when its analysis of the countervailing factors reveals that, on balance, labeling provides the most reasonable approach to protect the public health. Here, a situation in which HACCP offers a real long-term solution to controlling, if not eliminating, hazards in juice, the agency tentatively believes that labeling is not a reasonable long-term approach. The agency is soliciting comment on the appropriateness of this tentative conclusion.

The fifth alternative to HACCP that was suggested is education. Industry education can play a valuable role in the production of safe juices. Consumer education can play an important part in consumer purchasing choices. However, education is only effective if people understand and use the information conveyed. Moreover, even an extensive education program may not reach all consumers. Conversely, mandatory HACCP would ensure that industry produces safe juice, and that the product that reaches consumers is safe.

For the foregoing reasons, FDA has tentatively concluded that HACCP represents the appropriate system of controls that is necessary for producing safe juice products. Therefore, FDA is proposing to add part 120 to its regulations to establish procedures for implementing HACCP systems for fruit and vegetable juices. As the agency did with seafood, it is proposing to issue these HACCP regulations under various sections of the the act, including, most significantly, sections 402(a)(1) and (a)(4) and 701(a) of the act (21 U.S.C. 371(a)).

Section 402(a)(1) of the act states that a food is adulterated if it bears or contains any poisonous or deleterious substance that may render the food injurious to health. Section 402(a)(4) of the act states that a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health. It is important to recognize that section 402(a)(4) of the act addresses conditions that may render a food injurious to health, rather than conditions that have actually caused the food to be injurious (see *United States* v. *1,200 Cans, Pasteurized Whole Eggs, etc.*, 339 F. Supp. 131, 141 (N.D. Ga. 1972)). The question is whether the conditions under which the food is processed and held are insanitary and may render the food injurious to health. The agency tentatively finds that, if a processor of juice products does not incorporate certain basic controls into its procedures for preparing, packing, and holding food, it is operating under insanitary conditions that may render the juice that is produced injurious to health and, therefore, adulterated under the act. Section 701(a) of the act authorizes the agency to adopt regulations for the efficient enforcement of the act.

The legal basis for mandating HACCP systems for juice processors is the same as that for seafood. Additional discussion of the legal basis is set out in the proposed rule (59 FR 4142 at 4150, January 28, 1994) and final rule (60 FR 65096 at 65098) for fish and fishery products.

E. Notice of Intent

FDA published a notice of intent on August 28, 1997 (62 FR 45593), that announced a comprehensive program to address the incidence of foodborne illness related to consumption of fresh juice and to address ultimately the safety aspects of all juice products. The agency invited comment on the appropriateness of its strategy to: (1) Initiate rulemaking on a mandatory HACCP program for some or all juice products, (2) propose that the labels and labeling of some or all juice products not specifically processed to prevent or eliminate the presence of harmful bacteria bear a warning statement informing consumers of the risk of illness associated with consumption of the product, and (3) initiate several educational programs to minimize the hazards associated with fresh juice. The agency stated that it would consider comments received within 15 days of publication of the notice prior to publication of any proposed rule.

Some comments on the notice suggested that FDA mandate HACCP only for fresh juice processors. One comment stated that HACCP should be mandated only for firms that process large quantities of fresh juice. Other comments supported mandatory pasteurization or equivalent treatment of juice, especially apple cider. One comment added that pasteurization and use of CGMP would preclude the need for the mandatory use of HACCP.

In section II.D of this document the agency has already discussed its reasons for proposing HACCP. The illnesses discussed in sections I.A and I.B of this document did not pinpoint problems related solely to fresh juice processors or to the amount of fresh juice that a firm produced. The comments have not provided any new information to alter the agency's tentative conclusion that HACCP is necessary to ensure the safe production of juice. However, FDA requests information on whether there are categories of juice that should be excluded from the proposed regulation.

FDA has reviewed all of the comments received within 15 days of publication of the notice and has determined that the comments provided no information that would cause the agency to conclude that this proposal is inappropriate. The agency has attempted to address these comments to the extent that they are relevant to this proposal. All comments received in response to the notice that address the issues in this proposal will be considered either in this proposal or in any final rule published in response to this proposal.

F. Fresh Produce Guidance

FDA, working with the U.S. Department of Agriculture (USDA) and the agricultural community, has developed voluntary good agricultural practice (GAP) and GMP guidance for fruits and vegetables that has been issued in draft for comment. The guidance, which is a science-based evaluation of risks, will address potential food safety problems throughout the food production and distribution system such as sanitation, worker health, and water quality. This voluntary guidance can be used by both domestic and foreign fresh fruit and vegetable producers to help ensure the safety of their produce.

III. The HACCP System

The HACCP concept is a systematic approach to the identification and assessment of the risk (likelihood of occurrence and severity) of biological, chemical, and physical hazards from a particular food production process or practice and the control of those hazards. HACCP is a preventive strategy for food safety. Under it, the food producer develops a plan that anticipates and identifies the points in the production process where a failure would likely result in a food hazard being created or allowed to persist. These points are referred to as critical control points (CCP's). Under HACCP, identified CCP's are systematically monitored to ensure that critical limits (CL's) are not exceeded, and records are kept of that monitoring. Corrective actions are taken when control of a CCP is lost, including proper disposition of the food produced during that period, and these actions are documented. The effectiveness of HACCP is also systematically verified by the processor.

HACCP has been endorsed by the NACMCF as an effective and rational means of ensuring food safety. HACCP also is recognized in the international food safety community as the state-of-the-art means to ensure the safety and integrity of food. In particular, the Committee on Food Hygiene of the United Nations' Codex Alimentarius Commission (Codex) has endorsed the HACCP concept as a worldwide guideline. The European Union (EU) and other countries around the world have begun to require that foods produced within their borders be processed in a HACCP system. HACCP also is required for shipment of some foods (e.g., seafood) into EU countries.

A. Five Preliminary Steps of HACCP

The NACMCF recommends a process for developing a HACCP system that includes: (1) Assembling a HACCP team, (2) describing the food and its distribution, (3) identifying the intended use and consumers of the food, (4) developing a flow diagram, and (5) verifying the flow diagram (Ref. 55). These steps have been identified by the NACMCF as the ''five preliminary steps'' of HACCP. Although the agency is not proposing to mandate that processors use these preliminary steps, processors will greatly benefit from using these preliminary steps in developing their HACCP systems. The NACMCF advises that the preliminary tasks should be accomplished before the application of HACCP principles to a specific process (Ref. 55).

B. The Seven Principles of HACCP

The NACMCF has developed the following seven principles that describe the HACCP concept:

1. Conduct a Hazard Analysis

The first step in the establishment of a HACCP system for a food production process or practice is the identification of the hazards associated with the product. The NACMCF defines a hazard as a biological, chemical, or physical factor that may cause a food to be unsafe for consumption. The hazard analysis step should include not only a written identification of the hazard but a written assessment of the likelihood that the hazard will occur and its severity if it does occur. This analysis should also involve the identification of CCP's along with control measures for each identified hazard.

2. Determine the CCP's

A CCP is a point, step, or procedure at which control can be applied, so that a potential food hazard can be prevented, eliminated, or reduced to acceptable levels. Points in the manufacturing process that may be CCP's include heat treatment, chilling, specific sanitation procedures, product formulation control, prevention of cross contamination, and certain aspects of employee and environmental hygiene.

3. Establish Critical Limits

This step involves establishing parameters that must not be exceeded for each control measure associated with a CCP. Critical limits (CL's) can be thought of as boundaries of safety for each CCP and may be set for control measures such as temperature, time, physical dimensions, moisture level, water activity, pH, and available chlorine. A CL is used to distinguish between safe and unsafe operating conditions at a CCP. For example, the minimum temperature and time combination that will kill pathogens in a heat treatment step is the CL for that CCP.

4. Establish Monitoring Procedures

Monitoring is a planned sequence of observations or measurements to assess whether a CCP is under control (i.e., operating within its CL) and to produce an accurate record of the monitoring for use in future verification procedures. An unsafe food may result if a process is not properly controlled and a deviation occurs. Because of the potentially serious consequences of a CL deviation, monitoring procedures must be effective. Continuous monitoring is possible with many types of physical and chemical methods. When it is not possible to monitor a CL on a continuous basis, monitoring intervals must be established that are frequent enough to permit the manufacturer to determine whether the step/process/procedure designed to control the hazard is working.

5. Establish Corrective Actions

While the HACCP system is intended to prevent deviations in a planned process from occurring, total prevention can rarely, if ever, be achieved. Therefore, there needs to be a corrective action plan in place to fix or correct the cause of the deviation to ensure that the CCP is brought under control, to ensure that there is appropriate disposition of any food produced during a deviation, and to ensure that records are made of the corrective actions taken. Out of control situations should be used to identify opportunities for improvement of the process to prevent future occurrences.

6. Establish Verification Procedures

This process involves the application of methods, procedures, tests, and evaluations, other than monitoring, to determine the adequacy of, and compliance with, the HACCP system. The major infusion of science in a HACCP system centers on proper identification of the hazards, CCP's, and CL's and the institution of proper verification procedures.

7. Establish Recordkeeping and Documentation Procedures

This principle requires the preparation and maintenance of written HACCP records that list the hazards, CCP's, and CL's identified by the firm, as well as the monitoring, recordkeeping, and other procedures that the firm intends to use to implement the system. This principle also requires the maintenance of records generated during the operation of the HACCP system.

C. History of the Use of HACCP

1. HACCP for Fish and Fishery Products

On December 18, 1995, FDA published a final rule in the **Federal Register** (60 FR 65096) on procedures for the safe and sanitary processing and importing of fish and fishery products (part 123 (21 CFR part 123)) (seafood final rule). The regulations require that seafood processors develop, implement, and document sanitation control procedures and mandate the application of HACCP principles to the processing of seafood. The effective date for the seafood final rule was December 18, 1997.

The regulations proposed herein are based on the seafood final rule with some modification to reflect the differences between seafood and juice products and to reflect recent developments in the application of HACCP. An extensive administrative record was compiled in the seafood proceeding. FDA is incorporating that record as support for the current proposal. Although the regulations proposed herein differ in some aspects from part 123, they are not intended to supersede or otherwise alter the seafood final rule.

2. Advance Notice of Proposed Rulemaking for the Development of HACCP for the Food Industry

In the **Federal Register** of August 4, 1994 (59 FR 39888), FDA published an advance notice of proposed rulemaking (ANPRM) requesting public comment about whether and how the agency should develop regulations that would establish requirements for a new comprehensive food safety assurance program, based on HACCP, for both domestically produced and imported foods. The agency stated its tentative view that, if such regulations were issued, they would enhance FDA's ability to ensure the safety of the U.S. food supply. FDA requested comments on a number of specific issues, as well as on all aspects of such a food safety program.

3. HACCP Pilot Programs

In addition to the ANPRM, FDA also published in the **Federal Register** on August 4, 1994 (59 FR 39771), a notice announcing that it intended to conduct a pilot program in which volunteers from the food manufacturing industry would use a HACCP system that FDA would audit. The pilot program was intended to provide information that FDA could use in deciding whether to propose to adopt regulations and in developing and implementing a regulatory system in which food manufacturers are required to perform the food safety aspects of their operations based on HACCP principles. In the notice, FDA invited individual firms that wished to participate in the program to submit letters of interest. Approximately 50 firms expressed initial interest in participating in the pilot program, and 11 firms were selected to participate. In 1997 FDA completed the pilot program at six firms and published a second interim report.

4. HACCP for Meat and Poultry

On July 25, 1996, USDA published a final rule (61 FR 38806) that, among other things, required that each meat and poultry establishment develop and implement written sanitation standard operating procedures (Sanitation SOP's) and a system of HACCP controls designed to improve the safety of their products. The effective date for the Sanitation SOP's was January 27, 1997, and for the HACCP regulations was January 26, 1998. FDA has reviewed the meat and poultry HACCP regulations and has incorporated portions of them as appropriate in the proposed HACCP regulations for juice.

D. Issues from the ANPRM

FDA received approximately 150 comments in response to the August 4, 1994, ANPRM. The comments represented the views of consumers, consumer organizations, health professionals, academicians, food industry officials, trade associations, and foreign, State, and local government agencies. The agency has attempted to address these comments to the extent that they are relevant to this proposal.

1. The agency asked in the ANPRM how the responsibility for food safety should be shared between the food industry and government. Comments generally agreed that the food industry is responsible for producing safe food products. All respondents on this issue recognized that the Government's role is to verify industry compliance with any applicable safety regulations.

FDA agrees that it is the manufacturer's responsibility to ensure that the food that it produces is safe, and that it is the Government's role to verify that manufacturers are fulfilling their responsibility. Through use of a HACCP system, both the firm and FDA are able to better fulfill their roles. The proposed regulation in part 120 underscores the division of roles. Under the proposed regulation, industry is charged with examining all aspects of production, identifying hazards that are reasonably likely to occur, and establishing measures that will control or minimize those hazards. HACCP records enable the agency to inspect the production facility more efficiently and to verify that the firm is operating in accordance with its HACCP plan. They also give the agency insight into whether any problems that have occurred have been identified and appropriately addressed.

It is important that the juice industry focus on its responsibility to produce safe food. Recent outbreaks evidence that some members of the industry have not kept up with the need to evaluate the hazards presented by juice and to design processes to address those hazards. Firms need to be aware of the emerging problems presented by their raw materials and to decide whether, and if so what, steps are necessary to address these problems. Firms may decide that it is necessary to incorporate a step designed to kill bacteria into their process (e.g., pasteurization), that there are alternative steps that they can take to ensure the safety of their products, or that, given the nature of the raw materials, no steps are necessary. Firms also need to monitor the process that they decide to employ to ensure that it is functioning adequately and appropriately. FDA notes that some firms have already addressed food safety concerns and have implemented HACCP systems.

Moreover, given the heightened concerns about these products, Government needs to be in a position to fulfill its role of verifying that industry is doing its job. Given the sporadic and variable way in which the problems that have been associated with juice arise, sampling and end-product testing of juice products will not enable it to do so. Other steps that will give Government insights into the production itself appear to be in order.

2. FDA requested comment in the ANPRM about the likelihood of occurrence of a hazard that would warrant HACCP-type control. Generally, the comments consistently identified two features that would characterize a properly formulated definition of likelihood: Processing conditions and nature of hazard. The majority of comments offered by the food industry stipulated that the necessary condition for likelihood of occurrence of the hazard appropriate to trigger HACCP control must not be speculative, as in worst-case scenarios, but be real, practical, and intrinsic to the processing or hazards demonstrably present for specific commodities. Several responses recommended that the question be referred to broadly based expert panels to establish the likelihood of risk.

According to the NACMCF, each potential hazard is evaluated based on the severity of the potential hazard and its likely occurrence (Ref. 55). Severity is the seriousness of the consequences of exposure to the hazard. Considerations of severity (e.g., impact of sequelae and magnitude and duration of illness or injury) can be helpful in understanding the public health impact of the hazard. Likelihood of occurrence of a hazard is generally judged based on processing experience, epidemiological data, and information in the technical literature.

The agency agrees with the comments that stated that the processing conditions and the nature of the hazard are key elements in assessing the

likelihood of a hazard occurring. It would be futile for processors to attempt to control for every theoretical hazard because doing so would entail assessing hazards that the processor could not reasonably anticipate would actually occur. The assessment of the likelihood of risk of illness or injury to consumers should be practical for the specific commodity and not be speculative. For example, use of pesticides on fruits and vegetables is a common practice while these foods grow. The presence of pesticides on fruits or vegetables used to make juice is considered a hazard if: (1) The pesticide is not approved for use on the fruit or vegetable, or (2) it is found in amounts above its EPA established tolerance. If a pesticide is applied to fruits or vegetables in conformance with EPA regulations, and the appropriate period of time has elapsed between application and harvest, the presence of the pesticide is not considered to present a hazard that is reasonably likely to occur.

The agency disagrees that it should rely on broadly based expert panels to establish likelihood of occurrence of a hazard. Although such committees could provide insight into the issue, on balance, the insights that they would be likely to provide would not justify the expenditure of resources that convening such committees would require. However, interested persons are welcome to consider voluntarily the question and to submit the results of their consideration to the agency.

3. Comments on the ANPRM stated that because epidemiological studies consistently show that microbial pathogens are the most significant source of food hazards, issues such as pesticides, heavy metals, filth, physical contaminants, and others pale by comparison with the immediate health consequences of foodborne microbial pathogens. They stated that HACCP is best suited for preventing microbial hazards rather than physical or chemical hazards because CCP monitoring can be readily established in a timely fashion for pathogens and, particularly, for the unsanitary conditions that promote their growth.

The comments added that effects that result from events that occur after the food has left the processor's HACCP system are not controllable by the processor. The comments said that this fact is significant because food service establishments and the lack of consumer education have contributed to the majority of incidences of foodborne illness reported in current epidemiological data. They stated that HACCP systems are essentially localized management tools that will not permit any measurable improvement in national or international food safety effectiveness and have been implemented voluntarily solely as a corporate practice to provide strategic business advantages in increasingly competitive markets.

The comments stated that regulation may be premature because of the adequacy and feasibility of presently available analytical tests to control all hazards. They stated that, consequently, HACCP is an excellent tool but only in the very specific case of high-risk food processing that is focused on controlling microbiological risks. The comments stated that, instead of misdirecting its efforts, FDA needs to look to itself to reinforce food preparation safety awareness at food service establishments and to pursue vigorously an enhanced consumer education policy on unsafe food practices as the best preventative food risk control program.

FDA agrees that microbial hazards are a significant source of food hazards. FDA also agrees that HACCP is an ideal mechanism to deal with microbial hazards because it is a system of prevention. Prevention makes up for the inadequacies of end-product testing. For example, for maximum quality, nonshelf stable juice must be distributed quickly, and end-product testing usually takes at least several days to obtain results. If pathogens are discovered in the juice after distribution, the product must be recalled, and consumers may have already ingested product. Finally, the particular samples taken in end product testing may not contain pathogens because the pathogens may not be ubiquitous in the lot (i.e., there may be low level or sporadic contamination) and thus produce false negatives.

A system of preventive controls, like HACCP, on the other hand, is designed to identify and manage conditions where pathogens could be present in juice while it is still being processed. HACCP is designed to ensure that there is early discovery, and timely correction, of any problems that may develop. Although HACCP is well suited for preventing microbial hazards, this does not mean, as some of the comments asserted, that it is not useful for other types of hazards. As the NACMCF has recognized, it is well suited for preventing chemical and physical hazards. For example, processors can establish CCP's to prevent pieces of glass from contaminating a product when glass bottles are used.

The NACMCF endorses HACCP as an effective and rational means of assuring food safety (Ref. 55). According to the NACMCF, its use will likely result in measurable improvement in food safety. Under HACCP, processors view the processing plant from a prevention perspective and thus are in a position to react appropriately to new hazards if they arise. In preparing this proposal, FDA has reviewed the history of juice related outbreaks. All of these outbreaks might have been prevented if a HACCP system of the type that FDA is proposing herein had been in use.

The agency agrees that there are hazards that can occur after food has left the processing plant that the processor cannot control. The agency has established the Food Code to assist State agencies and food workers in retail food establishments and has addressed handling of high risk foods in the Food Code. FDA also provides consumer information on food safety through a consumer hotline, public affairs specialists in FDA's district offices, and various brochures and other publications. These efforts are intended to educate consumers on safe handling of foods at home. In addition, as described in the interim notice, the agency has initiated a consumer education program concerning juice that is not treated to prevent or eliminate the presence of harmful bacteria.

4. The agency requested information in the ANPRM on its possible role in assisting the food industry in the development of HACCP plans. Comments stated that FDA preparation of general background materials on HACCP would be beneficial in establishing a common approach to plan development, in assisting hazard identification analysis, and in using consistent language. They stated that FDA could provide informational resources such as examples of HACCP plans adaptable to the individual circumstances of a business' operations or consultative documents that could serve to guide plan development.

However, some comments urged that FDA avoid over-regulation. They stated that an excessively ambitious regulatory approach will limit the effectiveness of any HACCP program.

The agency agrees that it should avoid over-regulation because such an approach can inhibit future developments and new technology in HACCP systems and in safe food processing. FDA is proposing a HACCP regulation that, if adopted, will be mandatory for juice processors (as defined at proposed § 120.3(i)) but that can be used as a model for other foods in that it outlines the minimum essential components of a HACCP system. To the extent possible, the proposed regulation is in harmony with

the existing HACCP regulations for seafood and meat and poultry.

FDA has developed the ''Fish & Fisheries Products Hazards & Controls Guide'' to assist manufacturers in the implementation of HACCP for seafood. The Federal Safety and Inspection Service (FSIS) has developed, in conjunction with the International Meat and Poultry HACCP Alliance, 13 HACCP models for meat and poultry products, a ''Guidebook for the Preparation of HACCP Plans,'' and the ''Meat and Poultry Products Hazards and Control Guide.'' However, it is not clear whether FDA will be able to provide such detailed information for juice. Therefore, in this rulemaking, the agency will attempt to provide guidance, to the extent possible, concerning the application of the regulation to juice.

5. Some comments on the ANPRM stated that, if EPA tolerances for pesticides in agricultural commodities become HACCP-focused safety issues in food processing and service industries, then explicit coordination by FDA with EPA is needed to define truly significant hazards. They stated that this effort would greatly assist HACCP development in such circumstances, so that duplication of effort would be avoided, consistency among regulatory requirements would be achieved, and impediments to international commerce would be removed.

FDA has attempted to harmonize its regulations with those of other Federal agencies and with Codex. EPA establishes regulations for pesticide use and tolerances for pesticide residues, and FDA and USDA enforce those tolerances on foods.

Under section 402(a)(2)(B) of the act, a food is deemed to be adulterated if it bears or contains a pesticide chemical residue unless a tolerance or an exemption for such pesticide has been established, and the quantity of such pesticide on the commodity is within the tolerance limits. Pesticide chemical residues for which there is no tolerance or exemption are deemed to be unsafe as a matter of law. HACCP is intended to protect against unsafe products. Thus, there is no reason why pesticide residues and similar types of food safety measures should be outside the scope of HACCP.

6. In the ANPRM, the agency asked if there was a need for microbiological criteria in HACCP regulations. Some comments favored inclusion of microbiological criteria for known high risk foods because such criteria are practical, efficient, and cost effective. However, most comments maintained that microbiological criteria, set as national standards, are not warranted because: (1) Criteria are discordant with HACCP purposes because they depend on end product testing, (2) criteria possess inadequate scientific basis, and (3) criteria are preemptive of localized development of HACCP systems.

The agency tentatively agrees with those comments that stated that microbiological criteria in HACCP regulations are warranted for some foods. Contrary to what many of the comments asserted, effective microbial controls depend not on end product testing but on processing controls and the establishment of CL's. For example, juice made from apples that have fallen on the ground must be processed in some manner to destroy pathogens because pathogens are likely to be present and, as discussed previously, end product testing may produce false negatives. If a regulation is flexible, it should not ''preempt'' the processor's development of HACCP, but it can provide the CL's needed for the safe processing of food under a HACCP system. However, the agency agrees that the decision on which processing controls are to be used must have a valid scientific basis.

Microbial pathogens have emerged as a significant problem in unpasteurized juice in recent years. The NACMCF recommended that safety performance criteria, rather than a specific intervention technology, be mandated for juice (Ref. 53). The safety performance criteria recommended by the NACMCF is whether the measures that a juice processor employs have been validated to achieve a cumulative 5 log reduction in the target organisms or a reduction in yearly risk of illness to less than 10^{-5}, assuming consumption of 100 mL of juice daily. As will be discussed in section IV.M of this document, FDA is proposing to require that firms include in their HACCP plans measures that will produce, at a minimum, a 5 log reduction in target pathogens.

7. Comments on the ANPRM stated that FDA should require end product testing records to provide information as to the effectiveness of a HACCP program. These comments stated that end product testing was practical because mandated testing was a necessary, continuing, and recordable validation of the completeness of a HACCP system, thereby ensuring that 100 percent control is manifested.

Comments from the juice meeting also supported the use of end product testing. One of the these comments proposed using testing to decide whether to pasteurize each lot. Several comments pointed to new rapid testing technologies and testing kits for pathogens.

However, other comments maintained that information generated from end product tests would not be useful. One comment stated that end product testing activities were counterproductive to a well-planned HACCP system. Furthermore, these comments added, any requirements that FDA puts forward must be practical, and no process can be regulated into 100 percent certainty.

The agency is not proposing to require end product testing. End product testing is most useful where there are high levels of the substance being tested, and there is uniformity throughout the lot being sampled. Product sampled for testing for microbial hazards, where a pathogen (e.g., *E. coli* O157:H7) is hazardous even at very low levels, or for physical hazards (e.g., glass), where the hazard is the presence of a discrete unit, may not contain the hazard even under the best sampling procedure. In these cases end product testing is likely to produce false negatives and, thus, to provide scant protection. It is prohibitive to use end product testing adequately in these situations because of the amount of testing that is necessary for a statistically valid test, and because it would be necessary to channel a significant portion of the product for that testing. Therefore, the agency has tentatively concluded that use of control measures under a HACCP system to prevent hazards from occurring, with subsequent monitoring, verification, validation, and recordkeeping, is more effective than end product testing in ensuring that food is safe. Thus, FDA has not included a requirement for end product testing in this proposed rule on juice products.

8. The agency asked in the ANPRM whether it should mandate HACCP for all segments of the food industry. Many comments stated that mandatory HACCP regulations for low-risk foods would be inappropriate because trying to manage low risk hazards through HACCP would dilute agency resources and therefore the effectiveness of HACCP. The comments stated that FDA could utilize its resources most efficiently by focusing on those high-risk food processing operations identified in its 1993 model Food Code as ''Potentially Hazardous.'' They stated that the U.S. food supply is already demonstrably the world's safest, so that there is no valid reason for requiring HACCP plans of the entire industry. The comments stated that enforcement mechanisms in the act are, and will continue to be, sufficient without adding to the regulatory burden on

industry. They added that incorporation of HACCP into food industry operations should be permitted to proceed on a voluntary basis, unless a well-defined need requires implementation through specific authority provisions of the act into specific high-risk segments of the food industry.

However, some comments stated that unless all segments of the food chain are mandatorily included, adoption of HACCP is unlikely to result in measurable enhancement of the safety of the food supply. They stated that less than universal coverage would create confusion about what should be excluded. The comments stated that any attempt to limit HACCP to identified ''high-risk'' processors would hinder efforts to address significant public health problems that may arise in the future. They concluded that it is not unduly burdensome to mandate HACCP for all. The comments maintained that HACCP regulations should be as comprehensive as practicable and applied throughout the food chain to the fullest extent possible and reasonable, and that HACCP principles must be applied from farm to fork.

FDA disagrees with the comments that stated that HACCP is inappropriate for low-risk foods. Both food processors and government regulatory agencies would benefit from the use of HACCP systems. The U.S.'s excellent record for having a safe food supply does not mean that this country should not consider ways of improving on that record. In the face of emerging pathogens and other new food hazards, HACCP provides a flexible system in which processors reassess their procedures on an on-going basis. HACCP also enables processors to meet future demands.

The use of HACCP allows food processors to concentrate their efforts on the aspects of the processes that they use where risks are highest and provides regulatory agencies with assurance that processors are observing prudent processing practices. HACCP also provides assurance that problems in the process are likely to be discovered, and that unsafe product is unlikely to leave the firm. The complexity of HACCP is a function of the number of hazards that must be controlled and the nature of the controls for each hazard. Foods that involve few hazards will tend to have fewer CCP's, and, conversely, those that have multiple hazards will tend to have more complex HACCP plans and monitoring requirements.

FDA is proposing a regulation that will mandate HACCP for juices. The agency has tentatively concluded that there is a safety basis to require that processors use HACCP systems in the processing of juice. As the agency gains experience and additional information from the pilot program and from seafood HACCP implementation, it will examine the appropriateness of expanding the scope of proposed part 120 (if the agency adopts it) to include other foods. Clearly, the agency will consider HACCP's use with foods that it has identified as presenting likely hazards, as it is doing in this proposal.

In developing the proposed regulations for juice, FDA came to recognize that the elements of a HACCP regulation for juice are really no different than those for seafood. This insight suggests that part 120 can act as a model for HACCP for other parts of the food industry should the agency become aware of facts that would justify extending the coverage of the regulation. Firms that are interested in voluntarily instituting HACCP can use the regulations in part 120 as a guide for doing so.

9. The ANPRM requested information on the criteria that FDA should use in deciding whether to cover some or all segments of the food industry with a mandatory HACCP rule. Some of the comments stated that exclusions cannot be justified on the basis of business size because about 75 percent of the food industry would be considered to be small businesses. The comments asserted that exclusions can only be judged with respect to properly defined risks for the food hazards involved in producing the end-product.

FDA agrees that exemptions from HACCP regulations cannot be justified on the basis that a business is small because food hazards that are reasonably likely to occur in the production of most foods occur regardless of the size of the firm. The agency also agrees that any exceptions to mandatory HACCP systems must be based on instances in which risks are not reasonably likely to occur. However, FDA is required by law to consider ways to assist small businesses when it implements regulations. While FDA does not propose to exempt any small businesses from the food safety requirements in this proposed rule, FDA is considering ways to provide regulatory options that will serve to reduce the burden of compliance on such small businesses.

IV. FDA's Proposal

A. Applicability

1. Scope

The agency tentatively concludes that HACCP is necessary for the safe and sanitary production of fruit and vegetable juices to address the special concerns discussed previously. Therefore, FDA is proposing new § 120.1(a), which states that part 120 applies to juice and defines what juice means for purposes of this regulation.

Fruit and vegetable juices may be used as ingredients in other beverages (e.g., flavored bottled waters; juice beverages and cocktails). These products often resemble juices, are processed in a manner that is similar to juices, and handled by consumers similarly to juices. Thus, they can present the same food hazards as juices. Therefore, FDA is proposing to require that any juice sold as such or used as an ingredient in beverages be processed in accordance with the requirements of part 120.

As stated in section II of this document, FDA has established standards of identity for a number of fruit juices in part 146 and for tomato juice in § 156.145. These standardized juices are generally described as the liquid extracted or expressed from a fruit or vegetable. However, prune juice (§ 146.187) is prepared from a water extract of dried prunes.

A typical dictionary definition of the term ''juice'' is a fluid naturally contained in plant or animal tissue (Ref. 56). As described above, the present situation has demonstrated a need to control food hazards associated with fruit and vegetable juices. The present situation does not include oil extracts of fruits and vegetables (e.g., olive oil) because these are not traditionally considered juice. Some juices (e.g., banana juice) and fruit nectars, when purees of the fruit used, need to be included in any definition FDA proposes because such purees are often blended with other juices. If there are food hazards associated with extractives of a fruit or vegetable, those food hazards will be present in purees of that fruit or vegetable. Concentrates of juice and purees also need to be included in the definition because, if a hazard is present in the juice or puree, it could also likely be present in the juice concentrate. Therefore, the agency is tentatively defining ''juice'' as the aqueous liquid expressed or extracted from a fruit or vegetable, purees of the edible portions of a fruit or vegetable, or any concentrates of such liquid or puree.

The agency requests comments on the definition of ''juice.'' FDA also requests comments on the scope of the regulation and on whether it should mandate HACCP for all types of juices, or whether it would be sufficient to mandate HACCP for certain types of juices.

2. Effective Date

The seafood final rule provided processors 2 years to implement HACCP. This was done to: (1) Allow time for training of industry personnel and regulatory personnel; (2) provide the States with the time to have a full opportunity to understand and respond to the effects of these regulations; (3) increase the likelihood that more agreements with other countries will exist; (4) increase the opportunity for processors to engage in ''voluntary'' HACCP inspections in advance of the effective date to obtain preliminary, informal feedback from the agency on their progress; and (5) allow incorporation of modifications made in the final rule and publication of FDA assistance materials for the seafood industry (60 FR 65096 at 65169).

The period of time between publication of the final rule and the effective dates of the HACCP regulations for meat and poultry issued by FSIS are: (1) Eighteen months for large establishments with 500 or more employees, (2) Thirty months for smaller establishments with 10 or more employees but fewer than 500, and (3) Forty-two months for very small establishments with fewer than 10 employees or annual sales of less than $2.5 million (61 FR 38806).

A comment from a fresh juice trade association submitted to the agency in response to the NACMCF recommendations to FDA on the safety of juices, requested that FDA mandate HACCP for all juice products and phase this requirement in over a 3-year period from the publication of the final rule in a manner similar to the FSIS HACCP regulation. The comment requested that FDA consider annual inspections of fresh juice firms until the regulation is effective. It stated that the delay in implementing HACCP requirements would allow FDA and juice processors the ability to review conclusions of specific research and establish performance standards based on this research.

Comments on FDA's notice of intent (62 FR 45593) generally supported a phased-in approach for small firms taking 3 to 4 years. However, one comment expected that a phase-in approach would take no more than 2 years.

The agency is considering the significant issues surrounding orderly implementation of HACCP. FDA must balance the need for immediate implementation of HACCP, because of its associated food safety benefits, against the costs of implementation and consider options to minimize the burden to small businesses. The proposed timeframe for implementation of these regulations attempts to balance these competing concerns. The implementation of HACCP may be more burdensome for small firms than for large firms. Large firms tend to have quality control personnel already in place. In addition, many regulatory requirements are less burdensome for a large firm in proportion to output than they are for a small firm.

FDA recognizes that HACCP systems cannot be developed and implemented overnight. The HACCP system of controls can involve new ways of thinking and performing on a routine basis.

The agency issued a notice on August 28, 1997 (62 FR 45593), that provided interim measures, and elsewhere in this issue of the **Federal Register**, FDA is proposing to require labeling for juice to address the agency's immediate public health concerns. If finalized, these measures will require labeling on juice to provide information that juice unprocessed to control pathogens poses risks to children, the elderly, and the immunocompromised. The agency is proposing that the labeling measures be superseded once packaged juice products are processed under adequate HACCP programs, or are otherwise processed in a manner to destroy pathogens (e.g., pasteurization). Therefore, as proposed, before the applicable effective date, juice will be processed to control for pathogens or, if not, will bear labeling to alert consumers that such processing has not occurred. After any applicable effective date, processors will use HACCP systems in the production of juice.

The agency has considered the precedents established by other HACCP regulations and the comments submitted on juice. There are two significant differences between the HACCP regulation that FDA is proposing for juice and the HACCP regulations for seafood and for meat and poultry. First, FDA has issued interim guidance suggesting that juice that has not been processed to control pathogens be labeled accordingly. Elsewhere in this issue of the **Federal Register**, the agency is proposing to require such labeling. Second, at the present time, FDA's available resources would make it very difficult, if not impossible, to implement a comprehensive inspection program for the entire juice industry. A phased in approach for compliance will thus ease the burden not only on small businesses but also on the agency itself. Accordingly, FDA is proposing that the regulations proposed herein generally be effective 1 year after the date of publication of the final rule, with special provisions that will extend the phase-in to up to 3 years after publication of the final rule. This proposed phase-in approach will permit the regulated industry time to accomplish the training of personnel and adjust its activities to include necessary HACCP activities and takes into account the needs of smaller businesses.

The agency proposes to establish a timetable for phasing in HACCP based on business size. FDA proposes in § 120.1(b) that the effective date be 1 year following publication of the final rule. The agency is proposing that, by its terms, the regulation will not be binding until 2 years following the date of publication of the final rule for small businesses employing fewer than 500 persons (§ 120.1(b)(1)). This is based on the definition of a small business used by the Small Business Administration. In addition, the agency is proposing that, by its terms, the regulation will not be binding until 3 years following the date of publication of the final rule for very small businesses that have either total annual sales of less than $500,000, or that have total annual sales that are greater than $500,000 but total annual food sales of less than $50,000, or that employ fewer than an average of 100 full-time equivalent employees and that sold fewer than 100,000 units of the product in the United States (§ 120.1(b)(2)). These criteria are consistent with those that the agency has used in its regulation on small firms and compliance with the nutrition labeling rules that implement the Nutrition Labeling and Education Act (the 1990 amendments) (61 FR 40963) (see § 101.9(j)(1) and (j)(18)) (21 CFR 101.9(j)(1) and (j)(18)). In the 1990 amendments context, these criteria represent the outcome of three hearings in different parts of the country, an act of Congress, and informal rulemaking by FDA. Thus, FDA tentatively concludes that food manufacturers agree with and understand the definition of very small businesses. As discussed in the next section of this document, for purposes of this proposed rule, the agency has tentatively decided that a retail establishment as set out in proposed § 120.3(h)(2)(iii) includes a very small processor that makes juice on its premises and directly sells this juice both to consumers and other retailers provided that total juice sales do not exceed 40,000 gallons per year.

In implementing proposed § 120.1(b)(2), FDA intends to use the definitions for the terms ''unit,'' ''food product,'' ''person,'' and ''full-time equivalent employee'' in

§ 101.9(j)(18)(vi). These definitions are as follows: (1) ''Unit'' means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers; (2) ''food product'' means food in any size package that is manufactured by a single manufacturer or that bears the same brand name, that bears the same statement of identity, and that has similar preparation methods; (3) ''person'' means all domestic and foreign affiliates, as defined in 13 CFR 121.401, of the corporation, in the case of a corporation, and all affiliates, as defined in 13 CFR 121.401, of a firm or other entity, when referring to a firm or other entity that is not a corporation; and (4) ''full-time equivalent employee'' means all individuals employed by the person claiming the exemption. The number of full-time equivalent employees is determined by dividing the total number of hours of salary or wages paid directly to employees of the person and of all of its affiliates by the number of hours of work in 1 year, 2,080 hours (i.e., 40 hours x 52 weeks).

FDA is committed to its mission of ensuring that food is safe and not misbranded. This commitment is the basis for proposing interim labeling measures. The agency tentatively finds that a phase-in HACCP implementation is necessary because of the logistical effort required to manage a fundamental change in work processes, roles, and responsibilities for smaller processors. The proposed implementation schedule reflects the abilities of processors of varying sizes to implement HACCP, and the time needed by industry to develop HACCP plans and train employees.

Upon the proposed implementation date, processors must be ready to operate their HACCP system, and FDA will conduct inspection activities according to HACCP principles to ensure that the HACCP system is operating acceptably. FDA requests comment on its proposed phased-in implementation of HACCP.

B. Definitions

FDA is proposing in the introductory paragraph of § 120.3 that the definitions and interpretations of terms in section 201 of the act (21 U.S.C. 321), in § 101.9(j)(18)(vi), and in part 110 be applicable to such terms when used in part 120, except where they are redefined in § 120.3.

The agency is proposing to include in § 120.3 all definitions applicable to juice that are in the seafood HACCP regulation. The following terms have proposed definitions that are the same as their definitions in § 123.3: ''critical limit'' (§ 120.3(d)), ''food hazard'' (§ 120.3(e)), ''importer'' (§ 120.3(f)), ''shall'' (§ 120.3(j)), and ''should'' § 120.3(k)).

However, FDA is proposing to modify the term ''preventive measure'' to ''control measure'' (§ 120.3(b)) and to modify its definition from that used in the seafood HACCP regulation (§ 123.3(i)) to conform with recent NACMCF changes in terminology (Ref. 55). The term ''control measure'' is used because not all hazards can be prevented, but virtually all can be controlled to some degree. The new NACMCF definition describes the control measures as actions or activities rather than as chemical, physical, or other factors. Further, the term ''control'' is clarified to mean prevention, elimination, or reduction of hazards. The agency tentatively concludes that the recent NACMCF definition better describes the measures that processors must take. Therefore, FDA is proposing that ''control measure'' means any action or activity that can be used to prevent, eliminate, or reduce a hazard.

The NACMCF also recently modified its definition for ''critical control point'' (Ref. 55). The modified definition incorporates the new definition of ''control measure'' and emphasizes the essential or critical nature of the step. Thus, FDA tentatively concludes that the recent NACMCF definition better characterizes the term. Therefore, the agency is proposing in § 120.3(c) that ''critical control point'' means a point, step, or procedure in a food process at which a control measure can be applied and at which control is essential to reduce an identified food hazard to an acceptable level.

The seafood HACCP regulation defines ''processing'' in § 123.3(k) with specific product application. To apply these definitions to juice and to avoid listing specific processes, the agency is proposing in § 120.3(h)(1) to define ''processing'' as activities that are conducted by a processor that are directly related to the production of juice products.

As with the seafood HACCP regulation, there are certain handlers of juice products that are not covered by the proposed definition. FDA has tentatively concluded that harvesting, picking, or transporting raw agricultural ingredients of juice products, without otherwise engaging in processing, should not be included in the term ''processing'' (§ 120.3(h)(2)(i)). FDA has developed voluntary GAP guidance that has been issued in draft for comment and will apply to these activities. The agency believes that growers will find GAP's useful and that the regulations that it is proposing in this rulemaking will, if adopted, reinforce use of both FDA and specific industry GAP's, thus affecting harvesting, picking, or transporting indirectly through processor and importer controls over raw materials and imported shipments (e.g., preventive controls such as the purchasing of raw materials only from farms that engage in proper handling of produce).

The agency notes that, with FSIS, it published an ANPRM (61 FR 59372, November 22, 1996) concerning transportation and storage requirements for potentially hazardous foods. In that ANPRM, FDA and FSIS requested information and comments on approaches that the two agencies should take to foster food safety improvements in the transportation and storage of potentially hazardous foods. While juice has not historically been considered a potentially hazardous food, recent illnesses associated with juice necessitate reconsideration of whether this food should not be included in that category. FSIS and FDA are reviewing the comments received in response to the joint transportation notice and will decide whether rulemaking is warranted. FDA invites comment on whether its approach to transportation is adequate.

The agency has also tentatively decided to exclude the operation of a retail establishment from the definition of ''processing'' (§ 120.3(g)(2)(ii)). For purposes of this rule, the agency has tentatively decided that a retail establishment as set out in proposed § 120.3(h)(2)(iii) includes a very small processor that makes juice on its premises and directly sells juice to consumers and other retailers provided that total juice sales do not exceed 40,000 gallons per year.

FDA has traditionally refrained from directly regulating retail establishments, although it has authority to do so. FDA provides training and other forms of technical assistance to States and local governments who inspect retail food establishments through the agency's retail Federal/State cooperative program. A major part of that cooperative program involves the development of model codes, some of which have been widely adopted by States and local governments. FDA has consolidated those model codes into a single, updated food code for the retail sector. Appropriate controls are included in the food code that can be applied to address juice hazards at retail. FDA will continue to operate through the Federal/State cooperative mechanism and, consequently, has not proposed to regulate juice retailers in

this proposal. However, elsewhere in this issue of the **Federal Register**, the agency is proposing to require labeling statements for packaged juice products including those sold by retailers that have not been pasteurized or otherwise processed to reduce, eliminate, or control pathogens. The proposed labeling requirement would apply to packaged untreated juice products produced in retail establishments for immediate consumption (such as grocery stores and very small processors) and would serve to inform consumers of the risk of untreated juices. (Retail processors selling unpackaged juice on-site for immediate consumption, such as restaurants and juice bars, would be exempt from both HACCP and labeling.) FDA notes that 2 of the outbreaks associated with apple cider (an outbreak of E. Coli. 0157:H7 infection and an outbreak of cryptosporidosis involving very small apple cider mills, refs. 8, 8A, and 11) would have fallen under the retail exclusion. Under the proposed labeling rule, the cider mills would have been required to label their apple cider. FDA seeks comment on whether the provisions of the food code in combination with the labeling statements will provide adequate public health protection. In addition, in formulating its proposal to include in the definition of retailer a processor that sells less than 40,000 gallons per year, the agency considered two other alternatives on which it requests comments. The first alternative would be to subject these establishments to the HACCP requirements and to provide a 3-year effective date. The second alternative would be to subject these establishments to the HACCP requirements and to provide a 5-year effective date. The agency is also soliciting comment on the appropriateness of including these establishments in the retail exemption as well as the appropriateness of the other two options considered.

The agency is proposing to define the term ''control,'' even though it was not included in § 123.3. FDA is proposing in § 120.3(a), that ''control'' means to prevent, eliminate, or reduce. This definition is consistent with the use of the term ''control'' in the definition for ''control measure'' (§ 120.3(b)) and describes more specifically what is to be accomplished in the control of food hazards.

FDA is also proposing to define the term ''monitor,'' even though it was not included in § 123.3. FDA is proposing in § 120.3(g) to define ''monitor'' as conducting a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and producing an accurate record of those observations or measurements for use in verification. This definition is identical with that of the NACMCF (Ref. 55). The agency tentatively concludes that defining this term will assist juice processors to be aware of what activities constitute monitoring of the various components of the HACCP system and prerequisite programs; and comply with the monitoring and recordkeeping requirements necessary for acceptable verification of HACCP.

C. CGMP's

Section 120.5 of the proposed regulations references the umbrella CGMP regulations in part 110 as providing general guidance to such matters as facility design, materials, personnel practices, and cleaning and sanitation procedures. Because part 110 provides guidance of general applicability to all foods, including juice, the agency intends that this guidance will continue to apply to juice processors even if FDA adopts the proposed regulations in part 120.

D. Prerequisite Program Standard Operating Procedures

The available evidence, including FDA's experience with the HACCP pilot programs, points to the effectiveness of two programs that do not fall within the parameters of traditional HACCP. FDA will refer to these programs in this document as ''prerequisite programs.'' The first of these programs is that the firm have in place SOP's designed to ensure plant sanitation.

The seafood final rule requires in § 123.11 that the processor monitor certain sanitation measures and document both the monitoring activities and any corrective actions taken when such monitoring finds an insanitary condition that may contribute to the likelihood of product becoming hazardous. While seafood processors are not required under § 123.11(a) to develop and implement written sanitation or prerequisite program SOP's, processors must maintain sanitation control records that, at a minimum, document that certain monitoring requirements have been met, and that corrective actions are taken when necessary (§ 123.11(c)). Section 123.11(b) sets forth requirements for sanitation monitoring.

FSIS's regulations for meat and poultry require that official establishments develop, implement, and maintain written SOP's for sanitation (9 CFR 416.11). Each official establishment must take appropriate corrective action when it or FSIS determines that the SOP's have failed to prevent direct contamination or adulteration of product (9 CFR 416.15). Each establishment must maintain daily records that are initialed and dated to document the implementation and monitoring of the SOP's and any corrective actions taken (9 CFR 416.16). Finally, FSIS verifies the adequacy and effectiveness of the SOP's (9 CFR 416.17).

Insanitary facilities or equipment, poor food handling, improper personal hygiene, and similar insanitary conditions create an environment in which products may become contaminated with microorganisms, including pathogens. However, sanitation controls may be difficult to fit into HACCP plans. Sanitation covers the whole processing environment, not just CCP's. A prerequisite program is an appropriate mechanism for a situation, such as sanitation, that does not lend itself well to HACCP controls. Therefore, sanitation SOP's are a type of prerequisite program that is essential to provide a solid foundation for HACCP systems. The agency tentatively concludes that sanitation SOP's are an essential foundation for HACCP systems for juice.

The second prerequisite program is one that provides control over materials that are entering the plant. The SOP requirements of both the seafood and FSIS regulations are limited to sanitation. However, the pilot program experience has suggested the utility of controls on incoming material. A processor could use incoming material prerequisite program SOP's, in a manner similar to the sanitation SOP's, i.e., to cover a range of processing factors, not just CCP's. Although use of incoming material SOP's may not obviate the need for some CCP's in a HACCP plan, FDA anticipates that their use could help to ensure the safety of the food produced.

Incoming material controls for raw produce could be invaluable in establishing the conditions under which produce needs to be grown (including pesticide application) and harvested to provide assurance to the processor that the raw produce will not present hazards that the processor will otherwise need to control. For example, the processor's incoming material SOP's could specify that the processor will only purchase carrots that have not been fertilized with manure during growth. Another example is that the incoming material control could specify that the processor will only accept apples that have been picked from the tree, and that dropped apples are unacceptable. A simple solution to control the possible

presence of unlawful pesticide residues on fruits and vegetables is to establish SOP's for incoming material control that ensure that any pesticides that have been used on the produce are approved for that use, are used at the appropriate level, and that appropriate time has elapsed between application and harvest.

As discussed previously, FDA is developing GAP and GMP guidance that has been issued in draft for comment. The guidance will address potential food safety problems throughout the food production and distribution system such as sanitation, worker health, and water quality.

A manufacturer also could use controls on the packaging materials that it receives. Proper packaging is essential if a processor is to minimize the possibility of the occurrence of hazards after juice has been processed. Juice that is not packed in hermetically sealed containers may be subject to contamination from a number of sources. The processor also needs to ensure that the container coating that it uses will not deteriorate through reasonable storage. Evidence in section I.B of this document showed examples where the acid content of some juices corroded the tin lining of the container, and the tin was present in sufficient concentration to be toxic. Incoming material controls will mean that the processor will act to ensure that packaging materials are safe and suitable before accepting them.

Incoming material controls for ingredients that a processor may add to juice can also be helpful. For example, if a processor is purchasing juice or juice concentrate from a supplier for use in a multi-juice beverage, it is essential that that juice have been processed under an adequate HACCP system and have not been contaminated during transportation. Thus, incoming material SOP's will lead the processor to establish controls on ingredients as criteria for acceptance in the plant.

However, the agency is not proposing to provide for the use of incoming materials SOP's in part 120 at this time and requests comment on this issue. FDA is seeking comment on whether incoming material SOP's can be utilized in a similar relationship to the HACCP system as the sanitation SOP's. Do interested persons see value in FDA requiring that these SOP's be written, monitored, and verified? How do these SOP's relate to FDA's draft guidance on fresh produce? What are reasonable procedures for acceptance of incoming materials that could be incorporated into SOP's?

1. Sanitation SOP's

FDA is proposing in § 120.6(a)(1) to require that processors have and implement SOP's that address sanitary conditions and practices before, during, and after processing. Good sanitation practices are critical to the prevention of microbiologically related foodborne illnesses. FDA's CGMP regulations for food in part 110 set out general principles of sanitation that should be followed in plants that manufacture, package, label, or hold human food. They address such matters as personal hygiene and cleanliness among workers who handle food, the suitability of the plant design to sanitary operations, and the cleaning of food-contact surfaces. The proposed sanitation SOP's relate to the entire facility, not just to a limited number of CCP's. FDA tentatively concludes that this step is necessary to fully implement section 402(a)(4) of the act and yet at the same time not overload the HACCP system. FDA invites comments on this approach.

FDA did not elect to make the development of a written sanitation SOP mandatory for seafood because it recognized that some processors may be able to achieve satisfactory sanitary conditions and practices without having to commit their sanitary control procedures to writing (60 FR 65096 at 65149). In the seafood final rule, FDA concluded that as long as there were records demonstrating that the plant was being kept in sanitary condition, it was not necessary to require written sanitation SOP's, even though the agency strongly recommended that a processor have them. The agency requests comment on whether it should require for juice HACCP that sanitation SOP's be written.

In the evidence discussed in section I.A of this document, there were several instances where contaminated water was the cause of the outbreak. The water that the processor used was contaminated and when produce was washed with it before juicemaking, the water contaminated the produce, resulting in contaminated juice. Therefore, the safety of the water that comes into contact with food or food contact surfaces is an important factor that a processor must consider to maintain proper sanitation and prevent contamination of the product and plant. The seafood HACCP regulation in § 123.11(b) lists eight sanitary conditions and practices that processors must monitor, and monitoring the safety of the water that comes into the plant is one of them (§ 123.11(b)(1)). Based on the foregoing, FDA is proposing a similar requirement in § 120.6(a)(1).

In section I.B of this document, FDA recounted the evidence demonstrating, that several outbreaks were caused by cleaning solution directly contaminating the juice. Sanitation SOP's for seafood in § 123.11(b)(5) require that processors protect food from adulteration with cleaning compounds. Given that cleaning compounds, sanitizing agents, pesticides, and other materials can pose a similar threat if not properly used in a juice processing facility, FDA is proposing a parallel requirement in § 120.6(a)(5).

The other provisions of § 123.11(b) are based on CGMP and encompass basic sanitation principles. Based on its consideration of the factors that it cited in arriving at § 123.11(b), the agency tentatively concludes that it is appropriate to require in § 120.6(a) that juice processors address the same sanitary conditions and practices in their SOP that must be monitored by seafood processors. FDA requests comment on the proposed matters that must be addressed in the sanitation SOP, and whether others are necessary for juice.

2. Other Requirements for Prerequisite Program SOP's

FDA is proposing in § 120.6(b) that processors monitor sanitation conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in part 110 that are appropriate both to the plant and to the food being processed. The seafood HACCP regulation requires sanitation monitoring (§ 123.11(b)). Because prerequisite programs potentially include facility-wide control points and provide a foundation for HACCP systems, processors need to monitor the performance of the SOP's to ensure that they are functioning as designed, and that they are corrected if there is a problem.

The agency is proposing in § 120.6(c) that processors maintain records that document the monitoring that they do under the prerequisite program SOP's and any corrections to those SOP's that they make. Monitoring and recording of conditions and practices under the prerequisite program SOP's are as much keys to the success in improving those conditions as is the development by a processor of the SOP's. As in the case of HACCP records, FDA is proposing to require that processors engage in systematic monitoring of their own sanitation practices and conditions. This proposed requirement is similar to what is required for sanitation SOP's for seafood (§ 123.11(c)). Monitoring to

ensure that sanitation is under control is the responsibility of all processors. Monitoring records help processors to see trends, and also allow the regulator to assess a processor's compliance over a period of time, not just at the time of an inspection.

FDA believes that the records bearing on the monitoring of relevant sanitation conditions and practices and the agency's access to such records are essential if proposed § 120.6 is to be an effective regulatory strategy. Therefore, as with HACCP records, the agency tentatively concludes that these records be subject to the recordkeeping requirements in proposed § 120.12.

Proposed § 120.6(d) provides the option to juice processors to include prerequisite program SOP controls in the HACCP plan. However, if these controls are implemented as part of the prerequisite program SOP's, there is no need to include them in the HACCP plan. The control must be in the HACCP plan or in the prerequisite program SOP but need not be in both places. This proposed provision is similar to § 123.11(d) for seafood. It is intended to provide manufacturers with flexibility in how they address the issues involved in the prerequisite controls.

The agency requests comment on its proposed approach to prerequisite program SOP's.

E. Hazard Analysis

1. The Hazard Analysis

The seafood HACCP regulation in § 123.6(a) requires that every processor conduct, or have conducted for it, a hazard analysis to determine whether there are food hazards that are reasonably likely to occur for each kind of fish and fishery product processed by that processor and to identify the preventive (i.e., control) measures that the processor can apply to control those hazards. Section 123.6(a) reflects the fact that food hazards can be introduced both within and outside the processing plant environment, including before, during, and after harvest. A food hazard that is reasonably likely to occur is one that, based on the evidence and insights provided by experience, illness data, scientific reports, and other information, has a reasonable possibility of occurring in the particular food if appropriate controls to protect against the hazard are not put in place. Thus, ensuring that a food will be safe involves identifying these hazards and preparing for them. The FSIS HACCP regulation for meat and poultry, in 9 CFR 417.2(a)(1), also requires that a hazard analysis be done.

According to the NACMCF, a thorough hazard analysis is the key to preparing an effective HACCP plan (Ref. 55). If the hazard analysis is not done correctly, and the hazards warranting control within the HACCP system are not identified, the plan will not be effective regardless of how well it is followed.

The hazard analysis involves hazard identification and evaluation. According to the NACMCF, each potential hazard is evaluated based on the severity of the potential hazard and the likelihood of its occurrence (Ref. 55). The NACMCF defined severity as the seriousness of the consequences of exposure to the hazard. They stated that consideration of the likelihood of its occurrence is usually based upon a combination of experience, epidemiological data, and information in the technical literature, and that when conducting the hazard evaluation, it is helpful to consider the likelihood of exposure and the severity of the potential consequences if the hazard is not properly controlled. The NACMCF also stated that consideration should be given to the effects of short term, as well as long term, exposure to the potential hazard.

The seafood HACCP regulation does not differentiate between hazards that cause acute harm and hazards that cause harm through chronic exposure. FDA stated in the seafood final rule that:

> HACCP should be the norm, rather than the exception, for controlling safety related hazards in the seafood industry. Existing standards for such contaminants as drug residues, pesticides, and industrial contaminants, are established to ensure that their presence in foods does not render the food unsafe. Processors of fish and fishery products are obliged to produce foods that meet these standards.
>
> Processors are obliged to exercise control over all food safety hazards that are reasonably likely to occur.

An important principle is that the processor has the burden of determining the reasonable likelihood of a hazard's occurrence, regardless of whether it is a chronic or an acute exposure hazard. In determining whether a chronic hazard is reasonably likely to occur, a processor should consider whether it is reasonably likely that, without some form of control, the food will contain a contaminant in sufficient quantity to cause it to be adulterated under the act (e.g., it exceeds a Federal tolerance for a pesticide residue).

The agency tentatively concludes that the requirement for a processor to conduct a hazard analysis is appropriate for juice processors. The evidence presented in section I of this proposal demonstrates that hazards are reasonably likely to occur in the processing of juice. Therefore, FDA is proposing to require in § 120.7 that processors develop a hazard analysis to determine whether there are food hazards that are reasonably likely to occur for each type of juice processed and to identify the control measures that the processor can employ to control those hazards. The agency requests comments on how processors should consider the severity of the hazard, as the NACMCF discussed, along with its likelihood of occurrence, in a hazard analysis.

FDA is also proposing in § 120.7 to require that juice processors use the same considerations in their hazard analysis as required of seafood and meat and poultry processors (i.e., that they determine where hazards are introduced, and which hazards need to be controlled) because these considerations raise the fundamental issues that must be considered in identifying the hazards present in any processing operation.

Finally, under the proposed regulation, the hazard analysis must be developed by an individual trained in HACCP. Training is critical to the successful implementation of HACCP systems. A trained individual will be able to understand and apply HACCP principles to the hazard analysis.

The hazard analysis serves several purposes. It can identify any modifications to a process or product that are necessary to ensure or improve the product's safety. It can also provide the basis for determining CCP's. A specific analysis of a process is necessary because aspects of the process that represent significant hazards in one operation may not present significant hazards in another operation even though the two operations produce the same or a similar product. Differences in equipment and incoming materials are generally the basis for these variations. For example, processors will use different equipment and incoming materials if producing juice from concentrate than if they are producing the same juice from raw materials.

A summary of the deliberations and the rationale developed during the hazard analysis should be kept for future reference. This information will be useful during reviews and updates of the hazard analysis and the HACCP plan.

Although under both seafood HACCP and meat and poultry HACCP a hazard analysis is required, a written hazard analysis is only required under the meat and poultry regulation. In the seafood HACCP final rule, the agency presented its reasons for not requiring a written hazard analysis (60 FR 65096 at 65118). It stated:

The agency recognizes that the best way for it to verify a processor's hazard analysis is indirectly, through its own evaluations of whether a processor ought to have a HACCP plan, and whether a HACCP plan appropriately identifies the food safety hazards and CCP's that are reasonably likely to occur. In other words, it is the end product of the hazard analysis, the HACCP plan and its implementation, that should be judged by the regulator. For this reason, the agency is not requiring that hazard analyses be performed according to a standardized regimen, or that they be documented in writing for FDA review.

Even though FDA is not requiring that the hazard analysis be available to the agency, there may be cases in which it would be to the processor's advantage to have a carefully documented written hazard analysis to show to FDA. Such documentation may prove useful in resolving differences between the processor and the agency about whether a HACCP plan is needed and about the selection of hazards, CCP's, and CL's. Written hazard analyses may also be useful to processors in that they may help provide the rationale for the establishment of CL's and other plan components. Having the basis for these decisions available may be helpful when processors experience changes in personnel, especially those associated with the HACCP process, and in responding to unanticipated CL deviations.

FDA believes that the position taken in the seafood HACCP regulation continues to be appropriate for seafood. The agency notes that the ''Fish & Fisheries Products Hazards & Controls Guide'' assists processors in the development of their HACCP plans, including the hazard analysis. It lists numerous potential hazards and guides seafood processors through the hazard analysis. However, as discussed previously, it is not clear whether, given the limitations on its resources, FDA will be able to provide such detailed information for juice. Therefore, the agency tentatively concludes that a requirement for a written hazard analysis is appropriate for juice.

Moreover, most firms in the FDA pilot program reported that preparing a written hazard analysis, including a list of preventive measures, helped them conduct a more scientific analysis rather than just a qualitative one; they also reported that the written hazard analysis provided a means of communicating to employees the public health significance of the hazards that were being controlled (Ref. 57). Thus, FDA believes that processors likely will conduct a more appropriate hazard analysis if they have to document it. If the hazard analysis has not been conducted properly, the HACCP plan will likely be inadequate. Therefore, FDA tentatively concludes that HACCP plans alone may not be adequate without a documented hazard analysis.

Accordingly, FDA is proposing to include in § 120.7 that the hazard analysis be written and maintained as a record in accordance with proposed recordkeeping requirements (§ 120.12). The agency requests comments on its approach of requiring a written hazard analysis.

2. Evaluation of Hazards

Section 123.6(c) requires that processors consider in the hazard analysis whether any food safety hazards are reasonably likely to occur as a result of natural toxins, microbiological contamination, chemical contamination, pesticides, drug residues, decomposition, parasites, unapproved use of direct or indirect food or color additives, and physical hazards. In 9 CFR 417.2(a)(3), FSIS lists these same considerations where food safety hazards might be expected to arise and adds zoonotic diseases to the list.

FDA has reviewed the food hazards that are reasonably likely to occur in juice. For the most part, the hazards that processors should consider in doing a hazard analysis for this type of food are the same as those that FDA and USDA have listed in the regulations for seafood, meat, and poultry (Ref. 58). However, unlike seafood, meat, and poultry, pesticides may be intentionally applied to fruits, vegetables, and other plant products during their growth. All pesticides applied to produce must be approved for use on that plant, and the residue levels of the pesticides at the time of harvest must be within tolerances. Therefore, processors must ensure that any pesticide residues on plant foods are lawful for that food and are within tolerances.

The presence of possible allergens in foods is a second possible hazard that was not considered in HACCP regulations for seafood or meat and poultry. Food ingredients must be declared on the label in accordance with § 101.4, and individuals sensitive to particular ingredients may avoid consuming them by checking the ingredient list. However, there is a possibility that traces of undeclared food materials could be present in food products from foods run previously on the same equipment as used for the juice or on nearby equipment. The presence of even traces of certain food ingredients can cause life threatening reactions in sensitive individuals. For example, dairies may process juice using the same equipment that they use to process milk. Therefore, dairies processing juice in this manner must consider whether traces of milk are present in the juice. The same principle holds for processors producing several types of juices on the same equipment. A hazard analysis should determine whether a food hazard is created as a result. FDA tentatively concludes that a hazard analysis should consider the potential presence of undeclared food ingredients that could be possible allergens.

Therefore, FDA is proposing in § 120.7(a) that in evaluating which food hazards are reasonably likely to occur, consideration should be given, at a minimum, to the following: (1) Microbiological contamination, (2) parasites, (3) chemical contamination, (4) unlawful pesticide residues, (5) decomposition in food where a food hazard has been associated with decomposition, (6) natural toxins, (7) unapproved use of direct or indirect food or color additives, (8) presence of undeclared allergens, and (9) physical hazards. The agency requests comment on these hazards and any others that should be included in the regulation.

3. Other Considerations

The agency is proposing in § 120.7(b) that processors should evaluate product ingredients, processing procedures, packaging, storage, and intended use; facility and equipment function and design; and plant sanitation, including employee hygiene, to determine the potential effect of each on the safety of the finished food for the intended consumer. These are factors that a prudent processor should consider in conducting a hazard analysis. The seafood HACCP regulations at § 123.6(a) did not list specific items or factors that processors should consider when conducting a hazard analysis. The preamble to the final rule for those regulations stated that, as of December 1995, the methodology for conducting a hazard analysis was not sufficiently standardized to justify mandating what the hazard analysis must include. The preamble encouraged processors to study the NACMCF guidance on the subject. The agency tentatively concludes, however, that including in the codified text the minimum elements that the processor should consider in developing a hazard analysis will assist processors. This material is included to be helpful and does not constitute a substantive change from the seafood HACCP regulation. FDA requests comment on proposed § 120.7(b).

F. HACCP Plan

1. The HACCP Plan

The seafood HACCP regulation requires in § 123.6(b) that processors have and implement a written HACCP

plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur. FSIS has established a similar requirement for meat and poultry (9 CFR 417.2(b)).

FDA is proposing to require in § 120.8(a) that every juice processor have and implement a written HACCP plan whenever a hazard analysis reveals that one or more food hazards are reasonably likely to occur during processing, as described in § 120.7. This could include adapting a model or generic-type plan to a processor's specific situation. This proposed requirement is in keeping with Principle 7 of the NACMCF guidelines that firms prepare and maintain written HACCP records (Ref. 55).

The agency is also proposing in § 120.8(a)(1) and (a)(2) that a HACCP plan be specific to each location where juice is, and to each type of juice that is, processed by that processor. The plan may group types of juice products together, or group types of production methods together, if the food hazards, CCP's, CL's, and procedures required to be identified and performed are essentially the same for the products or methods being grouped, provided that any required features of the plan that are unique to a specific product or method are clearly delineated in the plan and are observed in practice. Proposed § 120.8(a) is similar to provisions in both § 123.6(b) of the seafood HACCP regulation and 9 CFR 417.2(b) of the HACCP regulation for meat and poultry.

A plan is specific to each location because the likely hazards, CCP's, CL's, and monitoring procedures can vary from one facility to another depending on such factors as type of equipment, conditions and procedures, personnel, and location. A plan also should be specific to each type of juice for the same kinds of reasons. Hazards can vary depending on the type of fruit or vegetable used to make the juice, pH, and other factors. The agency has tentatively concluded, however, that some types of juices can be grouped together in a HACCP plan if the hazard analysis reveals that the juices present similar hazards, their processing includes the same CCP's, or there are other appropriate commonalities in their production. Grouping would reduce the paperwork burden on some processors without altering the benefits attainable through HACCP. The agency requests comment on this approach.

A valid HACCP plan delineates the procedures to be followed in processing the juice. Thus, FDA tentatively concludes that the HACCP plan needs to be developed by individuals who not only are knowledgeable in juice processing but who have been trained in HACCP. This activity requires specialized training in the principles of HACCP, various aspects of food science, and the knowledge of criteria of existing regulations and guidelines. Therefore, the agency is proposing in § 120.8(a) that the HACCP plan be developed by an individual or individuals who have been trained in accordance with proposed § 120.13.

Seafood and meat and poultry processors are required to have a written HACCP plan that is subject to certain recordkeeping requirements. An adequate recordkeeping system is the key to HACCP. In addition, adequate records allow the processor to be able to reference the HACCP plan as necessary. Thus, FDA tentatively concludes that, because of the plan's importance in a HACCP system, the HACCP plan for juice must also be subject to certain recordkeeping requirements. Therefore, the agency is also proposing in § 120.8 that the HACCP plan be maintained in accordance with the recordkeeping requirements of § 120.12.

2. The Contents of the HACCP Plan

As discussed previously, the NACMCF has developed seven principles that describe the HACCP concept and what constitutes a HACCP plan. Both § 123.6(c) and 9 CFR 417.2(c) include minimum requirements for the contents of HACCP plans for seafood and meat and poultry, respectively, that are based on these seven principles. FDA is proposing to require similar minimum criteria for HACCP plans for juice products.

The agency is proposing in § 120.8(b)(1) to require that the plan list the food hazards that are reasonably likely to occur as identified in accordance with § 120.7 and that thus must be controlled for each type of product. This list identifies the hazards that will be controlled by adhering to the HACCP plan in the processing of that type of juice.

Consistent with the HACCP principles identified by the NACMCF, FDA is proposing in § 120.8(b)(2) that processors list the CCP's for each of the identified food hazards, including, as appropriate, CCP's designed to control hazards that could occur or be introduced inside the processing plant environment, and CCP's designed to control food hazards introduced outside the processing plant environment, including hazards that occur before, during, or after harvest. Complete and accurate identification of CCP's is fundamental to controlling food hazards (Ref. 55). Hazards may be caused by improper processing or by events outside the processor's direct control. These hazards are controlled by the CL's, monitoring, control procedures, and recordkeeping that are done as part of HACCP.

In § 120.8(b)(3), FDA is proposing, consistent with the NACMCF principles, that processors list the CL's that must be met at each of the CCP's. CL's must be met to ensure that the relevant hazard is controlled or avoided. According to the NACMCF, each CCP will have one or more control measures to ensure that the identified hazards are prevented, eliminated, or reduced to acceptable levels (Ref. 55). Each control measure has one or more associated CL's. Thus, some CL's can be set to reflect regulatory levels established by FDA or EPA in the form of action levels, regulatory limits, or tolerances for contaminants such as pesticide residues, natural toxins, and other contaminants.

According to the NACMCF, monitoring serves three main purposes (Ref. 55). First, monitoring is essential to food safety management in that it facilitates tracking of the operation. If monitoring indicates that there is a trend towards loss of control, then action can be taken to bring the process back into control before a deviation from a critical limit occurs. Second, monitoring is used to determine when there is loss of control and thus a deviation at a CCP (i.e., exceeding or not meeting a CL). When a deviation occurs, an appropriate corrective action must be taken. Third, it provides written documentation for use in verification.

Proposed § 120.8(b)(4) requires that processors list the procedures, and the frequency with which they are to be performed, that will be used to monitor each of the CCP's to ensure compliance with the CL's. Monitoring steps are necessary to ensure that the CCP is in fact under control and to produce an accurate record of what has occurred at the CCP. The frequency of monitoring affects the level of confidence that a firm has in the safety of its product, with continuous monitoring providing the highest level of confidence.

The agency is proposing in § 120.8(b)(5) that processors include in their HACCP plan any corrective action plans that have been developed in accordance with proposed § 120.10(a), and that are to be followed in response to deviations from CL's at CCP's. As explained in more detail in the ''Corrective Actions'' section of this preamble, FDA has tentatively concluded that these regulations should provide the processor with the option of predetermining corrective actions. Predetermined corrective action

procedures have the potential to facilitate faster action when a deviation occurs than would be possible in the absence of such procedures and to enable a processor to make a more timely response to the deviation when trained or otherwise qualified individuals are not readily available.

Consistent with the NACMCF principles, the agency is proposing in § 120.8(b)(6) that processors list the verification and validation procedures, and the frequency with which they are to be performed, that the processor will use in accordance with proposed § 120.11. As explained in more detail in the ''Verification and Validation'' section of this preamble, FDA has tentatively concluded that a processor must specify in its HACCP plan the verification and validation procedures that it will use and the frequency with which it will use those procedures. FDA tentatively finds that inclusion of this information in the plan is necessary to underscore that a processor has an ongoing obligation to ensure that the verification and validation steps it has determined are necessary are readily ascertainable by its employees as well as by regulatory officials.

Finally, in § 120.8(b)(7), FDA is proposing that processors provide for a recordkeeping system that documents the monitoring of the CCP's, and that the records contain the actual values and observations obtained during monitoring. Implementing a HACCP system depends on adequate records to document the controls at each CCP and the corrective actions taken in response to any deviations. FDA has tentatively concluded that it is neither possible for processors to derive the full benefits of a HACCP system, nor to verify or validate the operation of the system, without actual measurement values. Notations that heat treatment temperatures are ''satisfactory'' or ''unsatisfactory,'' without recording the actual times and temperatures, are vague and subject to varying interpretations and thus, will not ensure that controls are working properly. Also, it is not possible to discern trends without actual measurement values.

The agency requests comments on developing a HACCP plan based on the NACMCF principles.

3. Products Subject to Other Regulations

FDA has already established HACCP type regulations for acidified and low acid canned foods. FDA examined this issue in the seafood final rule (60 FR 65096 at 65124) and acknowledged that there is no need for a processor to restate in its HACCP plan the requirements of part 113 or 114 (21 CFR part 113 or 114).

Parts 113 and 114 dictate that low-acid canned foods and acidified foods be processed in a manner to become commercially sterile. Commercial sterility of thermally processed food is defined in § 113.3(e)(1) as a process that renders the food free of: (1) Microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution, and (2) viable microorganisms (including spores) of public health significance. Consequently, juice processors who must comply with the requirements of part 113 or 114 need not address these particular hazards at all in their HACCP plans.

However, it is important to note that other hazards may be reasonably likely to occur in an acidified or low-acid canned juice. FDA is proposing to require that these hazards be addressed in the HACCP plan, as appropriate. For example, FDA anticipates that the possible presence of glass in carrot juice packed in glass containers is a hazard that is reasonably likely to occur and thus the agency expects this hazard to be addressed in the HACCP plan. Accordingly, to clarify what is required of processors of acidified and low-acid canned juice products, FDA is proposing to adopt § 120.8(c) for juice products subject to other regulations.

4. Relationship to Prerequisite Programs

All hazards identified during the hazard analysis as being reasonably likely to occur need to be addressed by control measures that a processor can apply. Determining how the control measures, in turn, are to be addressed is a primary consideration in developing the HACCP plan. Control measures involve identifying the relevant CCP's and CL's as part of the HACCP plan, or, in those limited circumstances specified in proposed § 120.6, making appropriate provision in a prerequisite program SOP. The safety of the product can be compromised if control measures are not properly monitored and addressed.

As it required for seafood HACCP, FDA is proposing to require that processors address plant sanitation by monitoring certain key sanitary conditions and practices apart from CCP monitoring activities, either by including sanitation controls as part of the HACCP plan, or as part of an SOP in accordance with § 120.6, or by adopting some combination of these two approaches, at the option of the processor.

To reflect this approach, the agency is proposing in § 120.8(d) to state that sanitation controls may be included in the HACCP plan, but that, to the extent that they are monitored in accordance with § 120.6, they need not be included in the HACCP plan.

FDA recognizes that many processing operation sanitation controls, such as hand and equipment washing and sanitizing, are critical to the safety of the food because they serve to minimize the risk of pathogen introduction into finished products that may not be further heat treated before consumption. For this reason, some processors may elect to include in their HACCP plan the control of sanitation through standardized practices in addition to, or in place of, monitoring of sanitation conditions and control practices apart from the HACCP plan. However, FDA also recognizes that sanitation controls may be difficult to fit into HACCP plans, with appropriate CL's and corrective actions sometimes being elusive. For this reason, some processors may elect to rely exclusively on sanitation controls that are not part of the HACCP plan. Either approach is likely to be acceptable, so long as whatever approach is chosen is fully implemented and followed. FDA requests comment on this view.

G. Legal Basis

The seafood HACCP regulation states that the failure of a processor to have and to implement a HACCP plan that complies with § 123.6(g), whenever a HACCP plan is necessary, or otherwise to operate in accordance with the requirements of part 123, will render the fish or fishery products of that processor adulterated under section 402(a)(4) of the act, and potentially section 402(a)(1). Whether a processor's actions are consistent with ensuring the safety of food will be determined through an evaluation of the processor's overall implementation of its HACCP plan, if one is required. The legal basis for FDA's proposed mandatory HACCP systems for juice processors is the same as that for seafood processors. Additional discussion of the legal basis may be found in the proposed rule (59 FR 4142 at 4150) and final rule (60 FR 65096 at 65098) for fish and fishery products.

The agency is proposing in § 120.9 that failure of a juice processor to have and to implement a HACCP system that complies with § 120.8 or otherwise to operate in accordance with the requirements of this part, will have similar consequences as a failure to comply with the seafood HACCP regulations. FDA has tentatively determined that the hazards, especially microbial hazards, inherent in juice

processing are such that, unless there is adherence to HACCP principles, there cannot be assurance that the product is safe. Thus, failure to operate a juice processing operation in accordance with HACCP is itself an insanitary condition that may render the juice product injurious to health.

H. Corrective Actions

The fifth HACCP principle, as articulated by the NACMCF, is that processors establish the corrective actions that they will take should monitoring show a CL deviation. The NACMCF's expectation is that these corrective actions should be predetermined and written into the processor's HACCP plan. Where there is a deviation from established CL's, corrective actions are necessary (Ref. 55).

Section 123.7 of the seafood regulation permits, but does not require, processors to include in their HACCP plans any written corrective action plans that they develop. When a deviation from a CL occurs, § 123.7(a) requires that the processor either: (1) Follow a corrective action plan that is appropriate for the particular deviation, or (2) follow the series of actions provided in § 123.7(c). The steps in § 123.7(c) constitute a minimum generic model for corrective actions.

Section 123.7(b) of the seafood HACCP regulation defines an appropriate action plan as one that addresses both the safety of the product that was being processed when the CL failure occurred and the cause of the deviation. In this respect, the contents of the corrective action plan are consistent with the views of the NACMCF (Ref. 55).

Action necessary to correct the potential hazard may involve one or more of the following steps: Immediately reprocessing the product; diverting the product to another use for which it is safe; segregating, holding, and having the product evaluated by a competent expert; or destroying the product (60 FR 65096 at 65127). To ensure that subsequent product is not subjected to the same deviation, the corrective action must be sufficient to bring the process back under control. FDA advised in the preamble to the seafood final rule (60 FR 65096 at 65127) that such action may involve, where appropriate, adjustments to those process parameters that have an effect on the relevant CL (e.g., flow rate, temperature, source of raw materials); temporarily diverting product around a point in the process at which problems are being encountered; or temporarily stopping production until the problem can be corrected.

Section 123.7(c) of the seafood HACCP regulation describes the steps that a processor must take whenever there is a deviation from a CL, but the processor has not prepared a corrective action plan for that situation. If the processor does not have a corrective action plan for a particular deviation, then the processor must: (1) Segregate and hold the affected product for as long as necessary, (2) perform or obtain a review by a trained individual to determine the affected product's acceptability for distribution, (3) take corrective action to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation, (4) take corrective action to correct the cause of the deviation, and (5) have a trained individual perform a timely reassessment to determine whether the HACCP plan needs to be modified to reduce the risk of recurrence of the deviation and modify the HACCP plan as necessary.

As stated in a previous paragraph , these steps constitute a minimum generic-type corrective action plan. The objectives of these steps are the same as those of a preconceived plan: To ensure that adulterated product does not enter commerce and to correct the cause of the deviation. Because it is a generic-type plan that is intended to be applicable to any situation, some of the steps, such as segregating and holding the affected product (§ 123.7(c)(1)), might not be necessary if the corrective action had been predetermined. This aspect of the generic-type plan may provide processors with an incentive to predetermine corrective actions whenever practical.

FDA is proposing essentially the same requirements in § 120.10 that it requires in § 123.7 of the seafood HACCP regulation because the agency is not aware that a juice processor has any options other than those that are available to the seafood processor. The processor can either follow its own established corrective action plan, as appropriate for the particular deviation, or follow the generic provisions of the regulation that are applicable to any food. Thus, FDA tentatively concludes that the seafood HACCP requirements for corrective actions are applicable to juice processing.

Proposed § 120.10 sets forth the corrective action procedures that a processor must take whenever a deviation from a CL occurs. A processor may take corrective action either by following: (1) A corrective action plan as identified in the HACCP plan (see proposed § 120.8(b)(5)), or (2) the procedures outlined in proposed § 120.10(b). Predetermined plans provide processors with benefits, such as faster action when a deviation occurs, less need to justify to management the appropriateness of the corrective action after it has been taken, and a more timely response to the deviation than is possible when trained or otherwise qualified individuals are not readily available to make determinations, and a plan is not available.

The agency is proposing to provide in § 120.10(a) that processors may develop written corrective action plans, which become part of their HACCP plans in accordance with § 120.8(b)(5), by which they predetermine the corrective actions that they will take whenever there is a deviation from a CL. According to the NACMCF, specific corrective actions should be developed in advance for each CCP and included in the HACCP plan (Ref. 55). The agency is also proposing in § 120.10(a) that a corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that: (1) No product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation, and (2) the cause of the deviation is corrected. These two considerations are essential because they represent the reasons for taking corrective actions (i.e., protecting the public health and correcting the problem at hand).

In § 120.10(b), FDA is proposing the steps that processors must take when a deviation from a CL occurs, and they do not have a corrective action plan that is appropriate for that deviation. First, under proposed § 120.10(b)(1), any CL deviation will require the segregation and holding of the affected product until the significance of the deviation can be determined. FDA tentatively finds that this step is necessary to ensure that products that may be injurious to health do not enter commerce until the deviation's impact on safety has been determined.

Proposed § 120.10(b)(2) requires that processors perform or obtain a review to determine the acceptability of the affected product for distribution. This is fundamental to determining the final outcome of the affected product. In some instances product may simply need to be reprocessed, while at other times, the product may not be considered adulterated. For example, if the pasteurization process did not reach the minimum temperature specified by the CL, the juice can be diverted and rerouted through the pasteurizer for

reprocessing at acceptable temperatures. However, if the juice contains a pesticide above an established tolerance level, the juice is deemed to be adulterated.

FDA is also proposing to require in § 120.10(b)(2) that the safety determination be made by an individual who has adequate training or experience to perform such a review. Adequate training may or may not include training in accordance with proposed § 120.13, but the individual's training must be sufficient to qualify him or her to make the public health determinations of this nature. For example, an individual must have some training to understand that pasteurized juice must have been processed to reach a minimum time and temperature combination and know methods of reprocessing to remedy problem situations. Adequate training in this context requires only knowledge of how to perform the particular operation responsibility rather than training in the concepts of HACCP.

Under proposed § 120.10(b)(3), processors must take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation. Under proposed § 120.10(b)(4) processors must take corrective action, when necessary, to correct the cause of the deviation. As discussed for proposed § 120.10(a), the actions called for under these two provisions are essential to any corrective action plan because they address one of the two reasons for taking corrective actions, that is, correcting the problem at hand.

FDA is proposing in § 120.10(b)(5) to require that a trained person validate the HACCP plan that was in use at the time of the deviation to determine whether it needs to be modified to reduce the risk of recurrence of the deviation and to modify the HACCP plan as necessary. It is critically important that processors learn as much as possible from the occurrence of a deviation, and that they take the steps necessary to ensure that such deviation will not be repeated. Proposed § 120.10(b)(5) reflects these principles.

Finally, proposed § 120.10(c) requires that processors maintain records of all corrective actions that they take following either the corrective action procedures in the HACCP plan or those specified in § 120.10(b). The agency is proposing that these records be subject to the verification requirements in proposed § 120.11(a) and the recordkeeping requirements of § 120.12. The records need to reflect all actions taken in response to a deviation (i.e., provide the specifics about the actions taken and not simply refer to a written procedure). Such information helps the processor to determine if there are recurring problems that it needs to address. The information also will enable both the processor and the regulator to identify factors that may help prevent problems in the future.

The agency requests comments on its proposed approach to corrective actions.

I. Verification and Validation

The seafood HACCP regulation requires that every processor verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented (§ 123.8(a)). Section 123.8 includes requirements for reassessment of the HACCP plan and for various other verification activities, including reviewing monitoring records, reviewing records of corrective actions, and reviewing calibration records. Section 123.8 also requires, in certain circumstances, that processors who had concluded that no HACCP plan was necessary reassess that judgment and reevaluate their HACCP analysis.

The meat and poultry HACCP regulation requires that every establishment validate the HACCP plan's adequacy in controlling the food safety hazards identified during the hazard analysis and verify that the plan is being effectively implemented (9 CFR 417.4(a)). Section 417.4 includes requirements for initial validation, ongoing verification activities, reassessment of the HACCP plan, and reassessment of the hazard analysis for processors that do not need a HACCP plan.

According to the NACMCF (Ref. 55), there are four aspects to verification. One is verifying whether the facility's HACCP system is functioning according to the HACCP plan. Another aspect is the initial validation of the HACCP plan to determine whether the significant hazards have been identified, and whether, if the HACCP plan is properly implemented, these hazards will be effectively controlled. The third aspect consists of documented validations that are done after the initial development and implementation of the HACCP plan. The fourth aspect of verification deals with a periodic verification of the HACCP system by an unbiased, independent authority.

1. Verification

The agency is proposing in § 120.11(a) to require that every processor verify that the HACCP system is being implemented according to design. According to the NACMCF, a functioning HACCP system requires little end-product sampling because appropriate monitored safeguards are inherent to the process. Therefore, rather than relying on end-product sampling, firms need to conduct frequent reviews of their HACCP plan to verify that it is being correctly followed, to review CCP records, and to ensure that appropriate risk management decisions and product dispositions are made when process deviations occur.

Proposed § 120.11(a) sets forth the minimum requirements for verification activities. Proposed § 120.11(a)(1) deals with ongoing verification activities. These ongoing activities are in keeping with the NACMCF's view that verification needs to take the form of ''frequent reviews.'' Frequent reviews relate primarily to whether the HACCP plan is functioning effectively on a day-to-day basis.

The agency is proposing to require in § 120.11(a)(1)(i) that a processor review any consumer complaint that it receives to determine whether the complaint relates to the performance of the HACCP plan or reveal the existence of unidentified CCP's. Although the absence of consumer complaints does not, by itself, verify the adequacy of a HACCP system, those consumer complaints alleging a safety problem that a processor does receive can be of value as a verification tool and should be used for that purpose.

Proposed § 120.11(a)(1)(ii) provides for the calibration of process-monitoring instruments as a verification activity. Calibration provides assurance that an instrument is measuring correctly. Calibration is an important activity and involves readily defined procedures, usually provided by the instrument manufacturer, that can easily be included in the plan.

Proposed § 120.11(a)(1)(iii) provides that the processor may perform periodic end-product or in-process testing. FDA acknowledges the shortcomings of product testing, especially microbiological testing, as a process control. However, the agency recognizes that many processors will find that product testing may be included in their verification activities, and the agency encourages incorporation of testing into HACCP systems, where appropriate. For example, in cases where a processor is obtaining fruits and vegetables from unknown sources, and there is no assurance that pesticides have been correctly applied, product testing for pesticide residues is an appropriate step in a HACCP plan.

Proposed § 120.11(a)(1)(iv) provides for a review by a trained individual of all records that document monitoring of CCP's, the taking of corrective actions, the calibration of any process control instruments, and the performance of any end-product or in-process testing. As proposed, the review must include signing and dating of the records. The primary purpose of the record review is the periodic verification that the HACCP plan is appropriate and is being properly implemented. This review of these records must occur with sufficient frequency so as to ensure that any problems in the design and implementation of the HACCP plan will be promptly uncovered, and that modifications to the plan or process will be promptly made.

FDA tentatively concludes that a weekly review of HACCP monitoring and corrective action records (§ 120.11(a)(1)(iv)(A) would provide the industry with the necessary flexibility to handle a highly perishable commodity like fresh juice without interruption, while still facilitating timely feedback of information. FDA's experience with low-acid canned foods and acidified foods has demonstrated that timely review of these kinds of records is a critical verification tool.

However, this principle need not apply to the review of records of such verification activities as process control instrument calibration and product testing. The frequency of these activities will be variable and dependent upon the HACCP plan. For example, pesticide testing of fruits and vegetables may only need to be done when the source of the produce is new or unfamiliar to the firm. Consequently, the agency tentatively concludes that setting a specific review frequency for these records is not warranted and thus is only proposing that the review be conducted within a reasonable time after the records are made (see proposed § 120.11(a)(iv)(C)).

Proposed § 120.11(a)(1)(v) requires that processors take appropriate corrective action whenever any verification procedure, including the review of a consumer complaint, reveals the need to do so. This proposed provision is essentially a reminder to processors that information obtained through verification may require a corrective action.

FDA is proposing in § 120.11(a)(2) that processors document, in records that are subject to the recordkeeping requirements of § 120.12, the calibration of process-monitoring instruments and the performance of any periodic end-product and in-process testing, in accordance with paragraphs (a)(1)(iv)(B) and (a)(1)(iv)(C). For a processor's HACCP controls to work, the instruments and equipment that it relies upon in monitoring CCP's, such as thermometers, temperature-recording devices, and computer software, must be accurate and reliable. FDA has tentatively concluded that the best way to ensure such accuracy and reliability for juice is to require that the processor's monitoring procedures include steps necessary to verify the reliability of these instruments and devices. The proposed requirement that records of end-product testing be kept is consistent with the general recordkeeping principles of HACCP.

The agency requests comment on its proposed verification procedures for juice.

2. Validation of the HACCP Plan

The agency is proposing, in § 120.11(b) to require that juice processors validate that their HACCP plan is adequate to control the food hazards that are reasonably likely to occur in their products; this validation is required at least once during the year after implementation and at least annually thereafter or whenever any changes occur that could affect the hazard analysis or alter the HACCP plan and prerequisite program SOP's in any significant way. The proposed requirement that HACCP plan validation be conducted at least once during the year after implementation is based on a recommendation from the NACMCF (Ref. 55). This process consists of reviewing the CL's to verify that the limits at CCP's are adequate to control the hazards that are likely to occur.

The proposed requirement that the HACCP plan be validated at least annually, or whenever any relevant changes occur, is based on the NACMCF view that validation must occur on a regular basis (Ref. 55), although the NACMCF does not specify timeframes. Validation should be conducted on a regular basis, even in the absence of a recognized change, to ensure that the plan continues to address all of the reasonably likely food hazards with appropriate control limits and monitoring procedures. Processors should conduct the review at intervals that are appropriate for their processes, although FDA is proposing to require that this interval not exceed 1 year.

Proposed § 120.11(b) provides examples of changes that could trigger a validation. These include changes in raw materials or source of raw materials; product formulation; processing methods or systems, including computers and their software; packaging; finished product distribution systems; or the intended use or consumers of the finished product. These examples are derived from the NACMCF materials on the ''five preliminary steps'' that form the basis for the HACCP plan (Ref. 55). A change in any of these areas could necessitate a change in the plan to respond to any new hazards that may have been introduced or to maintain preventive control over existing ones. It is important to recognize that this list is not all inclusive.

Proposed § 120.11(b) requires that the plan validation be performed by an individual or individuals who have been trained in accordance with § 120.13. The validation is fundamental in determining whether the HACCP plan is adequate to control food hazards that are reasonably likely to occur. HACCP plan validation may result in a need to alter other aspects of the HACCP system and the prerequisite program SOP's. The activities involved in plan validation are not routine activities but require an understanding of the principles of HACCP and of plan development. This understanding is obtained through training.

Initial validation of the HACCP plan is necessary to ensure that all significant hazards have been identified, and that, if the HACCP plan is properly implemented, these hazards will be effectively controlled. Subsequent validation of the HACCP plan ensures that the plan continues to be effective.

Validation is especially important whenever any changes occur that could affect the hazard analysis or alter the HACCP plan and prerequisite program SOP's in any way. Without these assessments and subsequent changes, the HACCP plan may not control the hazards that it should, and unsafe juice may be distributed. Therefore, the agency tentatively concludes that validation of the HACCP plan is necessary to ensure that juice processed in accordance with the plan will not have been processed under conditions whereby it may have been rendered injurious to health.

The NACMCF states that the HACCP plan should be updated and revised as needed (Ref. 55). Changes in sources of incoming materials, formulations, processing, distribution, and consumer use usually occur over time. New technologies may be developed. New concerns that previously were not considered hazards reasonably likely to occur may become apparent. For example, *E. coli* O157:H7 was not recognized as a human pathogen before 1982 (Ref. 10), and the impact of its acid tolerance was not well understood.

Therefore, the agency tentatively concludes that processors must maintain records demonstrating that they have been diligent in keeping their HACCP plans current. Thus, FDA is proposing to require in § 120.11(b) that records of the plan validation be subject to the requirements of § 120.12.

Proposed § 120.11(b) also requires that, where validation shows that the HACCP plan is inadequate, the processor modify immediately the plan. Failure of a processor to modify immediately its HACCP plan after the processor has determined that the plan is inadequate would result in the processor operating under insanitary conditions that may render the food prepared under the inadequate plan injurious to health and thus would render the food adulterated.

FDA requests comments on its proposed approach to validation of HACCP plans for juice.

3. Validation of the Hazard Analysis

Proposed § 120.11(c) requires that, whenever a juice processor has no HACCP plan because a hazard analysis has revealed no food hazards that are reasonably likely to occur, the processor reassess the adequacy of that hazard analysis whenever there are any changes that could reasonably affect whether a food hazard exists. FDA has proposed to include examples of such changes in § 120.11(c). The list is identical to that proposed in § 120.11(b), on when a plan must be validated. Any change in these factors could warrant a validation to be certain that a plan is still not needed because, as stated in the discussion of proposed § 120.11(b), such changes could introduce new hazards.

FDA has tentatively concluded that, under a mandatory HACCP system for juice, the principle of validation applies equally to a decision that a HACCP plan is not necessary as it does to a decision that the plan is adequate. Circumstances change, and processors must be alert to whether factors that effectively exempt them from the requirement to have a plan continue to apply.

The agency is proposing in § 120.11(c) that the validation be performed by an individual or individuals who have been trained in accordance with proposed § 120.13. The validation is fundamental in determining whether the hazard analysis considers all food hazards that are reasonably likely to occur. The hazard analysis validation may result in a need to alter other aspects of the HACCP system and the prerequisite program SOP's. These kinds of activities are not routine but require an understanding of the principles of HACCP that is obtained through appropriate training.

The agency requests comment on its proposed approach to validation requirements of a hazard analysis in the absence of a HACCP plan.

J. Records

Implementing a HACCP program involves engaging in adequate monitoring of CCP's and documenting the results of that monitoring through records. It also involves the taking of appropriate corrective actions in response to any deviations and, again, documenting the results. HACCP records also include the hazard analysis, the HACCP plan itself, and documentation of verification and validation activities. Records of prerequisite program SOP's, although not a part of the HACCP system, are significant records in a HACCP program in that the SOP's may be used in place of HACCP controls. Record systems used by the pilot firms in FDA's pilot program included hand written logs, filing systems for continuous recording charts and inspection sheets, and computer files of data of monitoring results and followup corrective actions.

In § 123.9 of the seafood regulation, FDA established requirements for HACCP records. Under this provision, all required records must include: (1) The name and location of the processor or importer; (2) the date and time of the activity that the record reflects; (3) the signature or initials of the person performing the operation; and (4) where appropriate, the identity of the product and the production code, if any. Processing and other information must be entered on records at the time that it is observed (§ 123.9(a)(4)). Records must be retained for at least 1 year for refrigerated foods and for at least 2 years for all other foods, similarly, records relating to the general adequacy of equipment or processes being used by a processor must be retained for 2 years (§ 123.9(b)). Off site provisions for storage of records from processing facilities that seasonally pack are allowed, provided that the records are reasonably accessible (§ 123.9(b)(3)). All records must be available for official review (§ 123.9(c)). Section 123.9 also provides information concerning public disclosure of records and maintenance of records on computers.

According to the NACMCF, maintenance of appropriate records is fundamental to the success of a HACCP system (Ref. 55). In recognition of this fact, FDA is proposing to require in § 120.12 that specific records be kept; that HACCP records contain certain necessary information; that records be maintained for specific periods of time; and that records be available for FDA review.

The agency is proposing in § 120.12(a) to list the records that the processor is required to maintain to document its HACCP system. FDA has discussed the basis for requiring that these records be kept in the sections addressing each particular provision. The proposed sections also state that records shall be maintained. The list of records that juice processors are required to maintain is included in § 120.12(a), although this list is included simply for simplicity, in that the list reflects the record requirements that are set out in other sections of the proposed regulation.

Proposed § 120.12(b) describes the general requirements for records. The purpose of the proposed requirements in this provision is to ensure that records maintained under part 120 can be readily linked to a product and to the timeframe in which the product was manufactured. Linking a record to a specific product will be especially important when there has been a deviation at a CCP and will enable processors to isolate product that has not been processed properly, thereby preventing the product from reaching consumers. These records will also benefit processors in that only those lots that were processed inadequately will need to be recalled or isolated. The agency has tentatively concluded that including the name and location of the processor or importer; the date and time of the activity that the record reflects; the signature or initials of the person performing the operation or creating the record; and, where appropriate, the identity of the product and the production code, if any, are the minimum information necessary to enable the processor to determine what product may have been affected by a deviation and to take any appropriate actions with respect to that product.

Proposed § 120.12(b)(3) requires that the record include the signature or initials of the person performing the operation or creating the record. Requiring that the record be signed by the individual who made the observation will ensure responsibility and accountability. Also, if there is a question about the record, a signature ensures that the source of the record will be known.

Proposed § 120.12(b)(4) requires that processing and other information be entered on records at the time that it is observed and that the records contain the actual values and observations obtained during monitoring. It is important that information relating to observations be recorded immediately

and that the records contain the actual values and observations to enhance accuracy.

Both the HACCP regulations for seafood and for meat and poultry require that the HACCP plan be signed and dated. In the seafood final rule (60 FR 65096 at 65124), FDA emphasized the importance of signing and dating the HACCP plan. The agency stated that:

> Such a signature would provide direct evidence of management's acceptance of the plan for implementation. FDA cannot stress enough that for HACCP to succeed, there must be a clear commitment to it from the top of the firm on down. Management must set a strong example in this regard. A signature requirement will remind management of this important responsibility and will signal to all employees that the firm regards the HACCP plan as a document to be taken seriously. Additionally, the representative's signature, along with the date of signing, would serve to minimize potential confusion over the authenticity of any differing versions or editions of the document that might exist.

The agency tentatively concludes that this same reasoning applies to HACCP plans for juice processing, and that there are significant benefits of requiring similar steps for the HACCP plan for juice.

The agency is also proposing to require that the hazard analysis for juice be written (see proposed § 120.7). FDA tentatively concludes that the hazard analysis shall be signed and dated in a manner similar to what is required for the HACCP plan because of its relationship to and importance in the development of an adequate HACCP plan.

Therefore, the agency is proposing to require in § 120.12(c)(1) that the hazard analysis and the HACCP plan be signed and dated by the most responsible individual on-site at the processing facility or by a higher level official of the processor. Proposed § 120.12(c)(1) provides that the signatures signify that these records have been accepted for incorporation into the HACCP system by the firm.

In § 120.12(c)(2)(i) through (c)(2)(iii), FDA is proposing to require that the hazard analysis and the HACCP plan be dated and signed upon initial acceptance, upon any modification, and upon verification and validation of the plan in accordance with proposed § 120.11(d)(1). As was discussed fully in the ''Verification and Validation'' section of this preamble, FDA is proposing in § 120.11 that the adequacy of the HACCP plan, or, in the absence of a HACCP plan, the hazard analysis, be validated at least once during the year after implementation and at least annually thereafter or whenever any changes occur that could affect the hazard analysis or that could alter the HACCP plan and prerequisite program SOP's in any way. These verifications, validations, and modifications are necessary to ensure that the HACCP program remains current, and that it is responsive to emerging problems. The signature of the firm representative will document that these validations and modifications are performed as required. The requirements for documentation are the same as those required for the HACCP plan in the seafood regulation (§ 123.6(d)).

The agency is proposing in § 120.12(d) requirements for record retention. Proposed § 120.12(d)(1) states that, in the case of perishable or refrigerated products, all required records shall be retained at the processing facility or importer's place of business in the United States for at least 1 year after the date that they were prepared and in the case of frozen, preserved, or shelf-stable products, 2 years after the date that they were prepared. These timeframes are based on the length of time that these products can be expected to be in commercial distribution plus a reasonable time thereafter to ensure that the records are available for the processor's and FDA's verification activities.

FDA is proposing in § 120.12(d)(2) that records that relate to the general adequacy of equipment or processes being used by a processor, including the results of scientific studies and evaluations, be retained at the processing facility or the importer's place of business in the United States for at least 2 years after the date that the processor last used that equipment or process. Under § 120.12(a)(5) processors are required to maintain records documenting validation of the HACCP plan. If the firm is relying on equipment or processes to control hazards that are reasonably likely to occur then the firm must have some assurance that the equipment or process is adequate for that purpose. Should FDA adopt proposed § 120.12(d)(2), a written certification from the equipment manufacturer will likely generally be sufficient to establish equipment adequacy. However, the processor may need to obtain a written scientific evaluation of a process, especially in cases where two or more treatments are used to accomplish a 5 log reduction in the target pathogen, to ensure that the process is adequate to destroy microorganisms of public health significance or to prevent their growth. Such an evaluation may also be necessary to ensure the adequacy of the pasteurization or refrigerating equipment that the processor is using. As with processing records, these records are required to be retained for a period of time that reflects the period that the products to which they relate can be expected to be in commercial distribution.

The agency realizes that under the proposed requirements for recordkeeping, some juice processors may be required to store a significant quantity of records, and that there may not be adequate storage space in the processing facility for all of these records. However, if HACCP is to work, these records must be available for the processor's verification activities and for FDA inspections. Therefore, the agency is proposing to provide some relief to processors in § 120.12(d)(3), which allows for off-site storage of the prerequisite program SOP records and records documenting the ongoing application of the HACCP plan (i.e., monitoring of CCP's and their CL's and corrective actions) 6 months after the date that the monitoring occurred, if such records can be retrieved and provided on-site within 24 hours of request for official review. The records for which FDA is proposing to allow off-site storage are the more routine processing operation records and thus are of the type that are likely to be generated in the greatest numbers. FDA tentatively concludes that the proposed relief will benefit processors but will not interfere with the purpose for record retention because the records will be readily available.

The use of computers in the food processing industry is increasing. Computerized systems within large corporations can be networked, allowing for the sending and receiving of information in a secure fashion to all of the different food processing facilities of that corporation worldwide. This type of system can easily be used to maintain all of the processing records from each of the processing facilities at corporate headquarters. Therefore, for clarity, FDA is proposing in § 120.12(d)(3) that electronic records are considered to be on-site if they are accessible from an on-site location and comply with proposed § 120.12(g).

FDA recognizes that some juice processing plants may be closed on a seasonal basis. Given the nature of the HACCP system, however, FDA may choose to inspect at least the records of a plant even if the plant is not in operation. Therefore, FDA is providing in proposed § 120.12(d)(4) that, if the processing facility is closed for a prolonged period between seasonal packs, the records may be transferred to some other reasonably accessible

location at the end of the seasonal pack but shall be immediately returned for official review upon request. This proposed provision will give the juice processor some relief, yet will serve to ensure that the records in question will be readily available.

Proposed § 120.12(e) requires that all records required under part 120 be available for official review and copying at reasonable times. The agency's access to HACCP records is essential to ensure that the HACCP system is working, and that the safety of juice is being ensured by design. FDA's authority to require maintenance of these records, and to provide for agency access to them, was fully discussed in the rulemaking on seafood HACCP (60 FR 65096 at 65139). The importance of the records in ensuring that juice will not be rendered injurious to health has been fully discussed. FDA access to these records will expedite the agency's efforts to ensure that the juice products in interstate commerce are not adulterated and to identify any such products that are. The agency points out that the proposed language in § 120.12(e) is intended to be flexible enough to cover State officials if their agency adopts any final regulation by reference.

Proposed § 120.12(f) sets forth information concerning public disclosure of processing records. The agency concluded in the seafood final rule (60 FR 65096 at 65139):

> that records and plans should be protected to the extent possible in order to promote the implementation of HACCP across the seafood industry. FDA has concluded that the public will benefit from the protection of records because it will actually strengthen the HACCP system. So long as the legitimate public need to be able to evaluate the system can be met through other means, the confidentiality of HACCP records and plans generally will foster the industry's acceptance of HACCP. Even though HACCP may be mandatory under these regulations, in order for it to succeed, processors must be committed to it because they see value in it for themselves. Fear of public disclosure of matters that have long been regarded as confidential business matters could significantly undermine that commitment. FDA concludes, therefore, that it is in the public interest to foster tailored HACCP plans that demonstrate understanding and thought, rather than promote the use of rote plans and minimally acceptable standards due to fear of public disclosure.
>
> FDA understands that it cannot make promises of confidentiality that exceed the permissible boundaries established under the Freedom of Information Act, nor does the agency wish to do so in this case. The agency still does not expect that it will be in possession of a large volume of plans and records at any given moment. However, given the significant interest in this subject as conveyed by the comments, FDA has concluded that the final regulations should reflect the fact that the HACCP plans and records that do come into FDA's possession will generally meet the definition of either trade secret or commercial confidential materials.

The agency is not aware of any circumstances that would warrant different conditions for public disclosure for records for juice HACCP than those required for seafood HACCP. Therefore, FDA is proposing the same provisions for § 120.12(f) as are found in § 123.9(d).

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA issued regulations at part 11 (21 CFR part 11) that provide criteria for acceptance by FDA, under certain circumstances, of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed on paper. Proposed § 120.12(g) allows for the maintenance of records on computers in accordance with part 11. This provision simply makes clear the fact that records can be maintained on computers.

The agency requests comments on its proposed approach to recordkeeping for juice processors.

K. Training

In § 123.10 of the seafood HACCP regulation, FDA required that certain functions relating to the operation of a HACCP system be conducted by an individual who has successfully completed training in the application of HACCP principles to fish and fishery product processing that is at least equivalent to that received under a standardized curriculum recognized as adequate by FDA. Job experience that has provided equivalent knowledge is also acceptable. The trained individual need not be an employee of the company.

Training is essential to the effective implementation of a HACCP system for juice. Only a trained individual is capable of effectively executing certain activities, such as identifying appropriate CCP's, how to establish CL's, control measures, corrective actions, and recordkeeping procedures. The often seasonal nature, remote location, and small size of many juice processors also support the need for formalized training.

However, these conditions also create difficulty recruiting highly qualified management and supervisory staff. Given these factors, particularly in light of what FDA learned in its pilot program, the agency is concerned that a significant portion of the juice industry will be unprepared to meet the requirements of a mandatory HACCP program without some training (Ref. 59).

Therefore, FDA is proposing in § 120.13(a) that only an individual who has met specified training requirements can be responsible for certain functions. Those functions are listed in proposed § 120.13(a)(1) through (a)(4). FDA has discussed the basis for requiring that a trained individual perform these functions in the sections addressing each particular proposed provision. The agency is listing the functions that shall be performed by a trained individual in § 120.13(a) for simplicity and is not imposing any additional requirement through this list.

Proposed § 120.13(b) requires that the individual performing the functions listed in proposed § 120.13(a) have successfully completed training in the application of HACCP principles to food processing. The agency anticipates that 2- or 3-day training sessions, modeled after the Better Process Control Schools currently in place for low acid canned food and acidified food manufacturers, will be provided by various private organizations and through academia. FDA does not intend to run HACCP-training courses for the industry.

FDA has been extensively involved with a consortium called the ''Seafood HACCP Alliance'' (the Alliance) consisting of representatives from Federal and State agencies, industry, and academia, who have worked to create a uniform, core training program that will meet the requirements of the seafood HACCP regulations and that will cost very little. The training program that has been developed by the Alliance is based on the recommendations of the NACMCF. The core curriculum for the course consists of basic HACCP principles that are applicable to any food and, thus, are also applicable to juice. It is the agency's intent to utilize the Alliance materials, as applicable, as the standard against which other course materials may be judged. Therefore, the agency is proposing in § 120.13(b) that the training be at least equivalent to that received under standardized curriculum recognized as adequate by FDA.

FDA is also proposing in § 120.13(b) that job experience may qualify an individual to perform these functions if such experience has provided knowledge at least equivalent to that provided through the standardized curriculum. FDA acknowledges that a short course in HACCP has its limitations. For example, a 3-day course might not have anything important to offer to an individual who has had significant job experience working with or for an individual who is well-versed

in HACCP. Where a job experience has imparted a level of knowledge at least equivalent to that that could be provided by short course training, that individual would qualify as a trained individual. FDA requests comments on how processors will be able to determine whether job experience has provided the individual with the specific knowledge and expertise to develop and implement a HACCP program.

FDA is proposing to provide in § 120.13(b) that the trained individual need not be an employee of the processor. Processors may utilize consultants or other trained individuals to perform these functions if they so choose.

L. Application of Requirements to Imported Products

The seafood HACCP regulation sets forth requirements for importers of fish and fishery products in § 123.12. According to § 123.12(a), the importer must either: (1) Obtain fish or fishery products from a country that has an active memorandum of understanding or similar agreement with FDA that documents the equivalency or compliance of the inspection system of the foreign country with the U.S. system relative to the products being imported, or (2) have and implement written verification procedures, as described in the regulation, for ensuring that the products being imported were processed in accordance with the requirements of part 123. If the importer must engage in affirmative verification steps, records of the taking of these steps must be made in English and be on file with the importer, and available for inspection by FDA (§ 123.12(c)). In the absence of assurances that the imported fish or fishery product has been processed under conditions that are equivalent to those required of domestic processors, the product will appear to be adulterated under section 402(a)(4) of the act, and FDA will deny the product entry (§ 123.12(d)) under section 801(a) of the act (21 U.S.C. 381(a)).

Many types of juice are imported into the United States. FDA's inspection system for imports consists largely of reviewing the customs entries for products being offered for entry into the United States, engaging in wharf examinations and sample collections for laboratory analysis, and automatically detaining products with a history of problems (e.g., tamarind and tamarind products, including juice and juice concentrate). The same problems that are present in domestically produced juice can be present in imported juice and may not be apparent from the import review currently conducted by FDA. Consequently, the agency tentatively concludes that HACCP controls for juice should apply to imported products as well as to domestic products.

FDA also tentatively concludes that the importer should share responsibility with the foreign processor for safety. More often than not, it is the U.S. importer, rather than the foreign processor, who actually offers imported juice for entry into the United States. While many importers are conscientious about the safety of the products that they import, others have little understanding of the potential hazards associated with their products.

In the rulemaking process for seafood HACCP, the agency considered many options for compliance with HACCP requirements and carefully crafted the final regulation to incorporate a number of them. These options provide great flexibility for importers to achieve compliance and thus, would appear to be suitable for a wide variety of foods. FDA tentatively concludes that importer requirements for fish and fishery products in § 123.12 are appropriate for and applicable to juice, and is proposing the same requirements in § 120.14 because the agency is not aware of any circumstances that would necessitate any differences in treatment between juice imports and seafood imports. Thus, while the agency has made some minor editorial revisions for clarity, proposed § 120.14 essentially tracks § 123.12. FDA requests comments on the proposed import requirements for juice.

M. Pathogen Reduction

As discussed previously, one of the NACMCF's recommendations to FDA was the use of safety performance criteria instead of mandating the use of a specific intervention technology (Ref. 53). Performance standards set forth requirements in terms of what is to be achieved by a given regulatory requirement, and represent a shift in focus from ''command-and-control'' regulations because they specify the ends to be achieved (producing safe juice products), not the means to achieve those ends.

The NACMCF suggested that a tolerable level of risk would be achieved by requiring interventions that have been validated to achieve a cumulative 5 log reduction in the target pathogen or a reduction in yearly risk of illness to less than 10^{-5}, assuming consumption of 100 ml of juice daily. In addition, the NACMCF stated that HACCP and safety performance criteria should form the general conceptual framework needed to ensure the safety of juices, and that control measures should be based on a thorough hazard analysis. The NACMCF stated that validation of the process must be an integral part of this framework.

Based on the evidence of microbial outbreaks discussed in section I.A of this document, FDA tentatively concludes that processors must establish controls for pathogen reduction in juice. The requirements of parts 113 and 114 mandate a process that exceeds the proposed provision, and, therefore, it is not necessary to require that juices subject to part 113 or 114 meet the 5 log reduction requirement in proposed § 120.24.

FDA is proposing to require in part 120, subpart B, that juice processors, except those subject to the requirements of part 113 or 114, include in their HACCP plans control measures that are known, or can be shown, to produce, at a minimum, a 5 log (i.e., 10^5) reduction in the most resistant microorganism of public health significance that is likely to occur in the juice for at least as long as the shelf life of the product under normal and moderate abuse conditions. The agency requests comment on the appropriateness of the 5 log reduction performance standard and if other approaches, such as establishing a minimal acceptable risk standard for juices, could be used that would ensure the safety of the juice. The agency requests comments on what such a minimal acceptable risk standard should be and how it would be implemented. The agency also invites interested persons to submit scientific data concerning the acceptability of a 5 log reduction requirement or whether a more or less stringent performance standard (e.g., 3 or 7 log reduction) for specific juices would be more appropriate or whether different approaches consistent with a minimal acceptable risk standard for juices might be appropriate for specific juices based on their unique characteristics.

In the absence of known specific pathogen-product associations, the NACMCF recommended the use of *E. coli* O157:H7 or *L. monocytogenes* as the target organism, as appropriate. This recommendation is based on the number of known outbreaks of *E.coli* in juice as described in section I.A of this document and the ubiquitous nature of *L. monocytogenes*. *E. coli* is known to be unusually acid resistant (Refs. 60 and 61), and *L. monocytogenes* is relatively heat resistant (Refs. 62 and 63). Therefore, depending on the type of juice, one of the two NACMCF recommended target organisms will likely be the most resistant microorganism of public health

significance. In controlling the target microorganism, other pathogenic organisms will likely also be controlled.

However, because FDA is proposing a performance standard for pathogen reduction in lieu of a time/temperature requirement and is providing for a cumulative pathogen reduction process, the agency recognizes that other microorganisms may be more appropriate targets for juice processing. For example, control measures other than pasteurization may be more effective for reducing *E. coli* O157:H7 and less effective for another pathogen, and, thus, the most resistant pathogen under the circumstances must be the target pathogen.

Pasteurization is one process that will achieve the 5 log reduction performance standard. However, other interventions (e.g., surface treatments) may be adequate for some types of produce (e.g., citrus fruits). As discussed previously in section I.E of this document, the NACMCF concluded that: (1) The history of public health problems associated with fresh juices indicates a need for active safety interventions; and (2) for some fruit (e.g., oranges), the need for intervention may be limited to surface treatment, but for others, additional interventions may be required (e.g., pasteurization of the juice). Pathogens are not reasonably likely to be present in the interior of sound whole oranges or other citrus fruits. In addition, the acidic nature of citrus fruits may further inactivate any pathogens that may be present. Therefore, any contamination being introduced into the juice will come from the surface of the fruit or the food contact surfaces of the equipment.

There are two possible means by which contamination on the surface of the fruit can be introduced into the juice. First, the skin of the fruit can be damaged allowing any pathogens present to migrate inside the orange. An appropriate HACCP program can control this means of contamination through grading and culling. This step may be the first CCP in a HACCP plan for fresh orange juice production with a critical limit of zero defectives.

Secondly, contamination on the surface of the skin can be introduced from cutting into the orange to extract the juice. This source may be controlled by washing, brushing, and sanitizing the fruit prior to cutting. This step may be a CCP in the processing of fresh orange juice with processors establishing critical limits for the associated parameters (e.g., temperature of water, type and strength of sanitizers, effectiveness of equipment).

Proper implementation of these two CCP's (i.e., zero defects and washing, brushing, and sanitizing the fruit) could potentially achieve a three log reduction in microorganisms (Ref. 64). However, as proposed, processors must validate that such a reduction in the target pathogen is occurring.

In addition to the two CCP's, processors must implement CGMP's (proposed § 120.5) and sanitation SOP's (proposed § 120.6) to ensure that the working area and equipment are clean. The most important step is sanitation of the extraction equipment which may harbor yeasts, molds, and acid tolerant bacteria (Ref. 65). The 1995 outbreak of *Salmonella hartford* associated with fresh orange juice was most likely related to poor CGMP's (Ref. 9). However, CGMP's and sanitation SOP's alone are not sufficient to ensure a 5 log reduction.

Extraction of orange juice and other citrus juices is generally done by either a machine which scores and cores the fruit before squeezing or by cutting the fruit in half and reaming out each side. In the first instance, the only part of the peel which is exposed to the fruit is the cut core. In the second instance, the edge of the knife will make contact with the peel and could potentially contaminate the fruit through the first half of the cut (in the second half of the cut, the knife leaves the fruit after making contact with the peel). If most of the surface of the skin of the orange does not contact the interior (juice) during extraction and the peel is discarded, such an extraction technique may be considered a CCP contributing towards the reduction of the potential pathogenic load.

For purposes of illustration, FDA has simplified some of the extraction methods in order to calculate the possible log reduction in pathogens that might occur from different methods of extraction. In the ''coring'' extraction method, using an example of an orange that is 4 inches in diameter with a ½ inch core cut, there could potentially be a 2 log reduction by only allowing contact with the surface area contained by a ½-inch circle of the outside of the peel. That is, a 4-inch orange has about 50 square inches of peel and a ½-inch circle contains an area of 0.78 inches so that only 1.6 percent (.78/50) of the outside would be potentially in contact with the inner part of the orange. However, FDA points out that under proposed part 120, processors must be able to validate that the reduction in the target pathogen is occurring.

In the cutting method of extraction, there would also be a considerable reduction in the amount of potentially contaminated produce discarded. If, for example the knives used were 0.01 inch thick, the area of the exterior part of the orange that would make contact with the interior would be the top half of the circumference of the orange multiplied by the width of the knife, or about 0.06 square inches with a 4-inch (diameter) orange. Thus, the reduction of pathogens could be approximately 3 log (0.06/50) just by discarding the orange peel. Again, under proposed part 120, processors must be able to validate that this reduction is occurring in the target pathogen.

Thus, it may be feasible that a processor use a combination of CGMP's, sanitation SOP's, and at least the three CCP's discussed previously ((1) Culling and grading; (2) washing, brushing, and sanitizing; and (3) appropriate methods of extraction) and achieve a 5 log reduction in a target pathogen for orange juice. If so, it is unlikely that processors of fresh orange juice, and perhaps other fresh citrus fruit juices, will have to implement pasteurization in order to achieve a 5 log reduction in pathogenic bacteria. In addition, FDA anticipates that manufacturers of other juices, such as apple juice, may be able to use other technologies and practices in lieu of pasteurization (such as a combination of eliminating use of drops, brushing, washing, and using sanitizers) provided that the process is validated to achieve the 5 log reduction in the target pathogen. However, the agency points out that under the proposed rule, processors must establish CL's for each CCP, monitor CL's to ensure compliance, conduct verification and validation procedures, and maintain records of these actions. In addition, the 5 log reduction must be of a target organism.

Each type of control measure used in a cumulative process introduces a unique variable in attaining the overall target of pathogen reduction. The physical parameters of the juice and how the product will be handled after it leaves the processing plant, and before it is consumed, must be considered in the selection of the target organism. Processors must take into consideration time, temperature, pH, and Brix parameters and other matters for juice products in order to provide adequate pathogen control. Time, temperature, juice pH, and Brix directly affect the rate of growth and the types of microorganisms.

The proposed 5 log reduction standard of proposed § 120.24 requires that this reduction be achieved and persist for at least the shelf life of the product when the product is stored under normal and moderate abuse

conditions. Normal handling of juice includes the movement of the juice from the plant to retail (e.g., transportation, warehouse storage) and consumer handling after purchase (e.g., transport home, setting out on a counter or table). Moderate abuse may occur when unusual circumstances arise during regular handling. For example, unloading a truck on a hot day where the product may sit on a loading dock for a short period of time could constitute moderate abuse. In addition, moderate abuse could occur if consumers purchase a product on a warm day, place it in their car, and run errands before refrigerating the product. In FDA's view, moderate abuse does not include exposure to high temperatures for extended periods of time.

The proposed requirement mandates that processors validate that the control measures are both appropriate to their operation and scientifically sound. In many cases, processors may rely on a written certification from the equipment manufacturer or may obtain a written scientific evaluation of a process, especially in cases where two or more control measures are used to accomplish the 5 log reduction in the target pathogen, to ensure that the process is adequate to destroy microorganisms of public health significance or to prevent their growth. Such an evaluation may also be necessary to ensure the adequacy of the pasteurization or refrigerating equipment used by the processor.

Comments on the notice of intent (62 FR 45593, August 28, 1997) addressed the issue of pathogen reduction. One comment stated that a 2 1/2 log reduction in fruit surface microflora from washing was adequate. Some comments asked from what point the 5 log reduction would be measured (e.g., washing of produce).

FDA tentatively concludes that the cumulative 5 log reduction could be measured from the point of the processors' initial treatment of the intact fruit or vegetable. If pathogens are meaningfully reduced on the raw produce through washing or other treatment, and the product is processed under an adequate HACCP program, the hazard from the presence of pathogens may be controlled. However, this control measure may not be adequate or appropriate for all types of produce because of differences in surfaces, areas that are difficult to clean, inclusion of peel or outer layer in the juice, and tissue fragility.

The agency requests comments on its approach to pathogen reduction. In particular, the agency requests comments on whether all juices should be subject to proposed § 120.24, or whether such a requirement may not be necessary for certain juices or types of juices. FDA also requests comments on whether a 5 log reduction is appropriate for all juices, or whether a higher or lower requirement would be adequate for some types of juice.

V. The Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate or other forms of information technology.

Title: Hazard Analysis and Critical Control Point (HACCP) Systems—Reporting and recordkeeping requirements for processors of fruit and vegetable juices under the provisions of 21 CFR part 120.

Description: Section 402(a)(1) (21 U.S.C. 342(a)(1)) of the Federal Food, Drug, and Cosmetic Act (the act) states that a food shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health. Section 402(a)(4) (21 U.S.C. 342(a)(4)) of the act states that a food shall be deemed to be adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. The proposed regulation set forth in this proposed rule would require processors to use Hazard Analysis and Critical Control Point (HACCP) methodology to ensure that fruit and vegetable juices are safe under the act. HACCP is a preventive system of hazard control.

Description of Respondents: Businesses or other for profit organizations.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Sections	No. of Recordkeepers	Annual Frequency	Hours per Recordkeeper	Total Hours
120.6(c)	600	1[2]	4	4,800[2]
120.12(a)(1) and (a)(2), 120.6(c)-(d), and 120.12(a)(5)	600	1	2	1,200
120.7 and 120.12(a)(2) and (c)(1)	600	1[2]	8	4,800[2]
120.8(a) and 120.12(a)(3) and (c)	600	1[2]	8	4,800[2]
120.8(b)(7) and 120.12(a)(4)(i)	600	14,600	0.01	87,600
120.11(b) and 120.12(a)(5)	600	1	4	2,400
120.11(a)(1)(iv)	600	52	0.1	3,120
120.10(c) and 120.12(a)(4)(ii)	600	12	0.1	720
120.14(a)(2)	308	1	4	1,232
120.12(e)	182[3]	1	4	728

Totals:

First year 111,400
Subsequent years 97,000

There are no operating and maintenance cost or capital costs associated with this collection of information.
[2] First year only.
[3] Assuming that producers and importers are subject to official review on a 5-year cycle.

The burden for these activities will vary considerably among processors and importers of juice and juice products, depending on the type and number of products involved, and the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated based on the estimated average annual information collection burden for seafood HACCP (60 FR 65096 at 65178; December 18, 1995). As noted in the preliminary regulatory impact analysis for this proposal, FDA estimates that there are at least 600 firms producing juice products of the type affected by this proposed rulemaking.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to submit comments regarding information collection by May 26, 1998, to the OMB (address above), Attention: Desk Officer for FDA.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

A. Preliminary Regulatory Impact Analysis

In accordance with Executive Order 12886, FDA has developed a single preliminary regulatory impact analysis (PRIA) that estimates benefits and costs associated with both this HACCP proposal and the warning label proposal for juice. The agency will promptly publish the PRIA in the **Federal Register.**

B. Small Entity Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has developed a single small entity analysis that estimates benefits and costs associated with both this HACCP proposal and the warning label proposal for juice. The agency will promptly publish the small entity analysis in the **Federal Register**.

VIII. Request for Comments

Interested persons may, on or before July 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

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

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14. Memorandum of telephone conversation between Mike Cambridge, New York State Health Department, and Debra Street, FDA, January 22, 1997.

15.Memorandum of telephone conversation between Patty Walker, Washington State Health Department, and Debra Street, FDA, January 15, 1997.

16.Memorandum of telephone conversation between Susan Karam, Ohio State Health Department, and Debra Street, FDA, January 21, 1997.

17. Memorandum of telephone conversation between Roberta Hammond, Florida State Health Department, and Debra Street, FDA, January 21, 1997.

18. Memorandum of telephone conversation between Pam Shillam, Colorado State Health Department, and Debra Street, FDA, January 17, 1997.

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35. FDA, Health hazard evaluation, classification, and FDA Enforcement Report for recall #F–529–1, September 4, 5, and 18, 1991.
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45. FDA, Health hazard evaluation, classification, and FDA Enforcement Report for recall #F–036–7, October 23 and 30, 1996, and November 13, 1996.
46. FDA, Health hazard evaluation, classification, and FDA Enforcement Report for recall #F–072–7, November 14 and 20, 1996.
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List of Subjects in 21 CFR Part 120

Fruit and vegetable juice, Food, Imports, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that title 21 CFR chapter I be amended as follows:

1. Part 120 is added to read as follows:

PART 120—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

Subpart A—General Provisions

Sec.

120.1 Applicability.
120.3 Definitions.
120.5 Current good manufacturing practice.
120.6 Prerequisite program standard operating procedures.
120.7 Hazard analysis.
120.8 Hazard Analysis Critical Control Point (HACCP) plan.
120.9 Legal basis.
120.10 Corrective actions.
120.11 Verification and validation.
120.12 Records.
120.13 Training.
120.14 Application of requirements to imported products.

Subpart B—Pathogen Reduction

120.20 General.
120.24 Process controls.

Authority: 21 U.S.C. 321, 342, 343, 346, 348, 371, 374, 379e, 381, 393; 42 U.S.C. 241, 242l, 264.

Subpart A—General Provisions

§ 120.1 Applicability.

(a) Any juice sold as such or used as an ingredient in beverages shall be processed in accordance with the requirements of this part. Juice means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

(b) The regulations in this part shall be effective 1 year after the date of publication of the final rule in the **Federal Register**. However, by its terms, this part is not binding on small and very small businesses until the dates listed in paragraphs (b)(1) and (b)(2) of this section.

(1) For small businesses employing fewer than 500 persons the regulations in this part are binding 2 years after the date of publication of the final rule in the **Federal Register**.

(2) For very small businesses that have either total annual sales of less than $500,000, or if their total annual sales are greater than $500,000 but their total food sales are less than $50,000; or the person claiming this exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of juice were sold in the United States, the regulations are binding 3 years after the date of publication of the final rule in the **Federal Register**.

§ 120.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act, § 101.9(j)(18)(vi), and part 110 of this chapter are applicable to such terms when used in this part, except where redefined in this part. The following definitions shall also apply:

(a) *Control* means to prevent, eliminate, or reduce.

(b) *Control measure* means any action or activity that can be used to prevent, eliminate, or reduce a hazard.

(c) *Critical control point* means a point, step, or procedure in a food process at which a control measure can be applied and at which control is essential to reduce an identified food hazard to an acceptable level.

(d) *Critical limit* means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food hazard.

(e) *Food hazard* means any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

(f) *Importer* means either the U.S. owner or consignee at the time of entry of a food product into the United States, or the U.S. agent or representative of the foreign owner or consignee at the time of entry into the United States. The importer is responsible for ensuring that goods being offered for entry into the United States are in compliance with all applicable laws. For the purposes of this definition, the importer is ordinarily not the custom house broker, the freight forwarder, the carrier, or the steamship representative.

(g) *Monitor* means to conduct a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and to produce an accurate record for use in verification.

(h)(1) *Processing* means activities that are directly related to the production of juice products.

(2) For purposes of this part, processing does not include:

(i) Harvesting, picking, or transporting raw agricultural ingredients of juice products, without otherwise engaging in processing.

(ii) The operation of a retail establishment; and

(iii) The operation of a retail establishment that is a very small business and that makes juice on its premises, provided that the establishment's total sales of juice and juice products do not exceed 40,000 gallons per year, and that sells such juice:

(A) Directly to consumers or

(B) directly to consumers and other retail establishments.

(i) *Processor* means any person engaged in commercial, custom, or institutional processing of juice products, either in the United States or in a foreign country. A processor includes any person engaged in the processing of juice products that are intended for use in market or consumer tests.

(j) *Shall* is used to state mandatory requirements.

(k) *Should* is used to state recommended or advisory procedures or to identify recommended equipment.

§ 120.5 Current good manufacturing practice.

Part 110 of this chapter applies in determining whether the facilities, methods, practices, and controls used to process food are safe, and whether the food has been processed under sanitary conditions.

§ 120.6 Prerequisite program standard operating procedures.

(a) *Sanitation controls.* Each processor shall have and implement a sanitation standard operating procedure (SOP) that addresses sanitation conditions and practices before, during, and after processing and relates to the following:

(1) Safety of the water that comes into contact with food or food contact surfaces or that is used in the manufacture of ice;

(2) Condition and cleanliness of food contact surfaces, including utensils, gloves, and outer garments;

(3) Prevention of cross-contamination from insanitary objects to food, food packaging material, and other food contact surfaces, including utensils, gloves, and outer garments, and from raw product to processed product;

(4) Maintenance of hand washing, hand sanitizing, and toilet facilities;

(5) Protection of food, food packaging material, and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants;

(6) Proper labeling, storage, and use of toxic compounds;

(7) Control of employee health conditions that could result in the microbiological contamination of food, food packaging materials, and food contact surfaces; and

(8) Exclusion of pests from the food plant.

(b) *Monitoring.* The processor shall monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in part 110 of this chapter that are appropriate both to the plant and to the food being processed. Each processor shall correct, in a timely manner, those conditions and practices that are not met.

(c) *Records.* Each processor shall maintain prerequisite program SOP records that, at a minimum, document the monitoring and corrections prescribed by paragraph (b) of this section. These records are subject to the recordkeeping requirements of § 120.12.

(d) *Relationship to Hazard Analysis and Critical Control Point (HACCP) plan.* Prerequisite program SOP controls may be included in the HACCP plan required under § 120.8(b). However, to the extent that they are implemented in accordance with this section, they need not be included in the HACCP plan.

§ 120.7 Hazard analysis.

Each processor shall develop, or have developed for it, a written hazard analysis to determine whether there are food hazards that are reasonably likely to occur for each type of juice processed by that processor and to identify the control measures that the processor can apply to control those hazards. The hazard analysis shall include food hazards that can be introduced both within and outside the processing plant environment, including food hazards that can occur before, during, and after harvest. A food hazard that is reasonably likely to occur is one for which a prudent processor would establish controls because experience,

illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of those controls, the food hazard will occur in the particular type of product being processed. The hazard analysis shall be developed by an individual or individuals who have been trained in accordance with § 120.13 and shall be subject to the recordkeeping requirements of § 120.12.

(a) In evaluating what food hazards are reasonably likely to occur, consideration should be given, at a minimum, to the following:

(1) Microbiological contamination;

(2) Parasites;

(3) Chemical contamination;

(4) Unlawful pesticides residues;

(5) Decomposition in food where a food hazard has been associated with decomposition;

(6) Natural toxins;

(7) Unapproved use of food or color additives;

(8) Presence of undeclared ingredients that may be allergens; and

(9) Physical hazards.

(b) Processors should evaluate product ingredients, processing procedures, packaging, storage, and intended use; facility and equipment function and design; and plant sanitation including employee hygiene to determine the potential effect of each on the safety of the finished food for the intended consumer.

§ 120.8 Hazard Analysis Critical Control Point (HACCP) plan.

(a) *HACCP plan*. Every processor shall have and implement a written HACCP plan whenever a hazard analysis reveals one or more food hazards that are reasonably likely to occur during processing, as described in § 120.7. The HACCP plan shall be developed by an individual or individuals who have been trained in accordance with § 120.13 and shall be subject to the recordkeeping requirements of § 120.12. A HACCP plan shall be specific to:

(1) Each location where juice is processed by that processor; and

(2) Each type of juice processed by the processor. The plan may group types of juice products together, or group types of production methods together, if the food hazards, critical control points, critical limits, and procedures required to be identified and performed by paragraph (b) of this section are essentially identical, provided that any required features of the plan that are unique to a specific product or method are clearly delineated in the plan and are observed in practice.

(b) *The contents of the HACCP plan*. The HACCP plan shall, at a minimum:

(1) List all food hazards that are reasonably likely to occur as identified in accordance with § 120.7, and that thus must be controlled for each type of product.

(2) List the critical control points for each of the identified food hazards, including as appropriate:

(i) Critical control points designed to control food hazards that could occur or could be introduced inside the processing plant environment; and

(ii) Critical control points designed to control food hazards introduced outside the processing plant environment, including food hazards that occur before, during, and after harvest;

(3) List the critical limits that shall be met at each of the critical control points;

(4) List the procedures, and the frequency with which they are to be performed, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) Include any corrective action plans that have been developed in accordance with § 120.10(a), and that are to be followed in response to deviations from critical limits at critical control points;

(6) List the validation and verification procedures, and the frequency with which they are to be performed, that the processor will use in accordance with § 120.11; and

(7) Provide for a recordkeeping system that documents the monitoring of the critical control points in accordance with § 120.12. The records shall contain the actual values and observations obtained during monitoring.

(c) *Products subject to other regulations*. HACCP plans for juice need not address the food hazards associated with microorganisms and microbial toxins that are controlled by the requirements of part 113 or 114 of this chapter. A HACCP plan for such juice shall address any other food hazards that are reasonably likely to occur.

(d) *Sanitation*. Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with § 120.6, they are not required to be included in the HACCP plan.

§ 120.9 Legal basis.

Failure of a processor to have and to implement a Hazard Analysis and Critical Control Point (HACCP) system that complies with §§ 120.6, 120.7, and 120.8, or otherwise to operate in accordance with the requirements of this part, shall render the juice products of that processor adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act. Whether a processor's actions are consistent with ensuring the safety of juice will be determined through an evaluation of the processor's overall implementation of its HACCP system.

§ 120.10 Corrective actions.

Whenever a deviation from a critical limit occurs, a processor shall take corrective action by following the procedures set forth in paragraph (a) or paragraph (b) of this section.

(a) Processors may develop written corrective action plans, which become part of their Hazard Analysis and Critical Control Point (HACCP) plans in accordance with § 120.8(b)(5), by which processors predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

(1) No product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; and

(2) The cause of the deviation is corrected.

(b) When a deviation from a critical limit occurs, and the processor does not have a corrective action plan that is appropriate for that deviation, the processor shall:

(1) Segregate and hold the affected product, at least until the requirements of paragraphs (b)(2) and (b)(3) of this section are met;

(2) Perform or obtain a review to determine the acceptability of the affected product for distribution. The review shall be performed by an individual or individuals who have adequate training or experience to perform such review. Adequate training may or may not include training in accordance with § 120.13;

(3) Take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

(4) Take corrective action, when necessary, to correct the cause of the deviation; and

(5) Perform or obtain timely validation in accordance with § 120.11, by an individual or individuals who have been trained in accordance with § 120.13, to determine whether modification of the HACCP plan is required to reduce the risk of recurrence of the deviation, and to modify the HACCP plan as necessary.

(c) All corrective actions taken in accordance with this section shall be fully documented in records that are

subject to verification in accordance with § 120.11(a)(1)(iv)(B) and the recordkeeping requirements of § 120.12.

§ 120.11 Verification and validation.

(a) *Verification*. Every processor shall verify that the Hazard Analysis and Critical Control Point (HACCP) system is being implemented according to design.

(1) Verification activities shall include:

(i) A review of any consumer complaints that have been received by the processor to determine whether such complaints relate to the performance of the HACCP plan or reveal previously unidentified critical control points;

(ii) The calibration of process-monitoring instruments;

(iii) At the option of the processor, the performance of periodic end-product or in-process testing;

(iv) A review, including signing and dating, by an individual who has been trained in accordance with § 120.13, of the records that document:

(A) The monitoring of critical control points. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that the records document values that are within the critical limits. This review shall occur within 1 week (7 days) of the day that the records are made;

(B) The taking of corrective actions. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with § 120.10. This review shall occur within 1 week (7 days) of the day that the records are made; and

(C) The calibrating of any process monitoring instruments used at critical control points and the performance of any periodic end-product or in-process testing that is part of the processor's verification activities. The purpose of these reviews shall be, at a minimum, to ensure that the records are complete and that these activities occurred in accordance with the processor's written procedures. These reviews shall occur within a reasonable time after the records are made; and

(v) The following of procedures in § 120.10 whenever any verification procedure, including the review of consumer complaints, establishes the need to take a corrective action.

(2) The calibration of process-monitoring instruments, and the performance of any periodic end-product and in-process testing, in accordance with paragraphs (a)(1)(iv)(B) through (a)(1)(iv)(C) of this section, shall be documented in records that are subject to the recordkeeping requirements of § 120.12.

(b) *Validation of the HACCP plan*. Every processor shall validate that the HACCP plan is adequate to control food hazards that are reasonably likely to occur; this validation shall occur at least once within 12 months after implementation and at least annually thereafter or whenever any changes in the process occur that could affect the hazard analysis or alter the HACCP plan and prerequisite program of the standard operating procedures (SOP's) in any way. Such changes may include changes in the following: Raw materials or source of raw materials; product formulation; processing methods or systems, including computers and their software; packaging; finished product distribution systems; or the intended use or consumers of the finished product. The validation shall be performed by an individual or individuals who have been trained in accordance with § 120.13 and shall be subject to the recordkeeping requirements of § 120.12. The HACCP plan shall be modified immediately whenever a validation reveals that the plan is no longer adequate to fully meet the requirements of this part.

(c) *Validation of the hazard analysis*. Whenever a juice processor has no HACCP plan because a hazard analysis has revealed no food hazards that are reasonably likely to occur, the processor shall reassess the adequacy of that hazard analysis whenever there are any changes in the process that could reasonably affect whether a food hazard exists. Such changes may include changes in the following: Raw materials or source of raw materials; product formulation; processing methods or systems, including computers and their software; packaging; finished product distribution systems; or the intended use or intended consumers of the finished product. The validation shall be performed by an individual or individuals who have been trained in accordance with § 120.13 and shall be subject to the recordkeeping requirements of § 120.12.

§ 120.12 Records.

(a) *Required records*. Processors shall maintain the following records documenting the processor's Hazard Analysis and Critical Control Point (HACCP) system:

(1) Records documenting the implementation of the prerequisite program of the standard operating procedures (SOP's) (see § 120.6);

(2) The written hazard analysis required by § 120.7;

(3) The written HACCP plan required by § 120.8;

(4) Records documenting the ongoing application of the HACCP plan that include:

(i) Monitoring of critical control points and their critical limits, including the recording of actual times, temperatures, or other measurements, as prescribed in the establishment's HACCP plan; and

(ii) Corrective actions, including all actions taken in response to a deviation; and

(5) Records documenting verification of the HACCP system and validation of the HACCP plan or hazard analysis.

(b) *General requirements*. All records required by this part shall include:

(1) The name and location of the processor or importer;

(2) The date and time of the activity that the record reflects;

(3) The signature or initials of the person performing the operation or creating the record; and

(4) Where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on records at the time that it is observed. The records shall contain the actual values and observations obtained during monitoring.

(c) *Documentation*. (1) The records in paragraphs (a)(2) and (a)(3) of this section shall be signed and dated by the most responsible individual onsite at the processing facility or by a higher level official of the processor. These signatures shall signify that these records have been accepted by the firm.

(2) The records in paragraphs (a)(2) and (a)(3) of this section shall be signed and dated:

(i) Upon initial acceptance;

(ii) Upon any modification; and

(iii) Upon verification and validation in accordance with § 120.11.

(d) *Record retention*. (1) All records required by this part shall be retained at the processing facility or at the importer's place of business in the United States for, in the case of perishable or refrigerated juices, at least 1 year after the date that such products were prepared, and for, in the case of frozen, preserved, or shelf-stable products, 2 years or the shelf life of the product, whichever is greater, after the date that the products were prepared.

(2) Records that relate to the general adequacy of equipment or processes used by a processor, including the results of scientific studies and evaluations, shall be retained at the processing facility or at the importer's place of business in the United States for at least 2 years after the date that the

processor last used such equipment or process.

(3) Off-site storage of processing records required by paragraphs (a)(1) and (a)(3) of this section is permitted after 6 months following the date that the monitoring occurred, if such records can be retrieved and provided on-site within 24 hours of request for official review. Electronic records are considered to be on-site if they are accessible from an on-site location and comply with § 120.12(g).

(4) If the processing facility is closed for a prolonged period between seasonal packs, the records may be transferred to some other reasonably accessible location at the end of the seasonal pack but shall be immediately returned to the processing facility for official review upon request.

(e) *Official review*. All records required by this part shall be available for official review and copying at reasonable times.

(f) *Public disclosure*. (1) Subject to the limitations in paragraph (d)(2) of this section, all records required by this part are not available for public disclosure unless they have been previously disclosed to the public, as defined in § 20.81 of this chapter, or unless they relate to a product or ingredient that has been abandoned and thus, no longer represent a trade secret or confidential commercial or financial information as defined in § 20.61 of this chapter.

(2) Records required to be maintained by this part are subject to disclosure to the extent that they are otherwise publicly available, or that disclosure could not reasonably be expected to cause a competitive hardship, such as generic-type HACCP plans that reflect standard industry practices.

(g) *Records maintained on computers*. The maintenance of records on computers, in accordance with part 11 of this chapter, is acceptable.

§ 120.13 Training.

(a) Only an individual who has met the requirements of paragraph (b) of this section shall be responsible for the following functions:

(1) Developing the hazard analysis, including delineating control measures, as required by § 120.7;

(2) Developing a Hazard Analysis and Critical Control Point (HACCP) plan that is appropriate for a specific processor, in order to meet the requirements of § 120.8;

(3) Validating and modifying the HACCP plan in accordance with the corrective action procedures specified in § 120.10(c)(5) and the validation activities specified in § 120.11(b) and (c); and

(4) Performing the record review required by § 120.11(a)(1)(iv).

(b) The individual performing the functions listed in paragraph (a) of this section shall have successfully completed training in the application of HACCP principles to juice processing at least equivalent to that received under standardized curriculum recognized as adequate by the Food and Drug Administration or shall be otherwise qualified through job experience to perform these functions. Job experience may qualify an individual to perform these functions if such experience has provided knowledge at least equivalent to that provided through the standardized curriculum. The trained individual need not be an employee of the processor.

§ 120.14 Application of requirements to imported products.

This section sets forth specific requirements for imported food.

(a) *Importer requirements*. Every importer of food shall either:

(1) Obtain the food from a country that has an active memorandum of understanding (MOU) or similar agreement with the Food and Drug Administration, that covers the food and documents the equivalency or compliance of the inspection system of the foreign country with the U.S. system, accurately reflects the relationship between the signing parties, and is functioning and enforceable in its entirety; or

(2) Have and implement written procedures for ensuring that the food that such importer receives for import into the United States was processed in accordance with the requirements of this part. The procedures shall provide, at a minimum:

(i) Product specifications that are designed to ensure that the product is not adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act because it may be injurious to health or because it may have been processed under insanitary conditions; and

(ii) Affirmative steps to ensure that the products being offered for entry were processed under controls that meet the requirements of this part. These steps may include any of the following:

(A) Obtaining from the foreign processor the Hazard Analysis and Critical Control Point (HACCP) plan and prerequisite program of the standard operating procedure (SOP) records required by this part that relate to the specific lot of food being offered for import;

(B) Obtaining either a continuing or lot specific certificate from an appropriate foreign government inspection authority or competent third party certifying that the imported food has been processed in accordance with the requirements of this part;

(C) Regularly inspecting the foreign processor's facilities to ensure that the imported food is being processed in accordance with the requirements of this part;

(D) Maintaining on file a copy, in English, of the foreign processor's hazard analysis and HACCP plan, and a written guarantee from the foreign processor that the imported food is processed in accordance with the requirements of this part;

(E) Periodically testing the imported food, and maintaining on file a copy, in English, of a written guarantee from the foreign processor that the imported food is processed in accordance with the requirements of this part; or

(F) Other such verification measures as appropriate that provide an equivalent level of assurance of compliance with the requirements of this part.

(b) *Competent third party*. An importer may hire a competent third party to assist with or perform any or all of the verification activities specified in paragraph (a)(2) of this section, including writing the importer's verification procedures on the importer's behalf.

(c) *Records*. The importer shall maintain records, in English, that document the performance and results of the affirmative steps specified in paragraph (a)(2)(ii) of this section. These records shall be subject to the applicable provisions of § 120.12.

(d) *Determination of compliance*. The importer shall provide evidence that all food offered for entry into the United States has been processed under conditions that comply with this part. If assurances do not exist that an imported food has been processed under conditions that are equivalent to those required of domestic processors under this part, the product will appear to be adulterated and will be denied entry.

Subpart B—Pathogen Reduction

§ 120.20 General.

This subpart augments subpart A of this part by setting forth specific requirements for process controls.

§ 120.24 Process controls.

In order to meet the requirements of subpart A of this part, processors of juice products, except those subject to the requirements of part 113 or 114 of

this chapter, shall include in their Hazard Analysis and Critical Control Point (HACCP) plans control measures that will produce, at a minimum, a 5 log (i.e., 10^5) reduction, for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, in the pertinent microorganism. For the purposes of this regulation, the ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in the juice.

Dated: April 17, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–11025 Filed 4–22–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0524]

RIN 0910–AA43

Food Labeling: Warning and Notice Statements; Labeling of Juice Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require warning statements on packaged fruit and vegetable juice products that have not been processed to destroy pathogenic microorganisms that may be present. FDA is taking this action because of the recent outbreaks of foodborne illness and deaths caused by consumption of juice products that were not pasteurized or otherwise processed to control pathogenic microorganisms. This requirement for warning labels will serve to reduce the risk of foodborne illness. Elsewhere in this issue of the **Federal Register**, FDA is proposing to require that juice be processed under a Hazard Analysis and Critical Control Point program (HACCP).

DATES: Submit written comments by May 26, 1998. See section V of the **SUPPLEMENTARY INFORMATION** section of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

There recently have been outbreaks of foodborne illness associated with the consumption of juice and beverages containing juice, i.e., juice products, that have not been pasteurized or otherwise treated to destroy pathogenic microorganisms.[1] On October 30, 1996, the Seattle-King County Department of Public Health and the Washington State Department of Health reported an outbreak of *Escherichia coli* O157:H7 infections epidemiologically associated with consumption of unpasteurized apple juice. The outbreak resulted in at least 66 cases of illness in 3 western States and British Columbia, and the death of 1 child (Refs. 1 and 2).

Pathogens other than *E. coli* O157:H7 may be present in apple and other types of juice products and have been documented as the cause of foodborne illness. In particular, outbreaks caused by *Salmonella typhimurium* and *Cryptosporidium* in apple cider (Refs. 3, 4, and 5) and *Vibrio cholerae* in coconut milk (Ref. 6) have been reported. In addition, outbreaks caused by consumption of unpasteurized orange juice contaminated with *S. hartford* (Ref. 7), orange juice drink contaminated with *S. agona* (Ref. 8), orange juice contaminated with *Bacillus cereus* (Ref. 9), and home-made carrot juice contaminated with *Clostridium botulinum* (Ref. 10) have been reported.

Because of the agency's concern that its regulatory program for fresh juices may not be adequate to ensure the production of safe juice and juice products, and because of the severity of the recent outbreak of *E. coli* O157:H7 associated with apple juice, the agency held a public meeting on December 16 and 17, 1996, to discuss safety issues presented by juice products. At that meeting, FDA met with interested parties to review the current science, including technological and safety factors, relating to fresh juice production and to consider the measures that would be necessary to provide safe fruit and vegetable juices. Experts from industry, academia, and the regulatory and consumer sectors presented information on illnesses and the epidemiology of outbreaks arising from microbially contaminated juices; concerns with emerging pathogens; procedures for processing juices; and new and existing technology to control pathogens in juice products.

In light of the information developed at the public meeting and in comments received by the agency, as well as other information available to the agency, FDA has developed a strategy that it believes will address both the immediate goal of reducing the risk of foodborne illness associated with juice products and the long-term goal of ensuring that juice products are safe. In the **Federal Register** of August 28, 1997 (62 FR 45593), the agency published a notice of intent (''the notice of intent'') that announced a comprehensive program to address the incidence of foodborne illness related to consumption of fresh juice and ultimately to address the safety aspects of all juice products. The agency invited comment on the appropriateness of its strategy to: (1) Initiate rulemaking on a mandatory HACCP program for some or all juice products; (2) propose that the labels or labeling of juice products not specifically processed to prevent, reduce, or eliminate the presence of harmful bacteria bear a warning statement informing consumers of the risk of illness associated with consumption of the product; and (3) initiate several educational programs to minimize the hazards associated with fresh juice. FDA stated that it would consider comments received within 15 days of publication of the notice of intent as part of any rule proposed by the agency.

This document addresses the warning statements for labels of packaged juice products that have not been specifically processed to prevent, reduce, or eliminate the presence of harmful pathogens. FDA has reviewed all the comments received within 15 days of publication of the notice of intent and has determined that the comments provide no information that would cause the agency to conclude that this proposal is inappropriate. In this document, the agency addresses these comments to the extent that they are relevant to this proposal. Comments in response to the notice of intent received more than 15 days after publication of that notice that address issues in this

[1] In this proposal, the terms ''juice'' and ''juice products'' are used interchangeably. Thus, ''juice'' refers both to beverages that are composed exclusively of an aqueous liquid or liquids extracted from one or more fruits or vegetables and those beverages that contain other ingredients in addition to juice. Similarly, ''juice product'' refers both to beverages that contain only juice and beverages that are composed of juice and other ingredients.

proposal will be considered in any final rule published in response to this proposal.

II. The Proposal

A. Rationale for Proposal

As discussed in the notice of intent, implementation of a HACCP program appears to be the best long-term control measure for pathogens and for other safety concerns related to the production and distribution of some or all juice products. Therefore, elsewhere in this issue of the **Federal Register**, the agency is publishing a proposal (''the HACCP proposal'') to require that most juice be processed under a HACCP program. However, the agency recognizes that rulemaking and implementation of a HACCP program are time consuming, and that a HACCP program for some or all juices would likely not be fully implemented for several years. During this period of rulemaking and implementation, the risk of illness caused by pathogens in fresh juice will persist. The agency is concerned that, unless warned, consumers at greatest risk could suffer serious illness and even death from the consumption of juices that have not been treated to prevent, reduce, or eliminate microbial pathogens. Accordingly, FDA has tentatively concluded that there is an immediate need to inform consumers of the public health risks associated with consumption of untreated juice products through the use of a warning on the label of such products.

Implementation of a labeling requirement can be completed more quickly than implementation of a mandatory HACCP program. Consequently, FDA is proposing to require that the labels of packaged juice products not pasteurized or otherwise specifically processed to prevent, reduce, or eliminate the presence of pathogens bear a warning statement informing consumers of the potential risk of foodborne illness associated with the product. As discussed in more detail in section II of this document, the agency is also proposing that this labeling requirement not apply to any juice processed under an adequate HACCP program or otherwise processed in a manner sufficient to destroy pathogens, e.g., pasteurization, or to any unpackaged juice sold for immediate consumption, e.g., products sold by the glass in restaurants, grocery stores, or other food establishments.

B. Legal Authority for FDA to Require Warning Labels

As a general rule, FDA's authority to require warning labels on food products derives from sections 201(n), 403(a)(1), and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n), 343(a)(1), and 371(a)). Under section 403(a)(1) of the act, a food is misbranded if its labeling is false or misleading in any particular.[2] Section 201(n) provides that, in determining whether labeling is misleading, FDA shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts material in light of representations made or suggested in the labeling, or facts material as to consequences that may result from use of the product under conditions of use prescribed in the labeling or under customary or usual conditions of use. Section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act. FDA has relied on the authority of sections 201(n), 403(a), and 701(a) of the act to require warning labels that alert consumers to the potential hazards of certain ingredients of foods and dietary supplements. (See 49 FR 13679, April 6, 1984 (protein products) and 62 FR 2218, January 15, 1997 (iron-containing dietary supplements).)

As previously discussed, some juice products have been the vehicles of outbreaks of illnesses from foodborne pathogens, including *E. coli* O157:H7 and *Salmonella*. The consequences of consuming juice products that contain pathogenic microorganisms are well documented; such consumption may result in serious, life threatening illnesses or death (Refs. 1 to 7). Therefore, the agency tentatively concludes that there is a risk of serious illness from consuming juice products that have not been processed in a manner designed to destroy these pathogens. Given the possible presence of pathogens in untreated juice, and the potential consequences of consumption of these beverages, the fact that juice may contain harmful pathogens and the fact that a product has not been treated to control such pathogens are material facts regarding the consequences that may result from use of these juice products. Unless these facts are disclosed to consumers at the time that they are deciding whether to purchase and consume the juice, the juice products are misbranded under sections 201(n) and 403(a)(1) of the act. Accordingly, the agency is proposing to require a warning statement on the labels of packaged juice products not processed to destroy pathogens. The agency is not proposing to require warnings for unpackaged juice (e.g., juice sold by the glass in restaurants or other food establishments). The proposed regulation does not draw a distinction between packaged and unpackaged juice products, because, by its terms, the regulation applies only to packaged juice products and not the unpackaged products. This approach is consistent with the agency's food labeling regulations which do not apply to food distrubuted to consumers in unpackaged form unless specifically noted in the regulations.

C. Covered Products

In the HACCP proposal, FDA is proposing to define ''juice'' as the aqueous liquid expressed or extracted from one or more fruits or vegetables, the puree of the edible portion of one or more fruits or vegetables, or any concentrate of such liquid or puree. The agency is proposing that the term ''juice'' have the same definition for purposes of the warning statement. Furthermore, the agency notes that fruit and vegetable juices may be used as ingredients in other beverages (e.g., diluted juice beverages and flavored bottled waters). Because these products often resemble juices, are processed in a manner that is similar to the manner in which juices are processed, are handled by consumers similarly to juices, and would support pathogen outgrowth similarly to juices, these foods are likely to present the same food hazards as juices. Therefore, consistent with its HACCP proposal, the agency is proposing in § 101.17(g)(1) that the requirement for a warning statement cover any packaged juice, as defined in section II.C of this document, sold as such or used as an ingredient in another beverage. The agency notes that juice processed on premises and sold for immediate consumption in establishments such as restaurants, in-store delis, and juice bars are not subject to the requirements of this proposal.

D. Circumstances in Which Warning Statements Required

In comments that it submitted in response to the public meeting held on December 16 and 17, 1996, the National Advisory Committee for Microbiological Criteria for Foods (NACMCF) stated that the history of public health problems with juice necessitates some safety

[2] The term ''label'' means any written, printed, or graphic matter on the immediate container of an article (section 201(k) of the act). The term ''labeling'' means all labels and other written, printed, or graphic matter either on any article or its containers or wrappers, or accompanying such article (section 201(m) of the act).

interventions by manufacturers. The NACMCF recommended that a tolerable level of risk may be achieved by requiring interventions that have been validated to achieve a cumulative 5-log (i.e., 100,000 fold) reduction in *E. coli* 0157:H7 or *Listeria monocytogenes* or a reduction in the yearly risk of illness to less than 10^{-5}, assuming consumption of 100 milliliters of juice daily. However, the NACMCF did not specify the manner in which this reduction should be accomplished.

As discussed in the HACCP proposal published elsewhere in this issue of the **Federal Register**, FDA has tentatively concluded that a 5-log reduction in the target pathogen is a tolerable level of risk in juice products. Therefore, for purposes of the HACCP proposal, the agency is proposing to require that juice made by processors but not retailers as discussed in that proposal be processed in a manner that will produce, at a minimum, a 5-log reduction, for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, in the pertinent microorganism. (As set out in the HACCP proposal, retail establishments includes establishments that process juice for direct sale to consumers and other retailers, as long as total annual sales do not exceed 40,000 gallons.) For the purposes of this regulation, the ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in juice. (In the remainder of this document this level of reduction shall be referred to as ''the 5-log reduction.'') FDA recognizes that pasteurization is a process that can achieve this 5-log reduction. In addition, manufacturers may be able to use other technologies and practices (such as a combination of eliminating use of drops, brushing, washing, and using sanitizers) provided that their process is validated to achieve the 5-log reduction in the target pathogen. Therefore, the agency is proposing in § 101.17(g)(2) to require that all packaged juice that has not been processed in a manner that will produce the 5-log reduction bear a warning statement alerting consumers to the potential presence of harmful bacteria.

E. Label Warning Statements

1. Use of Terms ''Pasteurized'' and ''Unpasteurized''

The agency considered whether the use of the terms ''pasteurized'' and ''unpasteurized'' on the label without additional hazard information, would adequately alert consumers to the microbiological hazards associated with some juice products. FDA received several comments in response to the notice of intent regarding the use of these terms. Some comments suggested that products should be labeled ''unpasteurized'' to distinguish them from pasteurized products. Other comments opposed warning labels for pasteurized products. According to one comment, because there have been no public health problems associated with pasteurized juice, there should be no requirement that these products declare on their label that they are pasteurized. However, the comment further asserted that pasteurized juice products should be permitted to declare that fact voluntarily on their label.

Comments received in response to the notice of intent also addressed the adequacy of labeling using the terms ''pasteurized'' and ''unpasteurized.'' One comment stated that use of the terms ''pasteurized'' and ''unpasteurized'' alone, without hazard information, would be ineffective communication if consumers do not know that pasteurization is a heat treatment designed to kill bacteria and that these microorganisms, if not eliminated and if consumed, could cause life threatening illness for some consumers.

FDA tentatively agrees with this comment. Although label statements indicating whether a product is pasteurized or unpasteurized may be useful to consumers who are seeking to purchase either type product, FDA has tentatively concluded that use of such terms would only inform consumers about the type of treatment, or lack of treatment, that a juice has received and would not properly inform consumers of the risks presented by untreated juices. Also, FDA is not aware of the extent to which consumers understand the terms ''pasteurized'' and ''unpasteurized.'' Thus, the agency is concerned that without effective consumer education, labeling untreated juice products as simply ''unpasteurized'' may not only have relatively little meaning to consumers but could even cause confusion. For example, some consumers may select unpasteurized juice believing that such juice is superior to pasteurized juice in that it is less processed.

In addition, FDA has tentatively concluded that an untreated packaged juice product labeled with the term, ''unpasteurized,'' without an accompanying statement that describes the associated microbiological hazards, or a statement that informs purchasers that children, the elderly, and the immunocompromised are at greatest risk of serious illness from consuming such product, would be misbranded under section 403(a)(1) and 201(n) of the act because such labeling would not reveal material facts about the consequences that may result from use of such juice products.

Finally, FDA is concerned that requiring juice products to be labeled only with the terms ''unpasteurized'' or ''pasteurized'' would not take into account technologies other than pasteurization that may be developed to control pathogens in juice. Thus, requiring use of these terms could be viewed as restricting the development of new technologies. Several comments suggested that there are alternate technologies that could be used to control microorganisms in juice products, e.g., irradiation, high pressure treatment, or pulsed high energy processes. One comment opposed labeling that would preclude alternatives to pasteurization to render juice products safe. The agency agrees with this comment and tentatively concludes that labeling a product as ''unpasteurized'' may be misleading in that the term does not distinguish between a product that may contain harmful pathogens that could result in serious disease and one that is treated using a method (other than pasteurization) that is capable of achieving a 5-log reduction in the target pathogen. A product that is processed by a means other than pasteurization to achieve a 5-log reduction in the target pathogen does not have the potential microbiological hazard, and thus, would not require a warning statement, yet that product could not be labeled ''pasteurized.'' Without additional information, the consumer would not know how to interpret the label with the term ''unpasteurized.''

Therefore, the agency tentatively concludes that labeling juice as either ''pasteurized'' or ''unpasteurized'' without hazard information would not adequately inform consumers about the potential hazard associated with consumption of juices that have not been processed to prevent, reduce, or eliminate the presence of pathogenic microorganisms. Consistent with this tentative judgment, FDA has also tentatively concluded that language that specifically identifies the hazard, in the form of a warning statement, is necessary to inform consumers effectively of the risks associated with the consumption of fruit and vegetable juices that have not been so processed. Manufacturers who wish to label their products voluntarily with the term ''pasteurized'' or with the term ''unpasteurized,'' along with the warning statement, may do so under the

proposed rule, provided that these terms are used in a truthful and nonmisleading manner. The agency requests comments on these tentative conclusions.

2. Essential Elements of Specific Warning Statements

Consumer focus group research available to the agency shows that certain elements are essential if label warning statements are to inform consumers effectively of a hazard (Ref. 11). The agency has previously used this consumer study information to develop effective warning statements. For example, the agency used this information to craft a warning statement for iron-containing dietary supplements (see § 101.17(e) (21 CFR 101.17(e))). As discussed in the final rule that requires that such supplements bear a warning statement (62 FR 2218, January 15, 1997), the elements essential for an effective warning statement are a description of the hazard, handling instructions to avoid the hazard, and an instructional statement that describes conditions under which the hazard occurs and what action to take if the hazard is not avoided.

The consumer research that FDA has reviewed shows that when consumers generally believe that a product is safe, warning messages that note that a hazard exists but that do not provide information about the nature of the hazard, are likely to confuse or frighten them (Ref. 11). Therefore, because juice products have not historically been considered by consumers to be hazardous, and because these products are generally promoted and consumed as an important part of a healthy diet, it is critical that any warning statement for juice clearly describe the potential hazard to consumers. In this case, the hazard to be described is the potential presence of pathogens in the juice that can cause serious illness. Therefore, the agency tentatively concludes that to provide effective information to consumers of the hazard associated with some juice products, a brief description of the particular hazard should be included in the warning statement. These consumer research data also show that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the remainder of the statement (Ref 11). Therefore, FDA is proposing that the description of the hazard appear in the warning statement and that such description appear in the first sentence of that statement, i.e., that juice may contain pathogens known to cause serious, life-threatening illness.

The second essential element of an effective warning statement is that it disclose the reason that the labeled product presents the hazard. As discussed previously, consumer research shows that stating that a product presents a hazard without further explanation may be confusing and frightening to consumers. The agency is concerned that consumers may not find credible a warning on a product that they may have consumed safely for years. A warning that juice may be hazardous without an accompanying statement describing why the labeled product has the potential hazard could imply that all juices are potentially hazardous. Therefore, the agency tentatively concludes that it is essential to describe why a particular juice product has the potential hazard, i.e., because it has not been processed in a way that is designed to destroy harmful pathogens that could be present.

The final essential element for a warning statement is an identification of the groups that are at greatest risk of illness. Existing data show that certain subpopulations are more susceptible to foodborne illness than others. Specifically, the evidence suggests that children, the elderly, and persons who are immunocompromised are at greatest risk of serious illness from exposure to foodborne pathogens (Ref. 12). As previously discussed, juice has been a vehicle for foodborne pathogens that have caused serious illness. Therefore, it is essential that the warning statement for untreated juice specifically identify the at-risk groups, so that such individuals may choose to avoid the product.

The agency recognizes that the foregoing elements are somewhat different from those used in warning statements on other products. For example, as previously discussed, the warning label for iron-containing supplements contains handling and instructional statements. Warning statements for self pressurized containers in § 101.17(a), (b), and (c), and for protein products under § 101.17(d) also include handling or instructional statements.

However, the agency tentatively concludes that, for juices, handling and instructional information is not essential for an effective warning statement. Under this proposal, the warning statement will include a description of the hazard, a description of the source of the hazard, and a description of the at-risk groups. The agency believes that it is implicit in this description that the at-risk consumers can avoid the hazard by not consuming the juice product. However, FDA requests comment on whether the agency should require a statement explicitly instructing consumers who are at greatest risk to avoid the product and if so, the basis for such requirement.

Applying the essential elements described above, FDA crafted examples of warning statements. The following examples illustrate some of the variation that could occur in statements by applying the essential elements.

> WARNING: Unless specifically processed, some juices may contain harmful bacteria known to cause serious illness. This product has not been processed to destroy these bacteria. The risk of life-threatening illness is greatest for children, the elderly, and persons with weakened immune systems.

> WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.

The following is an alternative statement that contains the three essential elements as well as optional instructional and handling statements.

> WARNING: Some juices have been found to contain harmful bacteria known to cause life-threatening illness. This product has not been processed to destroy these bacteria. Children, the elderly, and persons with weakened immune systems should avoid this product. Consumers may protect themselves by boiling this product before serving.

In order to evaluate the examples of warning statements developed through use of the essential elements and to test the effectiveness of such examples in informing consumers of the hazards associated with untreated juice products, FDA conducted focus group research to evaluate consumer understanding of several possible warning statements.

Six focus groups were conducted to test possible warning statements that contained the essential elements as well as the optional handling instructions (Ref 13). All participants examined and discussed seven warning statements, including the three examples presented above. Most participants initially viewed the tested warning statements as very strong messages that indicated that there is greater risk associated with unpasteurized juice than these consumers had previously thought. Because many juice products do not state on the label that the product has been pasteurized, many of the participants assumed that most juices are not pasteurized. Once these

consumers understood that most juices are pasteurized, these consumers no longer believed that the warning statements were extreme.[3]

In comparing and contrasting the various examples of warning statements, there was strong consensus across the groups regarding the preferred warning statement. Specifically, the participants strongly preferred a statement that was short and concise, that clearly stated that the product was not pasteurized, and that clearly identified the consumers at greatest risk of illness. The focus group discussions also provided insight into the clarity of different terminology for conveying the essential elements. Participants were better able to understand the warning statement when the term pasteurization was used rather than a term such as ''specifically processed.'' They also found the term ''harmful bacteria'' easier to understand than ''microorganisms.'' Finally, for the description of risk groups, participants preferred the phrase ''weakened immune systems'' to the alternative ''immune system deficiencies.'' Overall, the participants emphasized the need for simple, straight-forward language that could be comprehended by lay people.

In addition, the focus group research showed that inclusion of handling statements that instructed consumers on how to sterilize unpasteurized juice by heating it was seen as not particularly effective. Overall, participants found the statements somewhat confusing and reacted rather negatively to these instructions. Many participants questioned why they would pasteurize unpasteurized juice when they could simply buy pasteurized juice in the first place.

The focus group research also showed that minor wording differences, such as inclusion of the adjective ''fresh'' in describing the juice product, had a strong impact on the participants' reaction to the statements. Participants stated that warnings that described the product as ''fresh'' were inappropriate because such description invoked a positive characteristic (being fresh) that changed the tone of the warning statement in a way that made the statement inconsistent with a serious warning. The participants believed this inconsistent tone would create confusion and that consumers would not recognize the statement as a warning.

Based on these findings FDA has tentatively concluded that requiring a specific message (i.e., a prescriptive approach) will be the most effective way to ensure that consumers are not misled and correctly understand the warning statement. This approach will ensure that consumers of fresh juice are able to make informed choices about the products they purchase and consume. In addition, use of a prescriptive warning statement for fresh juice is consistent with warning statements for other food products (protein products and iron-containing dietary supplements, § 101.17(d) and (e) respectively).

Although FDA stated in the notice of intent that it would propose essential elements of a warning statement, the agency recognized in the notice that, because the model statements were untested, there could be a more effective way to alert consumers to the potential hazard. The focus group research directed at warning statement examples developed through use of elements demonstrates that allowing variation in the warning statements may lead to a misleading message. Therefore, after having conducted focus group research directed at warning statements for juices that have not been treated to destroy pathogens, and having analyzed the results of the research, FDA has tentatively concluded that a prescriptive approach would be more effective than the ''elements approach'' in informing consumers of the potential hazard.

In addition, FDA believes that a regulation to require a warning statement for untreated juices must be sufficiently clear to allow the regulated industry to determine that its labeling complies with that regulation. In addition, the regulation should establish a so-called ''level playing field'' for all products covered by the regulation by requiring that each product's labeling provide the same information. FDA has tentatively concluded that by prescribing the specific language for a warning statement for untreated juice in a regulation would accomplish these two goals, as well as ensure a message to consumers that is not confusing, misleading or otherwise ineffective. In addition, from the agency's perspective, the enforcement of a labeling rule is more straight forward where the regulation prescribes the contents of the labeling.

Accordingly, FDA is proposing in § 101.17(g)(2) to require that juice products not processed in a manner that will produce, at a minimum, a 5-log reduction in the pertinent microorganism for a period of at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, bear the following statement:

WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.

The agency requests comments on the specific language of the warning statement. For example, are the categories of at-risk consumers identified too broadly in the warning statement? Should the at-risk consumers be more narrowly described, and, if so, on what basis? For example, is there any basis for describing certain ages for ''children'' and the ''elderly'' or describing a certain level of ''weakened immune system?'' Should the words that alert consumers to the warning statement be changed from ''WARNING'' to ''ATTENTION,'' ''NOTICE,'' ''CONSUMER ADVISORY,'' ''CONSUMER ALERT,'' or ''HAZARD ADVISORY,'' as suggested by comments to the notice of intent, or to some other term?

FDA is also interested in receiving in comments the results of any other available consumer research. FDA will consider the results of such research in developing any final rule that results from this proposal.

FDA is proposing the use of the term ''pasteurized'' rather than ''specifically processed'' in the warning statement because the term ''pasteurized'' in the context of the entire statement was better understood by the focus group participants to describe a process that makes juice ''safe.'' However, the agency recognizes that the use of this term could imply to consumers that all juices not bearing the warning statement have been pasteurized. While such an implication may not be technically precise for products manufactured under an effective HACCP plan that does not include pasteurization, FDA has tentatively concluded that this imprecision is acceptable because the more important message, i.e., that juice products not bearing the warning statement can be safely consumed by all population groups, will be clearly understood by consumers. Nonetheless, the agency solicits specific comment on whether use of the phrase ''has not been pasteurized'' is appropriate in this context, or whether alternate phrasing not identifying a specific process should be used. Comments that suggest alternate phrasing should include data, information, or a rationale to support the alternative, as well as evidence that consumers would not be confused or misled by the alternate phrasing.

[3] Approximately ninety-eight percent of juice sold in the United States is pasteurized.

3. Placement and Prominence

Section 403(f) of the act requires that mandatory label information be prominently placed on the label with such conspicuousness (compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of use. FDA has generally considered the label information panel to be the appropriate location for warning statements. As discussed in the agency's rulemaking requiring warning statements on iron-containing dietary supplements (62 FR 2218), consumer focus group studies establish that a warning statement need not be placed on the principal display panel (PDP) to be effective in informing consumers of the hazard. Participants in the focus groups reasoned that the front of the product was used for marketing purposes and stated that they were accustomed to looking at the ''back of products'' for nutrition and factual information, including warning statements (Ref. 11). Consequently, in the case of iron-containing dietary supplements, the agency required that the warning statement appear on the information panel.

The agency tentatively concludes that for warning statements on packaged juice products, the requirement for prominence and conspicuousness would similarly be met if the statements appeared on the information panel. However, the agency has tentatively concluded that it would not object to firms placing the warning statement on the PDP, because the PDP would provide even greater prominence. Accordingly, FDA is proposing to require in § 101.17(g)(3) that the warning statement for juices appear either on the product information panel or on the PDP.

The requirement in the act for prominent display means that the warning statement must appear in a manner that makes it readily observable and likely to be read. The agency notes that § 101.2(c) (21 CFR 101.2(c)) requires that mandatory information appearing on the PDP and information panel, including information required by § 101.17, appear prominently and conspicuously in a type size no less than one-sixteenth inch. The agency has tentatively concluded that it is not necessary to repeat type size requirements in the proposed regulation for warning labels on juice products and, therefore, has not done so.

Because of the severity of the hazard, FDA has tentatively concluded that the word ''warning'' in the warning statement should be as prominent and conspicuous as possible. In the past, when the agency has required cautionary information on labels, e.g., on products containing aspartame (39 FR 27317), it utilized bold type to make the information more prominent. In addition, FDA regulations on nutrition labeling, § 101.9(d)(1)(iv) (21 CFR 101.9(d)(1)(iv)), require that certain nutrient information in the nutrition facts panel use bold type. Therefore, consistent with these examples, the agency is proposing in § 101.17(g)(4) to require that the word ''WARNING'' be in bold type to help alert consumers that there is new and critically important information about the juice products.

In addition, current agency regulations that require a ''warning'' statement on the product label or in labeling (e.g., the statement required by § 101.17(e) on iron-containing dietary supplements in solid oral dosage form) or a label ''notice'' statement (e.g., the statement required by § 101.17(d)(3) on protein products that are not covered by the requirements of § 101.17(d)(1) and (2)) require that the identifying term ''WARNING'' or ''NOTICE'' be capitalized and immediately precede the language of the applicable labeling statement. Consistent with these examples, the agency is proposing in § 101.17(g)(4) to require that the capitalized word ''WARNING'' immediately precede the statement.

The agency notes that experience has shown that the prominence of some labeling information may be enhanced by the use of a box around the information. The agency's experience with the nutrition facts panel on food labels has been that the box surrounding the nutrition information greatly increases the prominence of the information. In addition, consumer focus group research has shown that boxes around important messages help consumers to distinguish the message from other information (Ref. 11). The agency tentatively concludes that the use of a box around the warning statement for juice will similarly increase the prominence of the message by setting it off, thereby enhancing the likelihood that consumers will notice and read the message. Accordingly, FDA is including in the proposal a requirement (§ 101.17(g)(5)) that the warning statement be set off in a box by use of hairlines. The agency requests comments on the prominence and placement of the proposed warning statements.

III. Analysis of Impacts

A. Preliminary Regulatory Impact Analysis

In accordance with Executive Order 12866, FDA has developed a single preliminary regulatory impact analysis (PRIA) that estimates benefits and costs associated with both this proposal and the HACCP proposal for juice. The agency will promptly publish the PRIA in the **Federal Register**.

B. Small Entity Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has developed a single small entity analysis that estimates benefits and costs associated with both this proposal and the HACCP proposal for juice. The agency will promptly publish the small entity analysis in the **Federal Register**.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Effective Date

FDA is proposing that any final rule that may be issued based upon this proposal become effective 60 days after its publication in the **Federal Register**. FDA realizes that it will take time for manufacturers to make label changes and to deplete existing inventories. However, FDA must balance the need for immediate implementation of a warning statement requirement because of the food safety benefits associated with it, with the burden placed on industry to comply with the requirement. The agency, therefore, is considering options in this document that will provide information to consumers while reducing the burden on industry. Accordingly, firms may provide the required warning statement in labeling at point of purchase, e.g., signs or placards, as a temporary alternative to providing the information on the label. When signs or placards are used, the agency is requiring that the type size of the labeling be in accordance with that required in § 101.100(a)(2)(ii) (21 CFR 101.100(a)(2)(ii)), i.e., not less than one-fourth inch in height. The agency is proposing in § 101.17(g)(3)(i) to allow manufacturers until January 1, 2000, to provide the warning message on the label itself. This is the next appropriate uniform compliance date for other food labeling changes. Furthermore, to

relieve the burden on small businesses, the agency is proposing in § 101.17(g)(3)(ii) to allow businesses employing fewer than 500 persons until January 1, 2001 to provide the required warning information on the label. Based on the agency's economic analysis, the agency believes that this date permits small businesses sufficient time to provide information on labels without appreciable economic losses. This definition of a small business is based on that of the Small Business Administration. The agency requests comments on the effective date and the compliance dates for this rule.

Because of the severity of the hazard, the agency urges manufacturers of juice products that have not been processed to prevent, reduce, or eliminate the presence of pathogenic microorganisms to begin immediately to label their products with a warning statement consistent with this proposal. Such labeling can be accomplished by the use of stickers or placards. FDA recognizes that it is possible that the requirements for the warning label statement in the final rule may be different from those in the proposal. However, to encourage manufacturers to use the warning label statement as soon as possible, the agency advises that it intends to allow the continued use of any label or labeling that complies with the proposed regulation and is printed prior to the date of publication in the **Federal Register** of any final rule resulting from this proposal until that inventory is depleted.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed warning statement is ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VII. Comments

Interested persons may, on or before May 26, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency notes that the comment period in this document is shorter than the 75-day period that is customarily provided by FDA for proposed rules. Likewise, this comment period is less than the 60 days that is the general rule set out in FDA's procedural regulations, § 10.40(b)(2) (21 CFR 10.40(b)(2)). As discussed below, FDA believes that a 30-day comment period is appropriate in these circumstances.

Executive Order 12889 (58 FR 69681, December 30, 1993), which implemented the North American Free Trade Agreement, states that any agency subject to the Administrative Procedure Act, should provide a 75-day comment period for any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application. However, Executive Order 12889 provides an exception to the 75-day period where the United States considers the measure necessary to address an urgent problem related to the protection of human, plant or animal health. Similarly, FDA regulations establish a 60-day comment period as agency practice, but provide that the 60-day period may be shortened if the Commissioner of Food and Drugs finds good cause for doing so.

As discussed in detail in this document, the available evidence demonstrates that some juice and juice products have been the vehicles for outbreaks of serious illness from foodborne pathogens. FDA has tentatively concluded that effective protection of the public health requires that consumers be informed as quickly as possible (i.e., in time for the 1998 ''cider season'') to the hazards associated with these juice products. FDA has concluded that the urgency of this matter is sufficient justification for shortening the comment period for this proposal to 30 days, consistent with Executive Order 12889. Similarly, this urgency constitutes good cause within the meaning of § 10.40(b), which justifies shortening the period to 30 days. In addition, a 30-day comment period is appropriate in these particular circumstances because interested parties have already been provided time to comment on the proposed warning label statements that were published in FDA's August 28, 1997, notice of intent.

VIII. References

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

1. Centers for Disease Control and Prevention, ''Outbreak of *Escherichia coli* O157:H7 Infections Associated with Drinking Unpasteurized Commercial Apple Juice—British Columbia, California, Colorado, and Washington, October 1996,'' *Morbidity and Mortality Weekly Report*, 45(44):975, 1996.

2. National Advisory Committee on Microbiological Criteria for Foods—Fresh Produce Subcommittee, proceedings, December 16, 1996.

3. Centers for Disease Control, ''*Salmonella typhimurium* Outbreak Traced to a Commercial Apple Cider—New Jersey,'' *Morbidity and Mortality Weekly Report*, 24:87–88, 1975.

4. Millard, P. S., K. F. Gensheimer, D. G. Addiss, D. M. Sosin, G. A. Beckett, A. Houck-Jankoski, and A. Hudson, ''An Outbreak of Cryptosporidiosis from Fresh-pressed Apple Cider,'' *Journal of the American Medical Association*, 272(20):1592–1596, 1994.

5. Centers for Disease Control and Prevention, ''Outbreaks of *Escherichia coli* O157:H7 Infection and Cryptosporidiosis Associated with Drinking Unpasteurized Apple Cider—Connecticut and New York, October 1996,'' *Morbidity and Mortality Weekly Report*, 46(1):4–8, 1997.

6. Centers for Disease Control and Prevention, ''Cholera Associated with Imported Frozen Coconut Milk—Maryland, 1991,'' *Morbidity and Mortality Weekly Report*, 40(49):844–845, 1991.

7. Centers for Disease Control and Prevention, memorandum from Kim A. Cook to Steve Thacker, October 1, 1995.

8. FDA recall data memorandum, Dirk J. Mouw to Raymond P. Mars, June 2, 1992.

9. FDA recall data memorandum, M. Anthony Abel to Ronald E. Joyce, March 21, 1994.

10. Memorandum of telephone conversation between Debra Street, FDA, and P. Walker, Washington State Department of Health, January 15, 1997.

11. FDA memorandum, Alan S. Levy to Kenneth Falci, June 26, 1997.

12. Council for Agricultural Science and Technology, *Foodborne Pathogens: Risks and Consequences*, Ames, Iowa: Council for Agricultural Science and Technology, Task Force Report No. 122, ch. 3, 1994.

13. Macro International Inc., Focus Group Testing of Warning Statements on Juice Products Not Pasteurized or Otherwise Specifically Treated to Eliminate Harmful Bacteria.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.17 is amended by adding paragraph (g) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(g) *Juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens.*

(1) For purposes of this paragraph (g), ''juice'' means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or puree. Any juice sold as such or used as an ingredient in beverages shall be labeled in accordance with the requirements of this paragraph.

(2) The label of any juice that has not been processed in the manner described in paragraph (g)(7) of this section shall bear the following warning statement:

WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria which can cause serious illness in children, the elderly, and persons with weakened immune systems.

(3) The warning statement required by paragraph (g)(2) of this section shall appear prominently and conspicuously on the information panel or on the principal display panel of the label of the container, except that:

(i) The warning statement may appear in labeling, including signs or placards, until January 1, 2000; after this date, the warning statement shall appear on the label of the food.

(ii) For products manufactured by businesses employing fewer than 500 persons, the warning statement may appear in labeling, including signs and placards, until January 1, 2001; after this date, the warning statement shall appear on the label of the food.

(4) The word ''WARNING'' shall immediately precede the statement, shall be capitalized, and shall appear in bold type.

(5) The warning statement required by paragraph (g)(2) of this section, when on a label, shall be set off in a box by use of hairlines.

(6) The requirements in paragraph (g) of this section shall not apply to juice processed in a manner that will produce, at a minimum, a 5-log (i.e., 100,000 fold) reduction in the pertinent microorganism for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions. For the purposes of this regulation, the ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in the juice.

Dated: April 17, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–11026 Filed 4–22–98; 8:45 am]

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federal register

Friday
April 24, 1998

Part III

Department of the Interior

National Park Service

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act

AGENCY: National Park Service, Interior.

ACTION: Final.

SUMMARY: The National Park Service is publishing for effect revisions to the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to Section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h–2).Q02

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Banks, Heritage Preservation Services, NC330, National Center for Cultural Resource Stewardship and Partnerships Programs, National Park Service, 1849 C Street, NW, Washington, DC 20240. Telephone: 202–343–9518. Facsimile: 202–343–3921. E-mail: david__banks@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h–2) establishes Federal agency responsibilities for the preservation of historic properties. Section 101(g) of the Act (16 U.S.C. 470a) directs the Secretary of the Interior to promulgate guidelines for Federal agency responsibilities under that part.

The proposal published here is a revision of guidelines originally published in the **Federal Register** on February 17, 1988 (53 FR 4727–46). The revision takes account of the 1992 amendments to the National Historic Preservation Act of 1966, as amended (title XL of Pub. L. 102–575).

These guidelines have no regulatory effect. Instead, they are the Secretary's formal guidance to each Federal agency on meeting the requirements of section 110 of the Act.

Preparation of the Final Standards and Guidelines

Public comment was invited for a 60-day period, ending on August 18, 1997 (62 FR 33105–15). Copies of the notice were sent to all Federal Preservation Officers, all State Historic Preservation Officers, and all Tribal Preservation Officers recognized pursuant to section 101(d) of the NHPA.

Twenty-three written comments were received representing 20 different organizations. That included nine federal agencies, four SHPOs, one Alaska Native association, one state transportation department, two national associations, two mining companies and four offices within NPS. Comments addressed all of the proposed standards and almost all of the guidelines for implementing those standards. All comments were fully considered in revising the proposal for publication in final form.

In general, the comments were favorable. Most comments were editorial in nature, i. e., they requested technical clarifications, or suggested improvements in format, wording and syntax. In the interest of brevity, these comments are not discussed further here. The following response to public comments focuses first on those substantive comments that were general in nature, and then on those comments that addressed particular standards and guidelines.

Response to Public Comment

General Comments

First, several commenters asked that the statement, ''these guidelines have no regulatory effect'' be made more prominent. We agree and have added the statement just before the listing of the standards, themselves. In a related comment, one person suggested that use of the word ''standards'' rather than just guidelines implies some level of regulatory enforcement. We disagree. The Secretary has over the years established and published a wide variety of standards and guidelines for historic preservation activity. None of these standards has regulatory effect, unless they are incorporated in a separate regulation that applies them as enforceable standards. These standards and guidelines for federal agency programs are no different.

Second, one commenter suggested that, because so many federal agency historic preservation activities are subject to review as undertakings pursuant to section 106 of the NHPA, these standards and guidelines should refer more often and more prominently to section 106 and to the section 106 review process set out in 36 CFR part 800. While we agree that the section 106 process is a focal point for federal agency undertakings, we believe that these standards and guidelines already make sufficient reference to the section 106 process. Additional references to the section 106 process would tend to obscure the larger message that federal agencies have affirmative responsibilities under section 110 that go beyond the responsibility for compliance with section 106. In addition, these standards and guidelines make clear that they are in addition to, not instead of, other guidance and requirements, such as section 106.

Third, one commenter expressed concern that these standards and guidelines do not include specific benchmarks for documentation of historic properties. In response, we note that such standards and guidelines already exist as a part of the *Secretary of the Interior's Standards and Guidelines Architectural and Engineering Documentation* (48 FR 44730–34). Consequently, they do not need to be restated here.

Comments on Specific Standards

Standard 1

First, two commenters suggested that the parameters of ''consultation'' with the Secretary be defined under guideline (d). We agree on the need for additional guidance on the requirement in section 110(a)(2) that each federal agency shall establish a preservation program ''in consultation with the Secretary.'' NPS is currently working with an interagency task force of federal agency preservation officers to develop this guidance, and will publish it for comment upon completion of the task force's work.

Second, three commenters suggested that the cost of historic preservation work can become an undue burden, so that guidelines (e) and (i) should define more specifically what ''reasonable preservation costs'' are. We disagree. Whether something is or is not an undue burden will always be in the eye of the beholder. It is also inappropriate and impractical to try to create some dollar-based formula that would inevitably be an arbitrary measure. Each federal agency must determine what is reasonable on a case-by-case basis, taking into account the agency's programmatic needs, the alternatives that are available for meeting those needs, the significance of any affected historic resources and the nature of the work needed to protect or minimize harm to them, the nature of the undertaking, and the budgetary resources that are available for the project.

Third, one commenter noted that the NHPA requires only that federal agencies ''consider'' preservation of historic properties, so that these standards and guidelines should explicitly state that agencies may in some cases decide to neglect or destroy a historic property. We believe that the meaning of ''consideration'' is fully addressed in Standard 4 and its

guidelines, and that the full range of options available to federal agencies is addressed in Standard 7 and its guidelines. Consequently, no additional guidance in necessary in Standard 1.

Standard 2

Four comments addressed guideline (g) and asked for more clarification of and/or limitations on the need to resurvey an area that was surveyed at some point in the past. Specific suggestions included establishing a minimum time period that must have elapsed before resurvey is necessary, and establishing limits on the costs of resurvey that can be passed on to private parties. We agree with those comments that pointed out the need for clarification and have added appropriate language to the guideline. However, we disagree with the suggestions for a standard time period and for a limit on the costs to private parties. Agencies must make these latter decisions based on the facts of each case, rather than on an arbitrary formula that may or may not be relevant to the case at hand.

One commenter expressed concern that the inclusion in guideline (e) of the phrase ''alter the social, cultural, or economic character of a community'' exceeds the intent of the National Historic Preservation Act. We believe the phrase is appropriate. The phrase is among a list of examples of actions that can affect historic properties. Where those actions do affect historic properties, they are properly within the scope of the Act. If, on the other hand, an action alters the character of a community in a way that does not affect historic properties, the action falls outside the purview of the Act.

One commenter asked whether the requirement in guideline (b) for the identification and evaluation of historic properties by professionally qualified individuals means that the identification and evaluation process must be carried out to the exclusion of ''generalist'' staff members who nevertheless have some management responsibility for agency properties. While we do not believe that additional language is necessary for the guideline, we affirm here that the guideline applies only to the technical process of determining whether and why a property appears to meet the National Register's eligibility criteria. Such a technical finding should be made by someone with appropriate professional qualifications, but the agency's property management decisions both before and after such a finding are the province of the ''generalists'' who exercise that decision-making authority for the agency.

One commenter suggested two additional guidelines for this standard. One guideline would call on agencies to establish plans and schedules for the identification and evaluation of properties under their control. We agree that, where it is feasible for an agency to establish such specific objectives, it should do so in order to measure its own progress. However, the ability to conduct survey and evaluation work independent of specific project needs varies so greatly from agency to agency and from year to year that establishing a schedule would often be a meaningless exercise. Section 110 makes no such requirement, so we must leave it to each agency to determine whether such a schedule would be meaningful and helpful.

The second suggested additional guideline addressed the disposition of archeological collections recovered during agency activities pursuant to section 110. Omission of this guidance was an oversight. However, we have added the appropriate language to Standard 6, guideline (c), rather than to Standard 2.

Standard 3

Several commenters offered essentially editorial suggestions that were aimed at emphasizing the importance of nominating properties to the National Register. We agree that the language of section 110 anticipates that nomination of properties to the Register will be an ongoing function of agency preservation programs. We have incorporated the suggested changes as appropriate.

One commenter suggested that placing National Register nominations as the third standard could create the misimpression that only those properties that are already registered are subject to the guidance in the standards that follow. The commenter proposed making this standard the last one on the list. We disagree. While one can devise—and, indeed, we did consider—various sequences for the presentation of these standards, we believe that the order presented here offers a logical cadence. It is true that registration is not a prerequisite for preservation and appropriate management, and we trust that the language of the guidelines eliminates any confusion on that point. On the other hand, as noted above, registration should be an ongoing function and should not appear in these standards and guidelines as if it were an activity to be carried out only when all else is said and done.

Standard 4

Stantive comments focused on guideline (f), concerning the determination of whether an ''agency's procedures for compliance with section 106 are consistent with regulations issued by the (Advisory) Council.'' (Section 110(2)(E)(i)). Three commenters expressed the concern that this guideline seems to say that an agency's procedures must be identical to the Council's regulations in order to be consistent with them. Such a requirement, they argue, would limit needed flexibility and inhibit innovation. We recognize the need for flexibility and innovation, and we affirm that these standards and guidelines do not mean to say or imply that agency procedures must copy the procedure set out in 36 CFR part 800. We have edited the language accordingly. An agency's procedures may satisfy the requirement of the law in one of two ways, as noted in guideline (f). First, of course, the agency can choose to adopt and use the procedure exactly as it is set out in 36 CFR part 800. Second, the agency can choose to develop alternate procedures that satisfy the purposes of the section 106 review process but that include any number of modifications to the standard process set out in 36 CFR part 800, in order to meet agency needs more effectively. Because the Advisory Council is unquestionably the appropriate judge of whether an agency's alternate procedures remain consistent with the Council's own regulations, it is sufficient and appropriate for these standards and guidelines to say that an agency's alternate procedures meet the test of section 110(2)(E)(i), if the Council has approved them .

One comment on guideline (a) cautioned that a federal agency's responsibility to consider the impact of its actions on properties outside its ownership or control must be carefully construed to avoid any implication that the non-federal owners of those properties are under any obligation to consider the impacts of their actions. In addition, the commenter cautioned that federal agencies cannot invoke their obligations under this standard as a means for interfering with the actions of private property owners outside the agency's jurisdiction or control. We agree that private property owners acting without reliance on federal permission or assistance are not within the scope of these standards and guidelines. On the other hand, a federal agency that is considering whether to issue a permit or provide assistance to

a private property owner does have to consider the impact of that property owner's actions before deciding whether to issue the permit or award the assistance.

Standard 5

Two commenters took issue with the idea set out in guidelines (b) and (c) that seeking agreement among the federal agency and interested parties is the reason for consultation. They argue that consultation is simply an exchange of views, that there is no requirement that agencies reach agreement with interested parties, and that there are many instances where the agency knows ahead of time that agreement will not be possible. Consequently, they argue, asserting that agreement is the object of consultation will create unrealistic and unwarranted expectations among interested parties and will lead to legal and procedural challenges that will compromise the agency's ability to accomplish its work. We disagree. We acknowledge that agencies are not required by law or by these standards and guidelines to reach agreements with interested parties. We also acknowledge that an agency can sometimes know in advance that a proposed activity will face the unalterable opposition of an interested party. Finally we acknowledge here and in the guidelines, themselves, that no agency is obliged to remain engaged in endless consultation when it is clear that agreement cannot be reached. However, we do not agree that meaningful consultation is accomplished by a mere exchange of views. Consultation must include, at least as its theoretical purpose, the willingness to explore the possibilities for agreement—or at least for a narrowing of disagreement—among the consulting parties. Even if that exploration quickly shows or confirms that further discussion would be fruitless, the attempt is fundamental to the concept of consultation as envisioned by these standards and guidelines. Finally, we believe that the agency's ability to end consultation without reaching agreement is sufficiently clear that procedural challenges should not be a problem.

One commenter sought the inclusion of specific time limits for consultation, so as to minimize delays and avoid efforts to thwart agency projects through endless consultation. We disagree. These standards and guidelines are intended to speak more broadly to the concepts and ideas that define meaningful consultation for federal agency historic preservation programs, so that trying to determine specific time periods for consultation is not appropriate here. In a regulatory setting, deadlines for response may well be critical to doing orderly business. However, even in the section 106 process there is no ultimate time limit within which all consultation must be completed, since such a deadline would ultimately compromise the purposes of that consultation.

Similarly, one commenter asked for more specific guidance on what constitutes a ''reasonable effort'' under guideline (h) to consult with those groups that do not customarily participate in traditional governmental means of consultation. As noted above, these guidelines are not the appropriate place to spell out specific solutions for such cases. The guideline means in general that, where an agency is dealing with interested parties who are unaccustomed to the agency's standard consultation procedures, the agency should—to the extent feasible given its own needs—make some adjustments in its standard procedures to allow those interested parties a reasonable opportunity to participate in consultation with the agency. The specific adjustments in each case will depend on a fair balancing of the needs of the agency and the needs of the specific interested party.

Finally, one agency asked for additional guidance in guideline (f) for how to provide the public with sufficient information to participate and still be consistent with the requirements of Section 304 of the Act, which calls for withholding information in cases where disclosure would put resources at risk, invade privacy, or impede traditional religious use of a site. Guideline (f) is not intended to be an instruction for how to balance these competing goals. The point of guideline (f) is to emphasize the primacy of Section 304's specific requirements for withholding information. An agency's efforts to involve the public, while important, do not take precedence over the requirements of Section 304. In any instance where an agency, in consultation with the Secretary, determines that disclosure of certain information would lead to one or more of the results listed in Section 304, the agency is required to withhold that information.

Standard 6

One commenter requested the insertion of a reference to Section 106 in the language of the standard, itself. We believe that the standard is and should be a stronger, more all-encompassing message than would be the case if a reference to Section 106 were added. Consequently, we have left the standard unchanged. However, compliance with Section 106 is clearly a critical component of an agency's efforts to meet the standard. Specific references to Section 106 appear in four of the eight guidelines for this standard.

Another commenter requested more guidance on the appropriate treatment of cultural landscape features when disturbance is unavoidable. NPS has developed formal guidelines for applying the Secretary's ''Standards for the Treatment of Historic Properties'' to cultural landscapes. We have added a reference to those guidelines here in guideline (a) of Standard 6.

Three commenters indicated that guideline (c)'s call for limiting archeological excavation to the footprint of the area that will be otherwise disturbed is inappropriate. We agree. The original intent had been to emphasize the need to minimize excavation, but the result was an arbitrary limit that ignored the need for excavation according to a research design that would allow for meaningful evaluation of the material that is excavated. We have amended the guideline accordingly.

One commenter argued with reference to guideline (c) that calling on agencies to adhere to the Secretary's Standards for the Treatment of Historic Properties when modifying historic properties is unduly stringent and unrealistic. We disagree. We acknowledge that there may be cases where meeting those standards will not be feasible, but we believe that meeting the standards should be the goal toward which the agency strives when modifying historic property. Where meeting that goal is not feasible, we believe the agency is obliged to explain why not. As a technical matter, both because this specific guideline uses the verb ''should'' and not ''shall,'' and because these standards and guidelines are not regulatory, these standards and guidelines do not impose any specific requirement that federal agencies must always adhere to the Treatment Standards noted above.

Standard 7

One commenter asked with reference to guideline (f) whether federally recognized Indian tribes can be recipients of historic properties under the Historic Surplus Property Program. We have added language to make clear that tribes can receive such property.

One commenter suggested that, pursuant to Section 110(h) there should be guidance concerning preservation awards programs that can be established by federal agencies. While it is certainly true that federal agencies can create

their own awards programs, Section 110(h) of the Act addresses only an awards program to be established by the Secretary of the Interior to recognize officers and employees of Federal, State, and local governments. Consequently, we have included no guidance for awards programs that other agencies may wish to create.

Definitions

Two commenters suggested the addition of a definition for the federal agency Preservation Officer. We agree and have added that definition.

One commenter pointed out that, while a traditional cultural property may be determined to be eligible for the National Register of Historic Places, not every traditional cultural property is by definition eligible for the Register.

We agree and have amended the definitions of ''historic property'' and ''traditional cultural property'' accordingly.

Dated: February 2, 1998.

de Teel Patterson Tiller,

Chief, Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnerships Programs, National Park Service.

The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act

Introduction

Section 110 of the National Historic Preservation Act (16 U.S.C. 470). Section 110 of the National Historic Preservation Act (hereinafter referred to as NHPA or the Act) sets out the broad historic preservation responsibilities of Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies. This intent was first put forth in the preamble to the National Historic Preservation Act upon its initial adoption in 1966. When the Act was amended in 1980, section 110 was added to expand and make more explicit the statute's statement of Federal agency responsibility for identifying and protecting historic properties and avoiding unnecessary damage to them. Section 110 also charges each Federal agency with the affirmative responsibility for considering projects and programs that further the purposes of the NHPA, and it declares that the costs of preservation activities are eligible project costs in all undertakings conducted or assisted by a Federal agency.

The 1992 amendments to the Act further strengthened the provisions of section 110. Under the law, the head of each Federal agency must do several things. First, he or she must assume responsibility for the preservation of historic properties owned or controlled by the agency. Each Federal agency must establish a preservation program for the identification, evaluation, nomination to the National Register, and protection of historic properties. Each Federal agency must consult with the Secretary of the Interior (acting through the Director of the National Park Service) in establishing its preservation programs. Each Federal agency must, to the maximum extent feasible, use historic properties available to it in carrying out its responsibilities. The 1992 additions to section 110 also set out some specific benchmarks for Federal agency preservation programs, including: (a) Historic properties under the jurisdiction or control of the agency are to be managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values;

(b) Historic properties not under agency jurisdiction or control but potentially affected by agency actions are to be fully considered in agency planning;

(c) Agency preservation-related activities are to be carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector;

(d) Agency procedures for compliance with section 106 of the Act are to be consistent with regulations issued by the Advisory Council on Historic Preservation; and

(e) An agency may not grant assistance or a license or permit to an applicant who damages or destroys historic property with the intent of avoiding the requirements of section 106, unless specific circumstances warrant such assistance.

The complete text of section 110 is included as Appendix A to these Guidelines. Also included as Appendix B are sections 1 and 2 of the NHPA that set out the purposes and policies of that Act. Anyone unfamiliar with the purposes of the Act or with the specific provisions of section 110 as amended in 1992 should refer to those texts in addition to the revised Guidelines.

Section 110 Guidelines—Background and Format

The Section 110 Guidelines were first published in the **Federal Register** on February 17, 1988 (53 FR 4727–46). This second edition has been revised to incorporate the 1992 amendments to the Act and to make the Guidelines easier to use.

These Guidelines neither replace nor incorporate other statutory authorities, regulations, or *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. These Guidelines show how Federal agencies should address these various other requirements and guidelines in carrying out their responsibilities under the Act. The head of each Federal agency, acting through its Preservation Officer, should become familiar with all the statutes, regulations, and guidelines that bear upon the agency historic preservation program required by section 110.

This second edition of the Section 110 Guidelines follows a format significantly different from that of its predecessor. The first edition followed the sequence of the statute and provided detailed guidance for each subsection of section 110. The current edition instead takes the form of standards and guidelines that will assist each Federal agency in establishing a preservation program that meets the various requirements of section 110.

Agency Use of These Standards and Guidelines for Evaluating Their Programs

The preservation and use of historic properties and their careful consideration in agency planning and decisionmaking are in the public interest, are consistent with the declaration of policy set forth in the NHPA, and must be a fundamental part of the mission of any Federal agency. These standards and guidelines are intended to assist Federal agency personnel and the agency head in carrying out their policies, programs, and projects in a manner consistent with the requirements and purposes of section 110 of the NHPA, related statutory authorities, and existing regulations and guidance.

An agency should use these standards and guidelines, and consultation with the Secretary and others, to ensure that the basic individual components of a preservation program called for in section 110 are in place. The preservation program should also be fully integrated into both the general and specific operating procedures of the agency. The agency's preservation program should interact with the agency's management systems to ensure that historic preservation issues are considered in decisionmaking. The program should try to ensure that the agency's officials, employees, contractors, and other responsible parties have sufficient budgetary and

personnel resources needed to identify, evaluate, nominate, manage, and use the historic properties under agency care or affected by agency actions.

Consultation and Technical Assistance

Section 110(a)(2) requires that agency preservation programs be established ''in consultation with the Secretary.'' Federal agencies seeking such consultation should contact the Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. Consultation with the Secretary regarding an agency's program will be based upon the degree to which that program is consistent with the Act and with the standards and guidelines that follow. Upon request, the Secretary will also provide informal technical assistance to any agency on questions concerning the establishment or improvement of the agency's historic preservation program. Requests for technical assistance should also be addressed to the Associate Director, Cultural Resources Stewardship and Partnerships, National Park Service.

Section 202(a)(6) of the Act provides that the Advisory Council may review Federal agency preservation programs and recommend improvements to such agencies. Where the Council carries out such a review, it will base any recommendations on its own regulations and policy statements, and on the standards and guidelines that follow.

The Secretary of the Interior's Standards for Federal Agency Historic Preservation Programs

Standard 1. Each Federal agency establishes and maintains a historic preservation program that is coordinated by a qualified Preservation Officer, and that is consistent with and seeks to advance the purposes of the National Historic Preservation Act. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. (Sec. 110(a)(1), sec. 110(a)(2), sec. 110(c), and sec. 110(d)).

Standard 2. An agency provides for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. (Sec. 110(a)(2)(A), and sec. 112)

Standard 3. An agency nominates historic properties under the agency's jurisdiction or control to the National Register of Historic Places. (Sec. 110(a)(2)(A)).

Standard 4. An agency gives historic properties full consideration when planning or considering approval of any action that might affect such properties. (Sec.110(a)(2)((B), (C), and (E), Sec. 110(f) and Sec. 402(16 U.S.C. 470a–2))

Standard 5. An agency consults with knowledgeable and concerned parties outside the agency about its historic preservation related activities. (Sec. 110(a)(2)(D)).

Standard 6. An agency manages and maintains historic properties under its jurisdiction or control in a manner that considers the preservation of their historic, architectural, archeological, and cultural values. (Sec. 110(a)(1), sec. 110 (a)(2)(B), sec. 110(b)).

Standard 7. An agency gives priority to the use of historic properties to carry out agency missions. (Sec. 110(a)(1)).

For a cross-reference of each standard to the parts of 110 see Appendix A.

The Secretary's Standards and Guidelines for Federal Agency Historic Preservation Programs

These guidelines have no regulatory effect. Instead, they are the Secretary's formal guidance to each Federal agency on meeting the requirements of section 110 of the Act.

The following guidelines provide information on the steps an agency must take to establish and maintain a preservation program that meets each of the applicable Secretary's Standards.

Standard 1. Each Federal agency establishes and maintains a historic preservation program that is coordinated by a qualified Preservation Officer, and that is consistent with and seeks to advance the purposes of the National Historic Preservation Act. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. (Sec. 110(a)(1), sec. 110(a)(2), sec. 110(c), and sec. 110(d)).

Guidelines

Agency Programs

(a) An agency historic preservation program must include specific provisions to ensure, to the extent feasible given the agency's mission and mandates, the full consideration and appropriate preservation of historic properties under the agency's jurisdiction or control and of other historic properties affected by the agency's actions. (Sec. 110(a)(2)(B))

(b) An agency historic preservation program is embodied in agency-wide policies, procedures, and activities. An agency historic preservation program is the vehicle for ensuring that the agency's mission-driven activities are carried out in a manner consistent with the purposes of National Historic Preservation Act. The program is not an activity carried out separate and apart from the activities mandated by the agency mission.

(c) The identification, evaluation, and preservation of historic properties must be the fundamental goal of any Federal agency preservation program. (Sec. 110(a)(2)). However, an agency's ability to achieve this goal is affected by its own mission and by whether it owns and manages historic property:

(1) In those cases where historic property is under the jurisdiction and control of the agency, the agency has an affirmative responsibility to manage and maintain such property in a manner that takes into account the property's historic significance. In addition, the Federal agency has an affirmative responsibility to seek and use historic properties to the maximum extent feasible in carrying out its activities. (Sec. 110(a)(1) and sec. 110(a)(2)(B))

(2) Where an agency carries out its mission through the award of grant funds for specific activities, and where those activities will inevitably affect historic properties, the agency should, to the maximum extent feasible, design its programs to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

(3) Where an agency's historic preservation activities are limited to considering the impact of federally licensed, or permitted activities initiated by non-federal entities on non-federally owned historic properties, the agency's preservation responsibility may be more narrowly cast as seeking to avoid or minimize any adverse effects to such properties that might otherwise occur as a result of such activities.

(d) An agency historic preservation program must be established in consultation with the Secretary of the Interior. (Sec. 110(a)(2)). Consultation with the Secretary regarding an agency's historic preservation program will be based on these Standards and Guidelines.

(e) The agency historic preservation program must be an effective and efficient vehicle through which the agency head can meet his or her statutory responsibilities for the preservation of historic properties. (Sec. 110(a)(2)). Compliance with responsibilities pursuant to section 106 of the Act is an integral part of an agency's overall historic preservation program. That program, however, is not simply intended to meet agency section 106 responsibilities to ''take into account'' the effects of its undertakings on historic properties. The program described in section 110(a)(2) is an

agency-wide approach to achieving the goals set forth in the NHPA. It should be fully integrated into both the general and specific operating procedures of the agency.

(f) The preservation program should interact with the agency's budgetary and financial management systems to:

(1) Ensure that historic preservation issues are considered before budgetary decisions are made that foreclose historic preservation options, and

(2) Ensure that the historic preservation program itself is adequately funded to enable it to perform its functions.

(g) To avoid needless duplication of effort and increased workload in developing and implementing its program, the agency should carefully review and consider using those existing policies, procedures, approaches and standards that are government-wide, i.e., applicable to all preservation programs, and develop only those that need to be agency-specific. Preservation programs can be expected to differ based on the extent to which:

(1) Agencies manage, own, or exercise control over historic properties;

(2) Historic properties play a significant role in agency activities through active use (e.g., for recreation, interpretation, public access/use, transportation, office space);

(3) Agencies are engaged in public education/interpretation, or multiple-use resource management; or,

(4) Agencies are in a position to influence actions affecting historic properties.

(h) Agency funding decisions for historic preservation work should be based on a determination of the prudent level of investment for a specific undertaking. That determination, in turn, should acknowledge that preservation costs are eligible project costs on an equal footing with other planning, design, construction, environmental protection, and mitigation needs and requirements. Similarly, the cost of caring for, documenting, and otherwise preserving artifacts, records, and remains related to historic properties is an eligible project cost. (Sec. 110(g)). The agency may contract with a State Historic Preservation Officer (SHPO), another Federal agency, or other public or private organization as appropriate to assist it in carrying out the agency's historic preservation work.

(i) Where preservation activity is a condition of obtaining a Federal license or permit, or Federal approval, or is subject to a delegation of authority by a Federal agency, the recipient may be expected to incur reasonable costs. (Sec. 110(g)). Because it is difficult to establish fair standards that would be applicable in all cases, ''reasonable costs'' should not be determined using inflexible criteria, such as a flat fee or a standard percentage of a budget, but rather should be determined on a case-by-case basis.

(j) An efficient preservation program should allow the agency to do more than simply meet its section 110 and 106 responsibilities. In order to eliminate duplicative effort and assist in agency planning, the preservation program should be coordinated with actions the agency takes to meet the requirements of other relevant and related Federal statutes (e.g., NAGPRA, the Archaeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), and the National Environmental Policy Act (NEPA)) in a comprehensive, anticipatory manner.

Preservation Officer

(k) The agency position responsible for coordinating the preservation program is the Preservation Officer required of all agencies by section 110(c) of the NHPA (unless specifically exempted under section 214 of the NHPA). A Preservation Officer may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities. (Sec. 110(c)).

(l) Agency officials designated as Preservation Officers should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who have such experience. Section 112 of the NHPA requires that agency personnel or contractors responsible for historic resources, meet qualification standards established by the Office of Personnel Management in consultation with the Secretary.

(m) Each Preservation Officer should have sufficient agency-wide authority, staff, and other resources to carry out section 110 responsibilities effectively. Agency administrative systems should ensure that the Preservation Officer can review and comment meaningfully on all agency programs and activities and interact with the agency's planning and project management systems in such a way as to influence decisions potentially affecting historic resources. The Preservation Officer should have sufficient authority and the agency should have sufficient control systems to ensure that decisions made pursuant to section 106 and section 110 about the treatment of such resources are in fact carried out.

(n) In agencies where significant preservation responsibilities are delegated to regional or field offices, or Federal facilities or installations, the agency head should also appoint qualified preservation officials at those levels. Such officials should ensure that their actions and conduct of historic preservation activities are coordinated with, and consistent with, those of the central office Preservation Officer for that agency.

(o) The agency should ensure that its personnel management system identifies those personnel with preservation responsibilities, includes such responsibilities in their position descriptions and performance elements and standards, and appropriately rewards high-quality performance. In addition, the agency should provide for ongoing training in historic preservation for all agency personnel with preservation responsibilities.

Standard 2. An agency provides for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. (Sec. 110(a)(2)(A) and sec. 112).

Guidelines

(a) Identification and evaluation of historic properties are critical steps in their long-term management, as well as in project-specific planning by Federal agencies. Normally, an agency must identify the full range of historic properties that may be affected by an agency program or activity, including, but not limited to, historic buildings and structures, archaeological sites, traditional cultural properties, designed and other cultural landscapes, historic linear features such as roads and trails, historic objects such as signs and street furniture, and historic districts comprising cohesive groups of such properties. (Sec. 110(a)(2)(A)). Effective management of historic properties requires that they first be identified and evaluated. The level of identification needed can vary depending on the nature of the property or property type, the nature of the agency's management authority, and the nature of the agency's possible effects on the property.

(b) The Secretary of the Interior has issued standards and guidelines for identification and evaluation of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44720–44726)), which should be used to ensure that the preservation program's identification and evaluation

procedures will be adequate and appropriate. Identification and evaluation of historic properties must be conducted by professionally qualified individuals. (Sec. 101(g), sec. 101(h), and sec. 112)

(c) Agency efforts to identify and evaluate historic properties should include early consultation with the State Historic Preservation Officer, or the Tribal Preservation Officer as appropriate, to ensure that such efforts benefit from and build effectively upon any relevant data already included in the State's or Tribe's inventory. For information on consulting with an Indian tribe that has assumed State Historic Preservation Officer functions pursuant to section 101(d)(2) of the Act, see Standard 6, Guideline 7(b). Agencies are encouraged to share with the appropriate SHPO and Tribal Preservation Officer, information about historic properties gathered through their identification and evaluation activities.

(d) Where an agency is planning an action that is not aimed at specific land areas (for example, a nationwide program of assistance to local governments, farmers, or low-income homeowners), and the identification of specific historic properties subject to effect is not feasible, the agency should nevertheless consider what types of historic properties may be affected directly or indirectly, and consider strategies that will minimize adverse effect and maximize beneficial effect on those properties. Such consideration must be carried out in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate (110(a)(2)(E)(ii)).

(e) Where an agency is planning an action that could affect historic properties directly or indirectly (e.g., a land-use or construction project; a project that could change the way land or buildings are used or developed, or alter the social, cultural, or economic character of a community; and any program of assistance to or the issuance of a license for such activities), identification and evaluation should take place at the earliest possible stage of planning, and be coordinated with the earliest phases of any environmental review carried out under the National Environmental Policy Act and/or related authorities. Identification and evaluation efforts must be carried out in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public as appropriate (110(a)(2)(E)(ii).

(f) Where identification and evaluation are carried out as a part of long-term planning, it may be appropriate to conduct background studies to develop a ''predictive model'' of historic property distributions that can be used in evaluating the likely effects of particular land management projects as the program proceeds. In some cases, depending on management needs for a particular project or activity, it may not be necessary to identify exhaustively every historic property or historic property type. It may also be appropriate and cost-effective to carry out the work in phases organized around particular property types or other such coherent units. For example, if historic architecture is of greater immediate concern than Native American traditional properties or archeological sites, a survey of architecture alone may be appropriate during a particular budget year, with archeological survey and ethnographic studies deferred until later. However, identification is not complete until all historic properties have been identified. Such work should be developed in consultation with SHPOs, Tribal Preservation Officers, local governments, Indian tribes and Native Hawaiian organizations as appropriate, and other parties that may have knowledge of, or interest in, such properties.

(g) Identification of historic properties is an ongoing process. As time passes, events occur, or scholarly and public thinking about historical significance changes. Therefore, even when an area has been completely surveyed for historic properties of all types it may require re-investigation if many years have passed since the survey was completed. Such follow-up studies should be based upon previously obtained information, may focus upon filling information gaps, and should consider re-evaluation of properties based upon new information or changed historical understanding.

Standard 3. An agency nominates historic properties under the agency's jurisdiction or control to the National Register of Historic Places. (Sec. 110(a)(2)(A)).

Guidelines

(a) The first step in designing a program for the nomination of historic properties is to determine what role nomination will play in the agency's overall preservation program. For example:

(1) An agency that controls relatively few historic properties may find it realistic to nominate them all to the National Register, and then manage them accordingly. An agency with a great many historic properties will need to establish explicit priorities for identifying, nominating, and preserving properties.

(2) Placement on the National Register may help justify budgeting funds for preservation or management of a historic property, so agencies may want to give priority to nominating properties as a first step in upgrading their maintenance and providing for their continued active service in carrying out agency programs. Further, development of National Register-level documentation provides information on the property that will assist the agency in its subsequent property management decisions.

(3) An agency with an excellent internal program for identifying and preserving historic properties may find that other determinants, such as whether a property is to be managed and interpreted as a site of public interest, are more useful in establishing nomination priorities.

(4) An agency that regularly transfers property out of Federal ownership may find it useful to give higher priority to nominating properties to be transferred, at the expense of other properties, in those cases where placement on the National Register may make preservation more likely once a property is no longer under Federal management.

(b) Beyond serving the agency's own internal management needs, the National Register is the nation's formal repository of information on historic properties. To the extent that the National Register is incomplete, its usefulness as a planning and educational tool is diminished. Consequently, an agency should generally strive to nominate the historic properties under its jurisdiction or control to the National Register.

(c) The Secretary of the Interior already has in place Standards and Guidelines for registration of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44726–44728) that details the process that should be followed in formally recognizing historic properties as significant. These Standards and Guidelines, along with the National Register Bulletin #16, *Guidelines for Completing National Register Forms*, provide guidance on completing National Register nomination forms. National Register regulations (36 CFR part 60) set forth the nomination process.

Standard 4. An agency gives historic properties full consideration when planning or considering approval of any action that might affect such properties. (Sec. 110(a)(2)(B),(C), and (E), and sec. 402 (16 U.S.C. 470a–2)).

Guidelines

All Historic Properties

(a) Each Federal agency has an affirmative responsibility under section 110 of the National Historic Preservation Act to consider its activities' effects on our nation's historic properties. This responsibility extends to a systematic consideration of properties not under the jurisdiction or control of the agency, but potentially affected by agency actions. (Sec. 110(a)(2)(C)).

(b) Full consideration of historic properties includes assessment of the widest range of preservation alternatives early in program or project planning, coordinated to the extent feasible with other kinds of required planning and environmental review.

(c) Full consideration of historic properties includes consideration of all kinds of effects on those properties: direct effects, indirect or secondary effects, and cumulative effects. Effects may be visual, audible, or atmospheric. Beyond the effects from physical alteration of the resource, itself, effects on historic properties may result from changes in such things as local or regional traffic patterns, land use, and living patterns.

(d) Full consideration of historic properties includes an obligation to solicit and consider the views of others in planning and carrying out agency preservation activities (See Standard 5 on Consultation). (Sec. 110(a)(2)(D)).

(e) Full consideration of historic properties must include development of and adherence to agency procedures for section 106 review that are consistent with the regulations of the Advisory Council on Historic Preservation, and, as necessary, with certain provisions of the Native American Graves Protection and Repatriation Act. (Sec. 110(a)(2)(E)(i), (ii), and (iii)).

(f) The term *consistent with the regulations issued by the Council* as used in the NHPA means that an agency's procedures provide for the identification and evaluation of historic properties, the assessment of project and program effects on them, and consultation (specifically including consultation with the State Historic Preservation Officer, Tribal Preservation Officer or other Native American groups where appropriate, and other affected parties) to determine appropriate treatment or mitigation. Such procedures must either adhere to and expand upon the process set out in 36 CFR part 800, or include modifications or alternatives to that process that have been reviewed and approved by the Council. Implementation of procedures consistent with the Council's regulations means that those procedures are carried out in a manner consistent with the Guidelines for Standard 1 above.

(g) Full consideration of historic properties includes development of procedures to identify, discourage, and guard against ''anticipatory demolition'' of a historic property by applicants for Federal assistance or license. Agency procedures should include a system for early warning to applicants and potential applicants that anticipatory demolition of a historic property may result in the loss of Federal assistance, license or permit, or approval for a proposed undertaking. When an historic property is destroyed or irreparably harmed with the express purpose of circumventing or preordaining the outcome of section 106 review (e.g., demolition or removal of all or part of the property) prior to application for Federal funding, a Federal license, permit, or loan guarantee, the agency considering that application is required by section 110(k) to withhold the assistance sought, unless the agency, after consultation with the Council, determines and documents that ''circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.'' (Sec. 110(k)).

(h) Agency preservation procedures for section 106 compliance must provide for the disposition of Native American, Alaskan, and Hawaiian human remains and cultural items from Federal or tribal land consistent with section 3(c) of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). (Sec. 110(2)(E)(iii)). The applicable NAGPRA sections on disposition (sections 3(c)(3) and 3(a) & (b)) vest ''ownership and right of control'' according to a hierarchy of relationships to the cultural items. See NAGPRA (25 U.S.C. 3002(c)) and the Department of Interior's regulations implementing this Act (43 CFR part 10) for detailed information.

(i) In those cases where consultation pursuant to section 106 does not produce a Memorandum of Agreement (MOA) governing how an agency will ''take into account'' the adverse effects of its undertaking on historic properties, section 110(l) requires that the final decision(s), reached after consideration of the Council's comments, be made by the agency head and not by any subordinate official, that it be explicit and informed, and that it be a part of the public record available for review. (Sec. 110(l)).

National Historic Landmarks

(j) National Historic Landmarks (NHL) are designated by the Secretary under the authority of the Historic Sites Act of 1935, which authorizes the Secretary to identify historic and archaeological sites, buildings, and objects which ''possess exceptional value as commemorating or illustrating the history of the United States.'' Section 110(f) of the NHPA requires that Federal agencies exercise a higher standard of care when considering undertakings that may directly and adversely affect NHLs. The law requires that agencies, ''to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark.'' In those cases when an agency's undertaking directly and adversely affects an NHL, or when Federal permits, licenses, grants, and other programs and projects under its jurisdiction or carried out by a state or local government pursuant to a Federal delegation or approval so affect an NHL, the agency should consider all prudent and feasible alternatives to avoid an adverse effect on the NHL. (Sec. 110(a)(2)(B) and sec. 110(f)).

(k) Where such alternatives appear to require undue cost or to compromise the undertaking's goals and objectives, the agency must balance those goals and objectives with the intent of section 110(f). In doing so, the agency should consider:

(1) The magnitude of the undertaking's harm to the historical, archaeological and cultural qualities of the NHL;

(2) The public interest in the NHL and in the undertaking as proposed, and,

(3) The effect a mitigation action would have on meeting the goals and objectives of the undertaking.

(l) The Advisory Council's regulations implementing section 106 include specific provisions that also implement section 110(f). These regulations require that the Council must be included in any consultation following a determination by the Federal agency that a Federal or federally assisted undertaking will have an adverse effect on an NHL. The Council must notify the Secretary and may request the Secretary to provide a report to the Council detailing the significance of the affected NHL under section 213 of the NHPA and recommending measures to avoid, minimize or mitigate adverse effects. The Council shall report the outcome of

the section 106 process to the Secretary and the head of the agency responsible for the undertaking.

Foreign Historic Properties

(m) In accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515) and with Executive Order 12114 (issued January 4, 1979), the agency's preservation program should ensure that, when carrying out work in other countries, the agency will consider the effects of such actions on historic properties, including World Heritage Sites and properties that are eligible for inclusion in the host country's equivalent of the National Register.

(n) The agency's preservation program should ensure that those agency officials, contractors, and other parties responsible for implementing section 402 of the NHPA (16 U.S.C. 470a–z) and Executive Order 12114 have access to personnel with appropriate levels and kinds of professional expertise in historic preservation to identify and assist in the management of such properties.

(o) Efforts to identify and consider effects on historic properties in other countries should be carried out in consultation with the host country's historic preservation authorities, with affected communities and groups, and with relevant professional organizations.

Standard 5. An agency consults with knowledgeable and concerned parties outside the agency about its historic preservation related activities. (Sec. 110(a)(2)(D) and (E)(ii)).

Guidelines

Consultation General Principles

(a) Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information. Whether consulting on a specific project or on broader agency programs, the agency should:

(1) Make its interests and constraints clear at the beginning;

(2) Make clear any rules, processes, or schedules applicable to the consultation;

(3) Acknowledge others' interests and seek to understand them;

(4) Develop and consider a full range of options; and,

(5) Try to identify solutions that will leave all parties satisfied.

(b) Consultation should include broad efforts to maintain ongoing communication with all those public and private entities that are interested in or affected by the agency's activities and should not be limited to the consideration of specific projects.

(c) Consultation should be undertaken early in the planning stage of any Federal action that might affect historic properties. Although time limits may be necessary on specific transactions carried out in the course of consultation (e.g., the time allowed to respond to an inquiry), there should be no hard-and-fast time limit on consultation overall. Consultation on a specific undertaking should proceed until agreement is reached or until it becomes clear to the agency that agreement cannot be reached.

(d) While specific consultation requirements and procedures will vary among agencies depending on their missions and programs, the nature of historic properties that might be affected, and other factors, consultation should always include all affected parties. Section 110(a)(2)(D) specifies that an agency's preservation-related activities be carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector. Section 110(a)(2)(E)(ii) requires an agency's procedures for compliance with section 106 to provide a process for the identification and evaluation of historic properties and the development and implementation of agreements, in consultation with SHPOs, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate. In addition to having a formal role under the Act, SHPOs and Tribal Preservation Officers can assist in identifying other parties with interests, as well as sources of information.

(e) The agency needs to inform other agencies, organizations, and the public in a timely manner about its projects and programs, and about the possibility of impacts on historic resources of interest to them. However, the agency cannot force a group to express its views, or participate in the consultation. These groups also bear a responsibility, once they have been made aware that a Federal agency is interested in their views, to provide them in a suitable format and in a timely fashion.

(f) Agency efforts to inform the public about its projects and programs and about the possibility of impacts on historic resources must be carried out in a manner consistent with the provisions of section 304 of the Act, which calls for withholding from disclosure to the public information on the location, character, or ownership of a historic resource where such disclosure may:

(1) Cause a significant invasion of privacy;

(2) Risk harm to the historic resource; or,

(3) Impede the use of a traditional religious site by practitioners.

Consultation with Native Americans

(g) Inclusion of Indian tribes and Native Hawaiian organizations in the consultation process is imperative and is specifically mandated by the Act (Sec. 110(a)(2)(D)):

(1) Properties with traditional religious and cultural importance to Native American and Native Hawaiian groups may be eligible for the National Register; such properties must be considered, and the appropriate Native American and/or Native Hawaiian groups must be consulted in project and program planning through the section 106 review process (see NHPA Sec. 101(d)(6)(A&B);

(2) Section 101(d)(2) of the Act provides that Indian tribes may assume State Historic Preservation Officer responsibilities on tribal lands, when approved to do so by the Secretary of the Interior. In those cases where a tribe has assumed such responsibilities on tribal lands, a Federal agency must consult with the tribe instead of the SHPO, in order to meet agency responsibilities for consultation pursuant to the Act;

(3) The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) establishes consultation requirements (43 CFR part 10) that may affect or be affected by consultation pursuant to section 106 of the NHPA concerning activities on Federal and Tribal lands that could affect human remains and cultural items. The Archeological Resources Protection Act of 1979 and its uniform regulations also require consultation with tribes and provide a formal process of notification (16 U.S.C. 470cc–dd);

(4) Section 110 requires that an agency's efforts to comply with section 106 must also be consistent with the requirements of section 3(c) of NAGPRA concerning the disposition of human remains and Native American cultural items from Federal and tribal lands.

(h) Where those consulted do not routinely or customarily participate in traditional governmental means of consultation (e.g., through public meetings, exchanges of correspondence), reasonable efforts should be made to accommodate their cultural values and modes of communication.

Standard 6. An agency manages and maintains historic properties under its jurisdiction or control in a manner that considers the preservation of their historic, architectural, archeological, and cultural values. (Sec. 110(a)(1), sec. 110(a)(2)(B), sec. 110(b)).

Guidelines

(a) Historic properties include any prehistoric or historic districts, sites, buildings, structures, or objects listed in, or eligible for inclusion in, the National Register of Historic Places, including artifacts, records, and material remains related to such properties. To the extent feasible, as part of its property management program, the agency should endeavor to retain historic buildings and structures in their traditional uses and to maintain significant archeological sites and landscapes in their undisturbed condition. (See *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR part 68), and *Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* and *Guidelines for the Treatment of Historic Landscapes*.)

(b) Where it is no longer feasible to continue the traditional use of a historic structure or to maintain a significant archeological site or cultural landscape in undisturbed condition, the agency should consider an adaptive use that is compatible with the historic property. Adaptive use proposals must be reviewed in accordance with section 106 of the Act. The agency should consider as wide a range of adaptive use options as is feasible given its own management needs, cost factors, and the needs of preservation. A use that severely damages or destroys a historic property is not consistent with the section 110(a)(1) requirement to preserve historic properties in accordance with the professional standards established pursuant to section 101(g) of the Act.

(c) Where modification of a historic property is required to allow it to meet contemporary needs and requirements, the agency should ensure that *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and its accompanying guidelines are followed. Agencies are authorized and directed by section 110(a)(1) to carry out (or cause a lessee or concessioner to carry out) whatever preservation work is necessary (e.g., rehabilitation or documentation) in preparation for use. Proposals to modify historic properties must be reviewed in accordance with section 106 of the Act. When such modification requires disturbance of the earth, and it is not feasible to avoid and protect significant archeological resources, the archeological resources should be excavated and the data recovered. Excavations should focus on areas that will be disturbed during the project, but overall excavation efforts should be governed by a research design intended to recover significant data contained in the site. Doing so may require excavation of adjacent deposits of the site. All archeological work should conform to the Secretary's ''Standards for Archeological Documentation.'' Under sections 101(a)(7)(A) and 110, agencies are also responsible for ensuring that prehistoric and historic material remains and associated records recovered in conjunction with projects and programs are deposited in repositories capable of proving adequate long-term curatorial services (see 36 CFR part 79). Additional requirements for the management and ongoing care of archeological resources may be found in the Antiquities Act (16 USC 431–433) and the Archeological Resource Protection Act (16 USC 470aa–mm), and their attendant regulations.

(d) Until and unless decisions are made to manage them in some other manner, historic properties, and properties not yet formally evaluated that may meet the criteria for inclusion in the National Register, should be maintained so that their preservation is ensured through adherence to *The Secretary of the Interior's Standards for the Treatment of Historic Properties.*

(e) The relative cost of various management strategies for a historic structure, ranging from full restoration, to rehabilitation and adaptive use to demolition and replacement with a modern building, should be carefully and objectively considered, with reference to the pertinent requirements of Executive Order 11912, as amended, to the pertinent criteria established in OMB Circular A–94, and to the pertinent principles and methods set forth in the National Bureau of Standards Life-Cycle Costing Manual (NBS Handbook 135).

(f) Applicable long and short-term costs should be carefully considered as part of any cost analysis. It is often the case that the short-term costs of preserving and rehabilitating a historic structure are balanced by long-term savings in maintenance or replacement; on the other hand, failure to perform needed cyclic maintenance may shorten the life of a building and decrease the value of investment in its rehabilitation.

(g) Where it is not feasible to maintain a historic property, or to rehabilitate it for contemporary use, the agency may elect to modify it in ways that are inconsistent with the Secretary's ''Standards for Rehabilitation,'' allow it to deteriorate, or demolish it. However, the decision to act or not act to preserve and maintain historic properties should be an explicit one, reached following appropriate consultation within the section 106 review process and in relation to other management needs.

(h) Where the agency determines in accordance with section 106 that maintaining or rehabilitating a historic property for contemporary use in accordance with the Secretary's Standards is not feasible, the agency must provide for appropriate recording of the historic property in accordance with section 110(b) before it is altered, allowed to deteriorate, or demolished.

Standard 7. An agency gives priority to the use of historic properties in carrying out agency missions. (Sec. 110(a)(1)).

Guidelines

(a) For the most part, use of historic properties involves the integration of those properties into the activities directly associated with the agency's mission. However, the agency should also be open to the possibility of other uses, such as the use of traditional sacred sites or plant gathering areas by Native Americans, or use of an archeological site as a public interpretive facility.

(b) An agency with historic properties under its jurisdiction and control should maintain an inventory of those properties that notes the current use and condition of each property. The agency should provide for regular inspection of the properties and an adequate budget for their appropriate maintenance.

(c) Section 110(a)(1) applies not only to historic properties under an agency's ownership or control, but to other historic properties available to an agency. An agency that requires the use of non-federal property is required to give priority to the use of historic properties. In such cases the agency should notify potential private-sector offerors of this priority and, if feasible, offer incentives to help ensure that historic properties will be offered.

(d) Where an agency carries out its mission through the award of grant funds for specific activities, and where those activities will inevitably affect historic properties, the agency should, to the extent feasible, design its grants programs so as to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

(e) As provided for in section 111 of the Act, the agency should consider

leases, exchanges, and management agreements with other parties as means of providing for the continuing or adaptive use of historic properties.

(f) Surplus properties that are listed in or have been formally determined eligible for the National Register can be transferred to State, tribal, and local governments for historic preservation purposes through the Historic Surplus Property Program. Additionally, properties or portions of surplus properties may be made available to States or local agencies at no cost for parks and recreation through application to the Federal Lands-to-Parks Program. Contact the NPS' Heritage Preservation Services Division or its Recreation Resources Assistance Division in Washington, D.C., for more information on these programs.

(g) The use of historic properties is not mandated where it can be demonstrated to be economically infeasible, or where historic properties will not serve the agency's requirements. The agency's responsibility is to balance the needs of the agency mission, the public interest in protecting historic properties, the costs of preservation, and other relevant public interest factors in making such decisions.

Definitions

(a) *The Act* or *NHPA* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(b) *Advisory Council* or *Council* means the agency, fully titled the Advisory Council on Historic Preservation, established pursuant to section 201 of Title II of the NHPA, that is to be afforded a reasonable opportunity under sections 106 and 110(f) of the NHPA to comment with regard to proposed undertakings, as defined in section 301(7) of the NHPA; that reviews Federal programs pursuant to section 202(a)(6) of the NHPA; and with whose regulations outlining the procedures for complying with the requirements of section 106 of the NHPA (''Protection of Historic Properties,'' found at 36 CFR part 800) in accordance with section 110(a)(2)(E)(i), other Federal agencies procedures for compliance with section 106 must be consistent.

(c) *Agency Head* means the individual Departmental Secretary, Executive Director or Administrator of an agency, as defined in the Council's regulations (36 CFR part 800).

(d) *Cultural items* is defined in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, 25 U.S.C 3002(c)). It includes human remains; associated and unassociated funerary objects (consisting of items intentionally placed with the body in a grave, including those not in possession of a Federal agency); sacred objects, ceremonial objects important to the practice of Native American traditional religions; and objects of cultural patrimony, those items having historical, traditional, or cultural importance to Indian tribes themselves. For a complete definition see section 2(3)(A)–(D) of NAGPRA, and the Department of Interior's regulations implementing the provisions of the Act at 43 CFR part 10.

(e) *Historic property* or *historic resource* is defined at section 301 of the NHPA and means any prehistoric or historic district, site, building, structure, landscape or object included in, or eligible for inclusion in the National Register, including artifacts, records, and material remains related to such a property or resource. Section 101(d)(6)(A) of the National Historic Preservation Act provides that ''properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.''

(f) *Historic resource* (see definition for ''historic property'').

(g) *Indian tribe* or *tribe* is defined at section 301(4) of the NHPA and means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary of the Interior is responsible for determining an Indian tribe's eligibility for those special programs and services.

(h) *Memorandum of Agreement* means the document that records the terms and conditions which have been agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(i) *National Register* is defined at Section 301(6) of the NHPA and means the list of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture established under section 101 of the NHPA and maintained by the Secretary of the Interior and fully titled the ''National Register of Historic Places.''

(j) *Native Hawaiian* is defined in the NHPA at section 301(17) and means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(k) *Native Hawaiian organization* as defined at section 301(18) of the NHPA means any organization which—

(1) Serves and represents the interests of Native Hawaiians;

(2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and,

(3) Has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and *Hui Malama I Na Kapuna O Hawai'i Nei*, an organization incorporated under the laws of the State of Hawaii.

(l) *Preservation* or *historic preservation* as defined in the NHPA at section 301(8) includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(m) *Preservation Officer* means the individual in the agency responsible for managing the agency's historic preservation program and coordinating all preservation activities. All federal agencies are required to appoint a Preservation Officer under section 110(c) of the National Historic Preservation Act (unless specifically exempted under section 214 of the NHPA). The Preservation Officer and the Agency Head are not necessarily one and the same individual.

(n) *Secretary* is defined at section 301(11) of the NHPA and means the Secretary of the Interior acting through the Director of the National Park Service, except where otherwise specified.

(o) *Secretary's Standards* means the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (available from the National Park Service), the project and program standards and guidelines for implementing the NHPA. They are technical guidance concerning archeological and historic preservation activities and methods. The complete Secretary's *Standards* currently address each of the following activities: Preservation Planning, Identification, Evaluation, Registration, Historical Documentation, Architectural and Engineering Documentation, Archeological Documentation, Treatment of Historic Properties

(including Rehabilitation), and Professional Qualifications.

(p) *State Historic Preservation Officer* (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the SHPO.

(q) *Traditional Cultural Property* is defined as a property that is associated with cultural practices or beliefs of a living community that (1) are rooted in that community's history, and (2) are important in maintaining the continuing cultural identity of the community. Readers should refer to National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (available from the National Park Service) for more information.

(r) *Tribal Preservation Officer* or *Tribal Historic Preservation Officer* means the official appointed or designated by the Tribe to carry out the historic preservation program responsibilities that the Tribe has assumed pursuant to section 101(d) of the NHPA.

(s) *Tribal lands* is defined at section 301(14) of the NHPA and means—

(1) All lands within the exterior boundaries of any Indian reservation; and

(2) All dependent Indian communities.

(t) *Undertaking* as defined in the NHPA at section 301(7) means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(1) Those carried out by or on behalf of the agency;

(2) Those carried out with Federal financial assistance;

(3) Those requiring a Federal permit, license, or approval; and

(4) Those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h–2):

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section. (Standards 1, 6 and 7.)

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary [of the Interior], a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. (Standard 1.) Such program shall ensure—

(A) That historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register (Standards 2 and 3);

(B) That such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having national significance (Standard 4);

(C) That the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning (Standards 4 and 6);

(D) That the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector (Standard 5); and

(E) That the agency's procedures for compliance with section 106—

(i) Are consistent with regulations issued by the (Advisory) Council (on Historic Preservation) pursuant to section 211 (Standard 4);

(ii) Provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered (Standard 4); and

(iii) Provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)) (Standard 4).

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference (Standard 6).

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's ''preservation officer'' who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h) (Standard 1).

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act (Standard 1).

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced (Standard 7).

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking (Standard 4).

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit (Standard 1).

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having the legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant (Standard 4).

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts (Standard 4).

Appendix B

Purposes of the National Historic Preservation Act

Section 110(d) of the National Historic Preservation Act (the Act) calls on all Federal agencies, consistent with their mission and mandates, to carry out their activities in accordance with the purposes of the Act and to consider programs and projects that will further the purposes of the Act. The purposes of the Act are set forth in sections 1 and 2. These sections are directly germane to all Federal preservation programs:

Section 1 (b) The Congress finds and declares that—

(1) The spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) The historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) Historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) In the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) The increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and,

(7) Although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2: It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) Use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) Provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with the States, Indian tribes, Native Hawaiians, and local governments;

(3) Administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) Contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) Encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) Assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

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federal register

Friday
April 24, 1998

Part IV

The President

Proclamation 7086—National Park Week, 1998

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Friday, April 24, 1998

Presidential Documents

Title 3—

The President

Proclamation 7086 of April 22, 1998

National Park Week, 1998

By the President of the United States of America

A Proclamation

Within our national parks, we find all the rich diversity and extraordinary beauty of America's natural heritage. From the majestic Grand Tetons to the mysterious Everglades, our parks preserve for us the treasures of our magnificent country: the astonishing variety of plant and animal life, the tranquility of forests and meadows, and the breathtaking grandeur of our great rivers, deserts, and mountains. Our national park sites also provide us with vital links to our heritage as a people and a Nation. They tell us the stories of the individuals, places, and events that have shaped the American character.

The Statue of Liberty National Monument and Ellis Island are tangible reminders of the more than 12 million immigrants who came to the United States through this small gateway to a new world and a new life. For many Americans, this national park site tells a very personal story of family struggles and triumphs and of the courage it takes to seek freedom.

Many African Americans took a different but equally brave route to freedom. Their story has been preserved for us by the National Park Service in the many historic sites marking the route of the Underground Railroad. In homes, churches, and farms in communities throughout Ohio, Indiana, Pennsylvania, New York, and elsewhere, we can experience the determination and indomitable spirit of African American men and women fleeing the bonds of slavery, and we can learn more about the many heroes like Harriet Tubman who helped them on their dangerous trek north to freedom.

This summer, our Nation will celebrate the 150th anniversary of the first Women's Rights Convention in Seneca Falls, New York. That event will be commemorated at Women's Rights National Historical Park, where we are reminded that the idea that men and women are created equal was once considered radical. On this site, visionaries such as Lucretia Mott, Elizabeth Cady Stanton, and Frederick Douglass helped our Nation take an important first step toward legal, political, and educational rights for American women.

At these and so many other historic places across our Nation, the National Park Service preserves and protects the American legacy, reminding us not only of who we are as a people, but also of how far we have traveled together on our great American journey. Our national parks are classrooms and laboratories, windows on our past and doorways to our future. As we celebrate National Park Week, I commend all the talented and dedicated men and women of the National Park Service for telling the story of the people and places that have shaped our destiny and for preserving for our children the riches of our natural and cultural heritage.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 20 through April 26, 1998, as National Park Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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