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Monday
July 6, 1998

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Contents

Federal Register

Vol. 63, No. 128

Monday, July 6, 1998

Agriculture Department
See Rural Utilities Service

Air Force Department
NOTICES
Meetings:
Air Force Academy Board of Visitors, 36396

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36410–36411
Meetings:
Energy-Related Epidemiologic Research Advisory Committee, 36411
National Vaccine Advisory Committee, 36411–36413

Coast Guard
PROPOSED RULES
Vessel documentation and measurement:
Undocumented barges over 100 gross tons; mandatory numbering system, 36384–36387

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bahrain, 36394
Dominican Republic, 36395
Macedonia, 36395
Special access and special regime programs:
Tycoon Tutti, Inc.; participation denial, 36395–36396

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 36396

Customs Service
PROPOSED RULES
Vessels in foreign and domestic trades:
Boarding vessels, etc., 36379–36384
NOTICES
General aviation telephonic entry (GATE) , flights entering U.S. from Canada; test program, 36483–36485

Defense Department
See Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic funds transfer, 36522–36528

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 36446–36448

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Miamisburg Environmental Management Project, OH; waste processing facility, 36396–36397
Natural gas exportation and importation:
Pan-Alberta Gas (U.S.) Inc., 36397

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, 36366–36373
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36400–36401
Superfund; response and remedial actions, proposed settlements, etc.:
Jones Trucklines Superfund Site, MO, 36401
Pennsylvania, 36401–36402
Water pollution; discharge of pollutants (NPDES):
Storm water discharges—
Construction activity; general permits, 36490–36519

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Bell Helicopter Textron, Inc., 36377–36379

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Oklahoma, 36387–36388
Vermont, 36387
NOTICES
Common carrier services:
Telecommunications Act of 1996; implementation—
Telecommunications relay services; State certification; applications accepted, 36402

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 36402

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 36399–36400
Applications, hearings, determinations, etc.:
California Power Exchange Corp., 36397
Columbia Gas Transmission Corp., 36397–36398
El Paso Natural Gas Co., 36398
Tennessee Gas Pipeline Co., 36398–36399

Federal Financial Institutions Examination Council
NOTICES
Uniform retail credit classification policy; comment request, 36403–36408

Federal Highway Administration
NOTICES
Meetings:
Intelligent Transportation Society of America, 36476–36477

Federal Railroad Administration
RULES
Railroad safety:
Passenger train emergency preparedness plans
Correction, 36376

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 36408
Formations, acquisitions, and mergers, 36408
Permissible nonbanking activities, 36408–36409
Reporting and recordkeeping requirements, 36409

Federal Trade Commission
RULES
Organization, procedures and practices:
Small business regulatory enforcement fairness and equal access to justice, 36339–36344

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
New Rochelle, NY; transportation improvements, 36477–36478

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Hart Mountain National Antelope Refuge, OR; jurisdictional land exchange, 36428
Swayze Lake National Wildlife Refuge, LA, 36427

Food and Drug Administration
RULES
Food additives:
Acesulfame potassium; use in alcoholic beverages; effective date confirmed, 36362–36365
Acesulfame potassium; use in nonalcoholic beverages, 36344–36362
NOTICES
Reports and guidance documents; availability, etc.;
Good guidance practices; quarterly list, 36413–36424

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic funds transfer, 36522–36528

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36409
Meetings:
Vital and Health Statistics National Committee, 36410

Health Care Financing Administration
RULES
Medicare:
Medicare+Choice program; establishment
Correction, 36488

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
NOTICES
Meetings:
National Recreation Lakes Study Presidential Commission, 36427

International Trade Administration
NOTICES
Antidumping:
Steel jacks from Canada et al.—
Five year reviews, 36389–36390
Tapered roller bearings and parts thereof from—
Romania, 36390–36391
Natural uranium component in United States; delivery procedures, 36391–36393

International Trade Commission
NOTICES
Import investigations:
Bicycle speedometers from—
Japan, 36432–36434
Canned Bartlett pears from—
Australia, 36434–36436
Fish netting of manmade fiber from—
Japan, 36436–36438
Large power transformers from—
France, Italy, and Japan, 36438–36440
Roller chain from—
Japan, 36440–36442
Steel jacks from—
Canada, 36442–36444

Justice Department
See Parole Commission

Labor Department
See Employment Standards Administration
See Labor Statistics Bureau
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36445–36446
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 36446

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36448–36449,

Land Management Bureau
NOTICES
Alaska Native claims selection:
Bering Straits Native Corp., 36427–36428
Closure of public lands:
Nevada, 36428

Environmental statements; availability, etc.:
Hart Mountain National Antelope Refuge, OR; jurisdictional land exchange, 36428
Meetings:
Resource advisory councils—
Sierra Front/Northwest Great Basin, 36428–36429
Realty actions; sales, leases, etc.:
Arizona, 36429
Withdrawal and reservation of lands:
Nevada, 36429–36430

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic funds transfer, 36522–36528
NOTICES
Inventions, Government-owned; availability for licensing, 36450–36451,

National Archives and Records Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36451

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 36451

National Highway Traffic Safety Administration
NOTICES
Motor vehicle theft prevention standards; exemption petitions; etc.:
Passenger motor vehicle data (1996 CY), 36478–36482

National Oceanic and Atmospheric Administration
RULES
Ocean and coastal resource management:
Marine sanctuaries—
Monterey Bay National Marine Sanctuary, CA; jade collection, 36339
NOTICES
Meetings:
Science Advisory Board, 36393
Western Pacific Fishery Management Council, 36393–36394

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Thicket National Preserve, TX; 3-D seismic survey, 36431
Environmental statements; notice of intent:
Fort Stanwix National Monument, NY, 36431
Meetings:
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 36431

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 36451–36452

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Westinghouse Electric Corp. (CBS Corp.), 36453
Applications, hearings, determinations, etc.:
Illinois Power, 36452–36453

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 36449–36450

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 36444–36445

Presidential Documents
PROCLAMATIONS
Generalized System of Preferences; amendments (Proc. 7107), 36529–36539

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 36431–36432,

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid transportation—
Leak detection; industry standard, 36373–36376

Rural Utilities Service
PROPOSED RULES
Telecommunications standards and specifications:
Materials, equipment, and construction—
Special equipment specifications, 36377

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 36462–36467
Options Clearing Corp., 36467–36468
Applications, hearings, determinations, etc.:
Cash Management Portfolio et al., 36453–36455
Evergreen Equity Trust et al., 36455–36457
Phoenix Home Life Mutual Insurance Co. et al., 36457–36460
Public utility holding company filings, 36460–36462

Small Business Administration
NOTICES
Disaster loan areas:
Kentucky et al., 36469
New York, 36469
Oregon, 36469–36470
Pennsylvania, 36470
Tennessee, 36470
Applications, hearings, determinations, etc.:
Capital Across America, L.P., 36468
J.P. Morgan Investment Corp., 36469

State Department
RULES
Visas; nonimmigrant documentation:
Aliens staying in U.S. longer than permitted; new visa accepted under extraordinary circumstances; place of application
Correction, 36365–36366
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36470

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 36424–36427

Surface Transportation Board
NOTICES
Railroad services abandonment:
Grand Trunk Western Railroad Inc., 36482–36483

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Trade Policy Staff Committee:
Free Trade Area of the Americas negotiation; comment request, 36470–36473

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36473–36476
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36476
Aviations proceedings:
Agreements filed: weekly receipts, 36476

Treasury Department
See Customs Service

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Vietnam Fulbright foreign student exchange program, 36485–36487

Separate Parts In This Issue

Part II
Environmental Protection Agency, 36490–36519

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 36522–36528

Part IV
The President, 36529–36539

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7107 36531

7 CFR

Proposed Rules:

1755 36377

14 CFR

Proposed Rules:

39 36377

15 CFR

922 36339

16 CFR

0 36339
1 36339
3 36339

19 CFR

Proposed Rules:

4 36379

21 CFR

172 (2 documents) 36344, 36362

22 CFR

40 36365
41 36365

33 CFR

Proposed Rules:

Ch. I 36384

40 CFR

180 36366

42 CFR

422 36488

47 CFR

Proposed Rules:

73 (2 documents) 36387

48 CFR

Proposed Rules:

13 36522
16 36522
32 36522
52 36522

49 CFR

195 36373
223 36376

Rules and Regulations

Federal Register
Vol. 63, No. 128
Monday, July 6, 1998

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

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150–8003–04]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary; Confirmation of Effective Date

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Confirmation of effective date.

SUMMARY: On March 30, 1998, the National Oceanic and Atmospheric Administration (NOAA) published a final rule (63 FR 15083) amending the regulations and Designation Document for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary. Under the National Marine Sanctuaries Act, the amendment would automatically take effect at the end of 45 days, continuous session of Congress beginning on March 30 1998, unless the Governor of California certified to the Secretary of Commerce the amendment as unacceptable in State waters of the MBNMS. The 45-day review period ended on June 13, 1998. During the review period, NOAA received a letter dated May 29, 1998, from Governor Pete Wilson stating that the State of California has no objection to the amendment. This document confirms the effective date of the amendment of the MBNMS Designation Document and regulations as June 16, 1998.

EFFECTIVE DATE: The amendment to the MBNMS Designation Document and regulations at 15 CFR part 922, subpart M, published on March 30, 1998 (63 FR 15083) shall take effect on June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Scott Kathey, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, California 93940 or at (408) 647–4251.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Captain Evelyn Fields,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–17734 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–08–M

FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, and 3

Organization, General Procedures, Rules of Practice for Adjudicative Proceedings

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission is revising its Rules of Practice to incorporate statutory requirements of the Small Business Regulatory Enforcement Fairness Act concerning congressional review of certain agency rules and publication of small entity guides for certain rules.

The revised rules also reflect statutory amendments to the Equal Access to Justice Act as well as technical and interpretive nonsubstantive changes to the rules governing claims under the Act.

EFFECTIVE DATES: These amendments are effective July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra M. Vidas, Attorney, (202) 326–2456, Office of the General Counsel, FTC, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission is amending Parts 0, 1, and 3 of its existing Rules of Practice to reflect the statutory provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Pub. L. 104–121, 110 Stat. 857 (1996) as that Act amends the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and the Equal Access to Justice Act (EAJA), 5 U.S.C. 504.

The Commission is amending Part 1 by adding a new Subpart M reflecting SBREFA's requirements concerning the submission of information to Congress and the Comptroller General when the agency issues or amends a rule or industry guide, or formally adopts an interpretation or policy statement that constitutes a rule within the meaning of 5 U.S.C. 804(3). The amendments also reflect SBREFA's statutory requirements with respect to publication of small entity compliance guides, and add references to the RFA and Paperwork Reduction Act, (PRA), 44 U.S.C. 3501–3520, where appropriate.

The Commission is revising its rules governing EAJA claims to reflect statutory amendments and to clarify certain provisions of the Commission's existing EAJA rules. These clarifying amendments provide, *inter alia*, additional information concerning filing time limits, procedures, and allowable expenses to assist persons eligible to file claims under the EAJA. The Commission is also amending § 0.5 of its rules, ''Laws authorizing monetary claims,'' to include a reference to the EAJA and a new telephone contact number in the Office of the General Counsel.

The Commission has determined that these rule amendments relate to agency practice or are interpretive in nature. Accordingly, they are not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b)(A), or to the RFA, 5 U.S.C. 601–612.

The submissions required by the amended rules with respect to claims under the EAJA, 5 U.S.C. 504, do not likely constitute ''the collection of information'' as that term is defined by the PRA. Submission of a claim for fees occurs in connection with an administrative proceeding with respect to a specific party and is therefore exempt from PRA coverage. 5 CFR 1320.4(a)(2). In the event that an EAJA claim is subject to the requirements of the PRA, the Commission has previously received clearance for Part 3, Subpart I, of the Rules of Practice, which specifies, *inter alia*, the documentation necessary to support an application for reimbursement under the EAJA, See 16 CFR 3.81–3.83 (OMB

Control Number 3084–0047, expiration date Sept. 30, 1998).

List of Subjects

16 CFR Part 0

Organization and functions (Government agencies).

16 CFR Part 1

Administrative practice and procedure.

16 CFR Part 3

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

1. The authority for part 0 continues to read as follows:

Authority: See 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383 as amended (5 U.S.C. 552).

2. Section 0.5 is revised to read as follows:

§ 0.5 Laws authorizing monetary claims.

The Commission is authorized to entertain monetary claims against it under three statutes. The Federal Tort Claims Act (28 U.S.C. 2671–2680) provides that the United States will be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful acts or omissions of its employees acting within the scope of their employment or office. The Military Personnel and Civilian Employees Claims Act of 1964 (31 U.S.C. 3701, 3721) authorizes the Commission to compensate employees' claims for damage to or loss of personal property incident to their service. The Equal Access to Justice Act (5 U.S.C. 504 and 28 U.S.C. 2412) provides that an eligible prevailing party other than the United States will be awarded fees and expenses incurred in connection with any adversary adjudicative and court proceeding, unless the adjudicative officer finds that the agency was substantially justified or that special circumstances make an award unjust. In addition, eligible parties, including certain small businesses, will be awarded fees and expenses incurred in defending against an agency demand that is substantially in excess of the final decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, unless the adjudicative officer finds that the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Questions may be addressed to the Office of the General Counsel, (202) 326–2462.

PART 1—GENERAL PROCEDURES

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

2. The authority for Subpart B is revised to read as follows:

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 552; sec. 212(a), Pub. L. 104–121, 110 Stat. 857 (5 U.S.C. 601 note).

3. Section 1.11(b)(4) is revised to read as follows:

§ 1.11 Commencement of a rulemaking proceeding.

* * * * *

(b) * * *

(4) The information required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

4. In § 1.14 paragraph (a)(2)(vi) is revised and paragraph (a)(3) is added to read as follows:

§ 1.14 Promulgation.

(a) * * *

(2) * * *

(vi) The information required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

(3) *Small entity compliance guide.* For each rule for which the Commission must prepare a final regulatory flexibility analysis, the Commission will publish one or more guides to assist small entities in complying with the rule. Such guides will be designated as ''small entity compliance guides.''

* * * * *

Subpart C—Rules Promulgated Under Authority Other Than Section 18(a)(1)(B) of the FTC Act

1. The authority for Subpart C is added to read as follows:

Authority: 15 U.S.C. 46; 5 U.S.C. 552; Sec. 212(a), Pub. L. 104–121, 110 Stat. 857 (5 U.S.C. 601 note).

2. Section 1.26 is amended by adding 3 sentences to the end of paragraph (d) to read as follows:

§ 1.26 Procedure.

* * * * *

(d) *Promulgation of rules or orders.* * * * The **Federal Register** publication will contain the information required by the Paperwork Reduction Act, 44 U.S.C. 3501–3520, and the Regulatory Flexibility Act, 5 U.S.C. 601–612, if applicable. For each rule for which the Commission must prepare a final regulatory flexibility analysis, the Commission will publish one or more guides to assist small entities in complying with the rule. Such guides will be designated as ''small entity compliance guides.''

* * * * *

3. Subpart M, consisting of § 1.99, is added to read as follows:

Subpart M—Submissions Under the Small Business Regulatory Enforcement Fairness Act

Authority: 5 U.S.C. 801–804.

§ 1.99 Submission of rules, guides, interpretations, and policy statements to Congress and the Comptroller General.

Whenever the Commission issues or substantively amends a rule or industry guide or formally adopts an interpretation or policy statement that constitutes a ''rule'' within the meaning of 5 U.S.C. 804(3), a copy of the final rule, guide, interpretation or statement, together with a concise description, the proposed effective date, and a statement of whether the rule, guide, interpretation or statement is a ''major rule'' within the meaning of 5 U.S.C. 804(2), will be transmitted to each House of Congress and to the Comptroller General. The material transmitted to the Comptroller General will also include any additional relevant information required by 5 U.S.C. 801(a)(1)(B). This provision generally applies to rules issued or substantively amended pursuant to §§ 1.14(c), 1.15(a), 1.19, or 1.26(d); industry guides issued pursuant to § 1.6; interpretations and policy statements formally adopted by the Commission; and any rule of agency organization, practice or procedure that substantially affects the rights or obligations of non-agency parties.

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: Section 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Subpart I is revised to read as follows:

Subpart I—Recovery of Awards Under the Equal Access to Justice Act in Commission Proceedings

3.81 General provisions.
3.82 Information required from applicants.
3.83 Procedures for considering applicants.

Authority: 5 U.S.C. 504 and 5 U.S.C. 553(b).

Subpart I—Recovery of Awards Under the Equal Access to Justice Act in Commission Proceedings

§ 3.81 General provisions.

(a.) *Purpose of these rules.* The Equal Access to Justice Act, 5 U.S.C. 504 (called ''the Act'' in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to adversary adjudicative proceedings under part 3 of this title. The rules in this subpart describe the parties eligible for awards, how to apply for awards, and the procedures and standards that the Commission will use to make them.

(1.) *When an eligible party will receive an award.* An eligible party will receive an award when:

(i) It prevails in the adjudicative proceeding, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust. Whether or not the position of the agency was substantially justified will be determined on the basis of the administrative record as a whole that is made in the adversary proceeding for which fees and other expenses are sought; or

(ii) The agency's demand is substantially in excess of the decision of the adjudicative officer, and is unreasonable when compared with that decision, under all the facts and circumstances of the case. ''Demand'' means the express final demand made by the agency prior to initiation of the adversary adjudication, but does not include a recitation by the agency of the statutory penalty in the administrative complaint or elsewhere when accompanied by an express demand for a lesser amount.

(b.) *When the Act applies.* (1) Section 504(a)(1) of the Act applies to any adversarial adjudicative proceeding pending before the Commission at any time after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date.

(2) Section 504(a)(4) applies to any adversarial adjudicative proceeding pending before the Commission at any time on or after March 29, 1996.

(c) *Proceedings covered.* (1) The Act applies to all adjudicative proceedings under part 3 of the rules of practice as defined in § 3.2, except hearings relating to the promulgation, amendment, or repeal of rules under the Fair Packaging and Labeling Act.

(2) [Reserved]

(d) *Eligibility of applicants.* (1) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adjudicative proceeding in which it seeks an award. The term ''party'' is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart.

(2) The types of eligible applicants are as follows:

(i) An individual with a net worth of not more than $2 million;

(ii) the sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees; and

(vi) For purposes of receiving an award for fees and expenses for defending against an excessive Commission demand, any small entity, as that term is defined under 5 U.S.C. 601.

(3) Eligibility of a party shall be determined as of the date the proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the Administrative Law Judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards*—(1) *For a prevailing party:*

(i) A prevailing applicant will receive an award for fees and expenses incurred after initiation of the adversary adjudication in connection with the entire adversary adjudication, or on a substantive portion of the adversary adjudication that is sufficiently significant and discrete to merit treatment as a separate unit unless the position of the agency was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on complaint counsel, which may avoid an award by showing that its position had a reasonable basis in law and fact.

(ii) An award to prevailing party will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make an award unjust.

(2) *For a party defending against an excessive demand:*

(i) An eligible applicant will receive an award for fees and expenses incurred after initiation of the adversary adjudication related to defending against the excessive portion of a Commission demand that is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with that decision under all the facts and circumstances of the case.

(ii) An award will be denied if the applicant has committed a willful violation of law or otherwise acted in bad faith or if special circumstances make an award unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under these rules may exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A). No award to compensate an expert witness may exceed the highest rate at which the Commission paid expert witnesses for similar services at the time the fees were incurred. The appropriate rate may be obtained from the Office of the Executive Director. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the Administrative Law Judge shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(5) Any award of fees or expenses under the Act is limited to fees and expenses incurred after initiation of the adversary adjudication and, with respect to excessive demands, the fees and expenses incurred in defending against the excessive portion of the demand.

(g) *Rulemaking on maximum rates for attorney fees.* If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may, upon its own initiative or on petition of any interested person or group, adopt regulations providing that attorney fees may be awarded at a rate higher than the rate specified in 5 U.S.C. 504(b)(1)(A) per hour in some or all the types of proceedings covered by this part. Rulemaking under this provision will be in accordance with Rules of Practice Part 1, Subpart C of this chapter.

§ 3.82 Information required from applicants.

(a) *Contents of application.* An application for an award of fees and expenses under the Act shall contain the following:

(1) Identify of the applicant and the proceeding for which the award is sought;

(2) A showing that the applicant has prevailed; or, if the applicant has not prevailed, a showing that the Commission's demand was the final demand before initiation of the adversary adjudication and that it was substantially in excess of the decision of the adjudicative officer and was unreasonable when compared with that decision;

(3) Identification of the Commission position(s) that applicant alleges was (were) not substantially justified; or, identification of the Commission's demand that is alleged to be excessive and unreasonable and an explanation as to why the demand was excessive and unreasonable;

(4) A brief description of the type and purpose of the organization or business (unless the applicant is an individual);

(5) A statement of how the applicant meets the criteria of § 3.81(d);

(6) The amount of fees and expenses incurred after the initiation of the adjudicative proceeding or, in the case of a claim for defending against an excessive demand, the amount of fees and expenses incurred after the initiation of the adjudicative proceeding attributable to the excessive portion of the demand;

(7) Any other matters the applicant wishes the Commission to consider in determining whether and in what amount an award should be made; and

(8) A written verification under oath or under penalty or perjury that the information provided is true and correct accompanied by the signature of the applicant or an authorized officer or attorney.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the application and any affiliates (as defined in § 3.81(d)(6)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, if an applicant objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure, the applicant may submit that portion of the exhibit directly to the Administrative Law Judge in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on complaint counsel but need not be served on any other party to the proceeding. If the Administrative Law Judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with § 4.11.

(c) *Documentation of fees and expenses.* The application shall be accompanied by full documentation of the fees and expenses incurred after initiation of the adversary adjudication, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. With respect to a claim for fees and expenses involving an excessive demand, the application shall be accompanied by full documentation of the fees and expenses incurred after initiation of the adversary adjudication, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought attributable to the portion of the demand alleged to be excessive and unreasonable. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection

with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When an application may be filed*—(1) For a prevailing party.

(i) An application may be filed not later than 30 days after the Commission has issued an order or otherwise taken action that results in final disposition of the proceeding.

(ii) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(2) *For a party defending against an excessive demand:*

(i) An application may be filed not later than 30 days after the Commission has issued an order or otherwise taken action that results in final disposition of the proceeding.

(ii) If review or reconsideration is sought or taken of a decision as to which an applicant believes the agency's demand was excessive and unreasonable, proceedings for the award of fees and expenses shall be stayed pending final disposition of the underlying controversy.

(3) For purposes of this subpart, ''final disposition'' means the later of—

(i) The date that the initial decision of the Administrative Law Judge becomes the decision of the Commission pursuant to § 3.51(a);

(ii) The date that the Commission issues an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding; or

(iii) The date that the Commission issues a final order or any other final resolution of a proceeding, such as a consent agreement, settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

§ 3.83 Procedures for considering applicants.

(a) *Filing and service of documents.* Any application for an award or other pleading or document related to an application shall be filed and served on all parties as specified in §§ 4.2 and 4.4(b) of this chapter, except as provided in § 3.82(b)(2) for confidential financial information. The date the Office of the Secretary of the Commission receives the application is deemed the date of filing.

(b) *Answer to application.* (1) Within 30 days after service of an application, complaint counsel may file an answer to the application. Unless complaint counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(2) If complaint counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the Administrative Law Judge upon request by complaint counsel and the applicant.

(3) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of complaint counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, complaint counsel shall include with the answer either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Reply.* Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and complaint counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge determines that the public interest requires such participation in order to permit full exploration of matters in the comments.

(e) *Settlement.* The applicant and complaint counsel may agree on a proposed settlement of the award before final action on the application. A proposed award settlement entered into in connection with a consent agreement covering the underlying proceeding will be considered in accordance with § 3.25. The Commission may request findings of fact or recommendations on the award settlement from the Administrative Law Judge. A proposed award settlement entered into after the underlying proceeding has been concluded will be considered and may be approved or disapproved by the Administrative Law Judge subject to Commission review under paragraph (h) of this section. If an applicant and complaint counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or complaint counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(2) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The Administrative Law Judge shall issue an initial decision on the application within 30 days after closing proceedings on the application.

(1) *For a decision involving a prevailing party:* The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

(2) *For a decision involving an excessive agency demand:* The decision shall include written findings and conclusions on the applicant's eligibility and an explanation of the reasons why the agency's demand was or was not determined to be substantially in excess of the decision of the adjudicative officer and was or was not unreasonable when compared with that decision. That decision shall be based upon all the facts and circumstances of the case. The decision shall also include, if at issue, findings on whether the applicant has committed a willful violation of law or otherwise

acted in bad faith, or whether special circumstances make an award unjust.

(h) *Agency review*. Either the applicant or complaint counsel may seek review of the initial decision on the fee application by filing a notice of appeal under § 3.52(a), or the Commission may decide to review the decision on its own initiative, in accordance with § 3.53. If neither the applicant nor complaint counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the Administrative Law Judge for further proceedings.

(i) *Judicial review*. Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 503(c)(2).

(j) *Payment of award*. An applicant seeking payment of an award shall submit to the Secretary of the Commission a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adjudicative proceeding has been sought by the applicant or any party to the proceeding.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17803 Filed 7–2–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 90F–0220]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Acesulfame Potassium

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 acesulfame potassium (ACK) as a nonnutritive sweetener in nonalcoholic beverages. This action is in response to a petition filed by Hoechst Celanese Corp. (Hoechst).

DATES: This regulation is effective July 6, 1998; written objections and requests for a hearing by August 5, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3093.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Evaluation of Safety
III. Evaluation of the Safety of the Petitioned Use of the Additive
A. ACK—Background
B. ACK—New Information
C. Methylene Chloride
D. Special Conditions Relevant to Use in Nonalcoholic Beverages
1. Hydrolysis Products—Consumer Exposure
2. Hydrolysis Products—Evaluation of Toxicological Information
a. Acetoacetamide-N-sulfonic acid (AAS)
i. Genetic toxicity testing
ii. Subchronic toxicity studies in rats and monkeys
iii. Reproduction and developmental toxicity study in rats
iv. Assessment of AAS
b. Acetoacetamide (AAA)
i. Genetic toxicity testing
ii. Short-term and subchronic toxicity studies in rats, rabbits, and dogs
iii. Developmental toxicity study in rabbits
iv. Assessment of AAA—nonthyroid endpoints
v. Assessment of AAA—thyroid endpoints
vi. Consideration of whether more testing of AAA is necessary
E. Summary of FDA's Safety Evaluation
IV. Response to Comments
A. Summary of Comments
1. Center for Science in the Public Interest's (CSPI's) First Submission
2. CSPI's Second Submission
3. CSPI's Third Submission
4. CSPI's Fourth Submission
5. Hoechst's Submission
6. Other Submissions
B. Analysis of Specific Issues Raised in the Comments
1. AAA Test Results
2. ACK Test Results
a. The second rat study
i. Issues raised previously
ii. Issues not raised previously
b. The mouse study
i. Issues raised previously
ii. Issues not raised previously
c. The first rat study
Issues raised previously
C. Summary of FDA's Response to Comments
V. Conclusion of Safety
VI. Environmental Impact
VII. Paperwork Reduction Act
VIII. Objections
IX. References

I. Introduction

In a notice published in the **Federal Register** of July 30, 1990 (55 FR 30983), FDA announced that a food additive petition (FAP 0A4212) had been filed by Hoechst Celanese Corp. (Hoechst), Route 202–206 North, Somerville, NJ 08876, proposing that § 172.800 *Acesulfame potassium* (21 CFR 172.800) be amended to provide for the safe use of acesulfame potassium (ACK) as a nonnutritive sweetener in nonalcoholic beverages, including beverage bases. (Recently, Hoechst has reorganized; the division of Hoechst now responsible for ACK is known as Nutrinova, Inc., 25 Worlds Fair Dr., Somerset, NJ 08873.) The present petition contains data and other information relevant to the safety of ACK under the proposed conditions of use; the present petition also relies on certain data and information contained in previous petitions for ACK.

FDA's food additive regulations were first amended to permit the use of ACK on July 28, 1988 (53 FR 28379, the ''dry uses final rule''), in response to a petition filed by Hoechst. In its original evaluation of the safety of ACK, FDA concluded that a review of animal feeding studies showed that there is no association between neoplastic disease (cancer) and consumption of this additive (53 FR 28379 at 28380 and 28381). The agency further concluded that ACK was safe under the conditions of use proposed in the initial petition, and amended its food additive regulations to permit the use of the sweetener.

Following publication of the dry uses final rule, the agency received timely objections from the Center for Science in the Public Interest (CSPI). CSPI submitted four separate objections, two of which asserted that the long-term studies of ACK in rodents were inadequate to evaluate ACK's potential carcinogenicity, and two of which asserted that certain of these studies showed that the additive was potentially carcinogenic. CSPI requested a stay of the regulation and also requested a hearing on each of its objections. FDA, after careful consideration of CSPI's objections, found that none of the objections raised issues of fact that justified granting a

hearing or otherwise provided a basis for revoking the regulation. Thus FDA denied both the request for a stay of the regulation and a hearing, and confirmed the effective date of the regulation. The agency published a detailed response to CSPI's objections in the **Federal Register** of February 27, 1992 (57 FR 6667).

Since its initial approval decision on the use of ACK, FDA has approved the following additional uses for ACK in response to petitions: In baked goods and baking mixes, including frostings, icings, and fillings for baked goods; in yogurt and yogurt-type products; in frozen and refrigerated desserts; in sweet sauces, toppings, and syrups; and in alcoholic beverages (59 FR 61538, 59 FR 61540, and 59 FR 61543, December 1, 1994, and 60 FR 21700, May 3, 1995). No objections were received in response to the December 1, 1994, final rule. However, CSPI filed timely objections to the agency's May 3, 1995, final rule authorizing the use of ACK in alcoholic beverages (60 FR 21700). The agency's response to those objections is published elsewhere in this issue of the **Federal Register**.

With respect to the present petition, Hoechst's original submission contained data and information from several toxicity studies of ACK, as well as data and information regarding the stability of ACK in aqueous solutions.[1] Because hydrolysis of ACK can occur under certain conditions, the petitioner also conducted toxicity studies of the principal hydrolysis products of ACK.

In response to an issue raised by FDA's review, Hoechst submitted additional information regarding ACK hydrolysis products, including a report prepared by a panel of experts in various scientific disciplines who independently evaluated the results of certain toxicity studies of the ACK hydrolysis products. Hoechst also submitted an indepth analysis of the potential health risk from one of the ACK hydrolysis products, acetoacetamide (AAA). FDA's Center for Food Safety and Applied Nutrition (CFSAN) conducted its own indepth analysis of the data and information on AAA, and, in reaching a final decision on this issue, also obtained the advice of additional experts from within and from outside the agency.

FDA notes that CSPI has submitted comments on the present petition for use of ACK in nonalcoholic beverages, and has transmitted comments on that petition from other interested parties as well. Further, Hoechst has transmitted additional comments from two of these same parties. Several other comments were also received. The agency's response to all comments on the present petition is presented in section IV of this document.

II. Evaluation of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations in § 170.3(i) (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 of the act (21 U.S.C. 348(c)(3)(A)) 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. Evaluation of the Safety of the Petitioned Use of the Additive

A. ACK—Background

As previously noted, FDA's original evaluation of the safety of ACK established that there was no association between neoplastic disease (cancer) and consumption of this additive (53 FR 28379 at 28380 and 28381). That evaluation also established a lifetime-averaged acceptable daily intake (ADI) for ACK of 15 milligrams per kilogram of body weight per day (mg/kg bw/d), equivalent to 900 mg per person per day (mg/p/d).

B. ACK—New Information

In the present petition, Hoechst included several ACK toxicity studies that had been conducted since the agency's original evaluation of the safety of this additive. These included studies on mutagenicity, antigenicity, and potential for dermal and eye irritation; an acute toxicity study in fish; and a subchronic toxicity study in diabetic rats.

The mutagenicity studies demonstrated that ACK is not mutagenic at histidine loci in *Salmonella typhimurium* or at a tryptophan locus in *Escherichia coli*. These results are consistent with the negative results of the mutagenicity and genetic toxicity studies previously considered by FDA in its original evaluation of the safety of ACK. The results of all the ACK genetic toxicity tests establish that ACK is not genotoxic.

The results of the other ACK toxicity studies listed above did not show toxicologically significant ACK-related adverse effects. Importantly, these ACK toxicity studies contain no new information that would change the agency's previous conclusion that there is no association between neoplastic disease and consumption of this additive. Thus, FDA has evaluated the safety of the petitioned use of ACK in nonalcoholic beverages under the general safety standard, considering all available data.

In determining whether the proposed use of an additive is safe, FDA considers, among other things, whether an individual's lifetime-averaged estimated daily intake (EDI) of the additive will be less than the ADI established from toxicological information. Importantly, the new studies on ACK listed above do not contain any new information that would cause the agency to alter the previously determined ADI for ACK. Thus, FDA concludes that the ADI for ACK is 15 mg/kg bw/d (equivalent to 900 mg/p/d). The present petition contains information regarding dietary consumption of ACK-containing food products, including nonalcoholic beverages, and the agency has considered consumer exposure to ACK resulting from its use in nonalcoholic beverages, as well as all currently listed uses. FDA has calculated the mean EDI from these combined uses to be 1.6 mg/kg bw/d, which is equivalent to 96 mg/p/d; and the 90th percentile EDI from these combined uses to be 3.0 mg/kg bw/d, which is equivalent to 180 mg/p/d (Ref. 1). These levels of dietary exposure to ACK, which represent measures of the average and the high chronic intake, respectively, are both well below the ADI.

C. Methylene Chloride

Residual amounts of reactants and manufacturing aids are commonly found as contaminants in chemical products, including food additives. In its evaluation of the safety of ACK, FDA reviewed both the safety of the additive

[1] Stability studies of ACK in aqueous solutions were also submitted in the original petition for ACK.

and the safety of the chemical impurities that may be present in the additive from the manufacturing process.

In the current manufacturing process for ACK, methylene chloride, a carcinogenic chemical, is used as a solvent in the initial manufacturing step. Subsequently, the product is neutralized, stripped of methylene chloride, and recrystallized from water. Data submitted by the petitioner show that methylene chloride could not be detected in the final product at a limit of detection of 40 parts per billion (ppb).

FDA has previously discussed the significance of the use of methylene chloride in the production of ACK. The agency incorporates those discussions, published in the **Federal Register** of December 1, 1994 (59 FR 61538, 59 FR 61540, and 59 FR 61543) and of May 3, 1995 (60 FR 21700), in full, into the agency's safety determination on the present petition.

Specifically, in evaluating the safety of the uses of the additive that are currently listed, FDA concluded, using risk assessment procedures, that the estimated upper-bound limit of individual lifetime risk from the potential exposure to methylene chloride resulting from these uses of ACK, together with the petitioned use of ACK in nonalcoholic beverages, is 2.6×10^{-11}, or less than 3 in 100 billion. The agency also concluded that, because of the numerous conservative assumptions used in calculating this estimated upper-bound limit of risk, this upper-bound limit would be expected to be substantially higher than any actual risk (59 FR 61538 at 61539, 59 FR 61540 at 61542, 59 FR 61543 at 61544, and 60 FR 21700). FDA has received no new information that would change the agency's previous conclusion. Therefore, the agency concludes that there is a reasonable certainty of no harm from the exposure to methylene chloride that might result from the proposed use of ACK in nonalcoholic beverages.

In conducting its evaluation, the agency also considered whether a specification is necessary to control the amount of potential methylene chloride impurity in ACK. At that time, FDA concluded that there is no reasonable possibility that methylene chloride will be present in amounts that present a health concern, and that there would thus be no justification for requiring manufacturers to monitor compliance with a specification (59 FR 61538 at 61539, 59 FR 61540 at 61542, 59 FR 61543 at 61544, and 60 FR 21700). Because no new information has been received that would change FDA's previous conclusion regarding the need for a specification, the agency affirms its prior determination that a specification for methylene chloride impurity in ACK is unnecessary.

D. Special Conditions Relevant to Use in Nonalcoholic Beverages

The use of ACK as a nonnutritive sweetener in nonalcoholic beverages may subject the sweetener to conditions other than those considered in the evaluation of the currently listed uses of this additive. FDA has evaluated data in the present petition and other information regarding the stability of ACK under a variety of conditions that characterize the proposed use in nonalcoholic beverages. Based on these data and information, the agency concludes that ACK is stable under almost all circumstances expected to be encountered for the proposed use in nonalcoholic beverages.

However, FDA has determined that there is a limited possibility that some nonalcoholic beverages could be stored under conditions that could lead to the formation of ACK hydrolysis products. Specifically, small amounts of hydrolysis products may be formed in highly acidic aqueous food products (which would include some, though not all, nonalcoholic beverages) under conditions of prolonged storage at elevated temperatures. As part of its safety evaluation, FDA has reviewed toxicological data and supporting information regarding the hydrolysis products of ACK, as well as estimates of human dietary exposure to the hydrolysis products. The substantive aspects of the agency's safety assessment of the hydrolysis products, as they relate to the use of ACK in nonalcoholic beverages, are discussed in detail in sections III.D.1 and 2 of this document.

1. Hydrolysis Products—Consumer Exposure

Both the present petition and the petition supporting the initial approval of ACK contain studies of the stability of ACK in aqueous solutions. These studies show that ACK hydrolyzes, in strongly acidic or strongly basic aqueous solutions, to acetoacetamide-N-sulfonic acid (AAS). AAS subsequently hydrolyzes to acetoacetamide (AAA). The AAA that is formed is also subject to hydrolysis; the eventual endproducts are acetone, carbon dioxide, and ammonia. Data and other information submitted by the petitioner and evaluated by the agency establish that both AAS and AAA are transient intermediates in the overall ACK hydrolysis pathway and that no significant buildup of AAS or AAA will occur in ACK-sweetened nonalcoholic beverages.

Studies in the two petitions also establish that hydrolysis of ACK is dependent on two other factors in addition to pH: Time and temperature. Prolonged storage at elevated temperatures is required to produce detectable amounts of AAS and, particularly, its byproduct, AAA, even in test solutions containing over 100 times the amount of ACK that would ordinarily be used in a nonalcoholic beverage. Specifically, data in the petition show that such a concentrated, buffered, carbonated solution of pH 3.0 (representative of the lower end of the pH range for carbonated diet soft drinks), after storage at 20 °C (68 °F) for 8 weeks, contained AAS at a level of 0.35 percent of the original ACK level. Even with a sensitive analytical method (limit of detection, circa (ca.) 1 ppb, corresponding to 0.001 percent of the original ACK level), no AAA was detected in this system. More severe storage conditions were required to produce detectable levels of AAA (e.g., 8 weeks storage at 30 °C (86 °F) or 50 weeks storage at 20 °C).

The combination of conditions necessary to produce measurable amounts of hydrolysis products in beverages (i.e., low beverage pH and extended storage at high temperatures) is not expected to be frequently encountered. The stability studies also establish that AAA and AAS will not build up in beverages over time. Accordingly, FDA believes that any consumer exposure to AAA and AAS from consumption of ACK-sweetened nonalcoholic beverages will be at extremely low levels and also both intermittent and infrequent.

Nevertheless, using data from the stability studies and other information regarding consumption patterns, FDA has estimated a potential lifetime-averaged ''daily'' dietary intake of ACK hydrolysis products that might result from consumption of ACK-sweetened nonalcoholic beverages. In its calculations, the agency has deliberately incorporated several assumptions that, taken together, will produce an estimated ''daily'' intake that is likely to be an overestimate rather than an underestimate. First, FDA has assumed that all nonalcoholic beverages ingested by consumers will have been sweetened only with ACK, that ACK will be used at the highest levels characteristic of each type of nonalcoholic beverage, and that the consumer will have ingested such beverages at the 90th percentile consumption level. Second, FDA has assumed certain values for beverage pH,

storage time, and storage temperature that are also likely to produce an overestimate of the ''daily'' intake of ACK hydrolysis products. The basis for the agency's particular choice of beverage pH, storage time, and storage temperature is discussed in more detail in the next two paragraphs.

FDA has chosen to use a pH of 3.0 in its analysis because this pH is representative of the lower end of the range in which beverages containing nonnutritive sweeteners are formulated. The agency has chosen to use a storage time of 8 weeks because FDA considers 8 weeks to be representative of a storage period that is significantly longer than the average storage period for nonalcoholic beverages. Data in the petition and in the agency's files show that ca. 90 percent of diet cola (representative of beverages formulated at low pH) is sold within 8 weeks of bottling; these data also show that even when additional flavor categories are considered, ca. 90 percent of nonalcoholic beverages are still sold within 9.5 weeks of bottling, with an average time from bottling to sale of just under 4 weeks (Ref. 2).

With respect to temperature, FDA has chosen to use 20 °C in its analysis because this temperature is representative of the high end of the range of in-home or in-store storage temperatures, when periods of both refrigerated and room temperature storage are taken into account.[2] The agency also reviewed climate data for different geographical locations in the United States, which were chosen to cover the range of possible temperature extremes for beverages stored under ambient conditions (no temperature control). This review shows that few locations have annual average temperatures above 20 °C (Ref. 2). Accordingly, for all of the foregoing reasons, the agency has used 20 °C as representative of the temperature conditions likely to be encountered over an extended storage period.

FDA has calculated estimated dietary exposure to AAS and AAA based upon data reflecting the foregoing assumptions regarding beverage formulation and storage conditions (see Ref. 2). The agency concludes that, for the 90th percentile consumer of ACK-sweetened nonalcoholic beverages, exposure to AAS would be no more than 2.5 micrograms (µg)/kg bw/d, which is equivalent to 0.15 mg/p/d. In estimating consumer exposure to AAA, the agency incorporated an additional conservative assumption: that AAA would be present at a level corresponding to one-half the limit of detection (Ref. 3), even though it was not actually detected. The agency concludes that, for the 90th percentile consumer of ACK-sweetened nonalcoholic beverages, exposure to AAA would be no more than 3.3 nanograms (ng)/kg bw/d, which is equivalent to 0.2 µg/p/d.

2. Hydrolysis Products—Evaluation of Toxicological Information

In support of the safety of ACK for use as a nonnutritive sweetener in nonalcoholic beverages, the petitioner submitted toxicity studies of AAS and AAA, the two principal hydrolysis products of ACK. The agency's evaluation of these toxicological data and other related information follows.

a. *Acetoacetamide-N-sulfonic acid (AAS).* Hoechst submitted a set of toxicity studies of AAS in support of the safety of the proposed use of ACK in nonalcoholic beverages including: Short-term tests for genetic toxicity; acute, short-term and subchronic studies in rats; a subchronic study in dogs; short-term and subchronic studies in monkeys; an acute study in humans; a reproduction and developmental toxicity study in rats; and metabolism studies in rats and humans. The key studies of AAS relevant to FDA's safety decision regarding the petitioned use of ACK are discussed in the next sections of this document.

i. *Genetic toxicity testing.* AAS was tested in several in vitro and in vivo genetic toxicity tests. In the absence of bioassay data, such tests are often used to predict the carcinogenic potential of the test compound.

AAS was not mutagenic at histidine loci in *Salmonella typhimurium* (Ames test), at a tryptophan locus in *Escherichia coli*, nor at the HGPRT locus in V79 cells treated in vitro. AAS did not induce unscheduled deoxyribonucleic acid (DNA) synthesis in strain A 549 human cells exposed in vitro. Finally, AAS was not clastogenic in V79 cells exposed in vitro nor in bone marrow cells of NMRI mice. The agency concludes that results of these tests establish that AAS is not genotoxic.

ii. *Subchronic toxicity studies in rats and monkeys.* The petitioner submitted the results of a subchronic toxicity study in which AAS was administered in the diet to 30 Wistar rats/sex/group at dose levels equivalent to 0, 800, 2,000, or 5,000 mg/kg bw/d for 90 days. Twenty rats/sex/group were sacrificed at the end of the dosing period. The remaining ten rats/sex/group were designated as ''recovery'' animals; that is, there was an interval of approximately 1 month between the time dosing ended and the time of sacrifice for these animals.

Increased relative kidney weights and decreased relative pituitary weights were observed in high-dose female rats. The mid- and high-dose groups (2,000 and 5,000 mg/kg bw/d, respectively) of male and female rats had softer feces, decreased body weight gain, and dose-related increases in feed consumption compared to controls. Other AAS-related effects observed in the animals in the mid- and high-dose groups included increased urine pH, and changes in various clinical chemistry parameters, some of which changes resolved by the end of the recovery period. Certain changes in the caecum were also observed; however, these effects had also resolved by the end of the recovery period, and were judged by FDA to be a probable physiological adaptation to osmotic changes in the gastrointestinal tract. Based on these data, FDA concludes that the no-observed-effect level (NOEL) from this study is 800 mg AAS/kg bw/d, the lowest dose level tested in this study (Ref. 4).

The petitioner also submitted the results of a subchronic toxicity study of AAS in Cynomologous monkeys. In this study, four monkeys/sex/group were administered gavage doses of 0, 100, 315, or 1,000 mg AAS/kg bw/d for 13 weeks. Marginal decreases in the absolute and relative weights of various organs in animals of the mid- and high-dose groups were observed; however, FDA does not consider these effects to be of toxicological significance because of the lack of corroborative evidence of organ toxicity. The only toxicologically significant effect observed in this study was a dose-related increase in incidence and severity of diarrhea in the mid- and high-dose groups. Thus, FDA concludes that the NOEL for AAS from this study

[2] FDA also considered the effect of extreme temperature conditions on dietary exposure to ACK hydrolysis products (see Ref. 2). However, the agency has concluded that, for several reasons, it is highly unlikely that beverages stored under extremely high temperatures for extended periods of time would be consumed on a continued basis. First, most in-home or retail storage is under refrigeration or other climate-controlled conditions. Second, it is a common and usual practice in the industry to discard diet beverages that have been stored under extreme conditions (e.g., 50 to 55 °C, equivalent to 120 to 130 °F) because the artificial sweeteners currently in use undergo significant decomposition that results in an unpalatable product. FDA expects that this practice would also be applied to beverages sweetened with ACK because the decomposition of ACK that occurs under such extreme conditions also results in an unpalatable product. Finally, consumers do not customarily store nonalcoholic beverages under extreme conditions for lengthy periods, and would not be expected to habitually consume the unpalatable products that result from extended storage at extremely high temperatures.

is 100 mg/kg bw/d, the lowest dose level tested (Ref. 4).

iii. *Reproduction and developmental toxicity study in rats.* The petitioner submitted the results of a two-generation reproduction study with a teratology phase conducted in Sprague-Dawley rats. In this study, AAS was administered in the diet to 25 rats/sex/group of the P- and F1-generation at dose levels equivalent to 0, 164, 492, or 1,780 mg AAS/kg bw/d. No adverse effects on reproduction or developmental parameters were observed at any dose level in this study. Thus, FDA concludes that the NOEL for this study is 1,780 mg AAS/kg bw/d, the highest dose used in the study (Ref. 4).

iv. *Assessment of AAS.* No adverse AAS-related effects were observed at 800 mg/kg bw/d in the subchronic rat study, at 100 mg/kg bw/d in the subchronic monkey study, and at 1,780 mg/kg bw/d and lower in the reproduction/teratology study in rats. The agency has no safety concerns about AAS at its anticipated level of intake (less than 2.5 μg/kg bw/day) because of the substantial margin between this level and the levels at which no adverse effects were observed in these studies (a margin of at least 40,000).

b. *Acetoacetamide (AAA).* Hoechst submitted a set of toxicity studies of AAA in support of the safety of ACK for use in nonalcoholic beverages, including short-term tests for genetic toxicity; an acute study, two short-term studies, and a subchronic study in rats; an acute and two short-term studies in dogs; a subchronic study in rabbits; metabolism studies in rats, dogs, hamsters, and humans; a developmental toxicity study in rabbits; and several other studies. The key studies of AAA relevant to FDA's safety decision regarding the petitioned uses of ACK are discussed in detail below.

i. *Genetic toxicity testing.* AAA was tested in several in vitro and in vivo genetic toxicity tests. As noted, in the absence of bioassay data, such tests are often used to predict the carcinogenic potential of the test compound.

AAA was not mutagenic at the HGPRT locus in V79 cells treated in vitro nor at histidine loci in *Salmonella typhimurium* (Ames test). AAA was not clastogenic in V79 cells exposed in vitro nor in bone marrow cells of NMRI mice. In addition, AAA did not induce unscheduled DNA synthesis in strain A 549 human cells exposed in vitro. The agency concludes that the results of these tests establish that AAA is not genotoxic.[3]

ii. *Short-term and subchronic toxicity studies in rats, rabbits, and dogs.* The petitioner submitted the results of one subchronic (90-day) and two short-term toxicity studies of AAA in rats. One short-term (30-day) study was designed to determine appropriate doses for the subsequent subchronic study. The second short-term (14-day) study was designed as a preliminary mechanistic study; the second short-term study is discussed in detail in section III.D.2.b.v of this document.

In the subchronic study, AAA was administered in the diet to 15 SPF Wistar rats/sex/group at dose levels equivalent to 0, 24, 157, 794, or 4,300 mg/kg bw/d for 13 weeks. The following AAA-related adverse effects were identified in the subchronic rat study: (1) Reduced body weights of males and females in the highest dose group over the entire study; (2) anemia in female rats in the highest dose group and male rats in the two highest dose groups; (3) increased numbers of both males and females with centrilobular fatty liver in the highest dose group; (4) increased group mean relative liver weights for male and female rats in the highest dose group; as well as (5) various adverse effects on the thyroid, which are discribed in the next paragraph.

The adverse effects on the thyroid observed in the subchronic rat study of AAA were: (1) Dose-related increases in the numbers of males and females with grossly enlarged thyroids; (2) increased relative thyroid weights for mid- and high-dose males and females; (3) dose-related increases in the numbers of males and females with follicular cell hypertrophy and hyperplasia; and (4) thyroid adenomas in one male rat in each of the two highest dose groups. No hypertrophy or hyperplasia was associated with enlarged thyroids in controls or in animals in the lowest dose group (24 mg/kg bw/d).

With respect to endpoints in organs other than the thyroid, no adverse toxicological effects were observed at doses corresponding to 157 mg/kg bw/day and lower. However, based on the gross and histopathological findings in the thyroid, FDA concludes that the NOEL from the subchronic rat study is 24 mg AAA/kg bw/d, the lowest dose tested in this study.

The petitioner also submitted the results of a subchronic study of AAA in albino Himalayan rabbits. In this study, six rabbits/sex/group were administered 0, 1,200, 6,000, or 30,000 mg AAA/kg drinking water/day (equivalent to 0, 96, 499, or 2,192 mg AAA/kg bw/d for male rabbits, and to 0, 93, 560, or 2,763 mg AAA/kg bw/d for female rabbits). The following effects were observed: (1) Significantly increased testes weights and signs of focal tubular hypospermatogenesis in the testes of all high-dose males; (2) significantly increased thyroid weights in high-dose males and females; and (3) thyroid follicular cell hypertrophy and hyperplasia in all high-dose males and females. One mid-dose female and one high-dose female in this study had grossly enlarged thyroids; the mid-dose female also had a thyroid follicular cyst that may have been part of a hyperplastic response.

With respect to endpoints in organs other than the thyroid, no adverse toxicological effects were observed at doses corresponding to 499 mg/kg bw/day and lower. However, based on the evidence that the thyroid is a target organ for AAA-related toxicity and the finding of possible thyroid hyperplasia in one female in the mid-dose group, FDA concludes that the NOEL for AAA in rabbits is 93 mg/kg bw/d, the lowest dose tested in females in this study (Ref. 4).

The petitioner submitted the results of two short-term (14-day) studies of AAA in dogs. In the first short-term study, two dogs/sex/group were gavaged with 0, 100, 500, or 2,500 mg AAA/kg bw/d for 14 days. Thyroid follicular cell hyperplasia was observed in males and females in all dose groups.

Because adverse effects were observed at all dose levels in the first study, the petitioner performed a second short-term (14-day) dog study using lower doses. In the second study, three dogs/sex/group were gavaged with 0, 4, 20, or 100 mg AAA/kg bw/d for 14 days; at the end of the dosing period two males and females from each group were sacrificed. The remaining male and female in each group were designated as ''recovery'' animals; that is, there was an interval of approximately 1 month between the time dosing ended and the time of sacrifice for these two animals. In this study, two of the males in the high-dose group developed thyroid follicular hyperplasia; no other males and no females in this study were reported to have thyroid abnormalities. However, of the two high-dose males that developed thyroid follicular hyperplasia, one was a ''recovery'' animal, indicating that the effect of AAA on the thyroid had persisted for 1 month after dosing ended. In an effort to identify a possible mechanism for AAA's action on the thyroid in the second dog study, the investigators

[3] The petitioner also submitted results of genetic toxicity tests of β-hydroxybutyramide (BHB), the principal metabolite of AAA in humans. The Ames test of BHB was well conducted and showed that BHB is not mutagenic. Although several of the other genetic toxicity tests of BHB had deficiencies, none of these tests indicated that BHB is genotoxic.

measured serum levels of thyroid hormones T3 and T4 at the end of the study; no compound-related changes in serum T3 or T4 levels were observed. (The investigators did not measure levels of thyroid stimulating hormone (TSH).)

FDA concludes that the results of the short-term and subchronic toxicity studies in rats, rabbits, and dogs demonstrate that AAA has a proliferative effect on the thyroid (i.e., diffuse follicular cell hypertrophy and hyperplasia). The agency's assessment of the significance of the observed thyroid lesions is discussed in detail in section III.D.2.b.v of this document.

iii. *Developmental toxicity study in rabbits*. The petitioner submitted an embryotoxicity study of AAA in Chinchilla rabbits in which groups of 16 rabbits were gavaged with 0, 100, 300, or 1,000 mg AAA/kg bw/d on days 6 through 18 of pregnancy. FDA has determined that there were no toxicologically significant effects of AAA on reproductive or developmental parameters in this study; thus, the NOEL for reproductive and developmental effects is 1,000 mg AAA/kg bw/d, the highest dose used in this study (Ref. 4).

iv. *Assessment of AAA—nonthyroid endpoints*. For organs other than the thyroid, no AAA-related adverse effects were observed at 157 mg/kg bw/d and lower in the subchronic rat study, at 499 mg/kg bw/d and lower in the subchronic rabbit study, and at 1,000 mg/kg bw/d and lower in the developmental toxicity study in rabbits. With respect to endpoints in organs other than the thyroid, the agency has no safety concerns about AAA at its anticipated level of intake (less than 3.3 ng/kg bw/day) because of the substantial margin between this level and the levels at which no adverse effects were observed in the studies discussed previously (a margin of at least 5 million).

v. *Assessment of AAA—thyroid endpoints*. No adverse AAA-related effects on the thyroid were observed at 24 mg/kg bw/day in the subchronic rat study, at 93 mg/kg bw/day in the subchronic rabbit study, and at 20 mg/kg bw/day and lower in the second short-term dog study. Although the study results permit FDA to identify NOEL's for certain thyroid endpoints in the rat and rabbit subchronic studies,[4] the major histological findings in these studies, thyroid follicular cell hypertrophy and hyperplasia, raise a question regarding the possible tumorigenic activity of AAA. Thyroid follicular cell hypertrophy and hyperplasia were also observed at similar levels of AAA administration in the dog studies, which studies were of even shorter duration. The pronounced thyroid follicular cell hypertrophy and hyperplasia observed in rats, rabbits, and dogs, considered together with the occurrence of thyroid adenomas in two males in the subchronic rat study, suggest that AAA might induce thyroid tumors if administered in long-term oral studies (see Refs. 2 and 4).

In response to FDA's concerns regarding AAA's thyroid effects, the petitioner initially argued that application of an appropriate safety factor to the lowest NOEL for thyroid endpoints was a suitable approach, despite the possible tumorigenic activity of AAA. Hoechst maintained that the dose-related hypertrophy and hyperplasia of the thyroid follicular cells and, in a 90-day study, the progression of some cells to adenomas was consistent with a typical pattern of morphological changes clearly associated with sustained, elevated levels of TSH,[5] particularly in the rat. Hoechst also maintained that AAA was most likely to act on the thyroid gland by inhibiting the enzyme thyroperoxidase in follicular cells. Thyroperoxidase is required for synthesis of T3 and T4 in the thyroid; therefore, inhibiting this enzyme would lead to a reduction in the levels of T3 and T4 and, consequently, increased serum levels of TSH (see Refs. 5 and 6). As support for this hypothesis, Hoechst referenced an extensive body of scientific literature linking thyroperoxidase inhibition (and consequent elevated TSH levels) by other compounds to thyroid lesions that are similar in type, severity, and timecourse of development, to the thyroid lesions observed in the short-term and subchronic studies of AAA summarized previously in this document. Hoechst asserted that progression of the hypertrophy and the hyperplasia associated with AAA would be dependent on continued or chronic stimulation of the thyroid gland by TSH, again drawing upon comparisons with other compounds whose similar effects on the thyroid were mediated by chronic TSH stimulation.[6]

In further support of its argument, Hoechst submitted a set of publications addressing various aspects of thyroid function and toxicity, including thyroid carcinogenicity; a report authored by the ''Acesulfame K Scientific Expert Panel,'' a group of experts retained by the petitioner to perform an independent safety evaluation of AAS and AAA (Ref. 7); and a letter from one of the experts from the Acesulfame K Scientific Expert Panel elaborating on the significance of the thyroid effects of AAA (Ref. 8).

The petitioner also submitted the results of a short-term study of AAA in rats (the ''preliminary mechanistic study''). In this study, 5 male rats per group were fed diets containing 0, 50, 123, 410, 1,110, or 2,400 ppm AAA or 90 ppm methimazole (positive control) for a period of 14 days. The following AAA-induced thyroid effects were observed in the preliminary mechanistic study: (1) Significantly increased absolute and relative thyroid weights in all positive control rats and in all rats fed diets containing 1,110 or 2,400 ppm AAA; (2) grossly enlarged thyroids in all positive control rats and in all rats fed diets containing 1,110 or 2,400 ppm AAA; (3) diffuse thyroid follicular cell hypertrophy and hyperplasia in all positive control rats and in all rats fed diets containing 1,110 or 2,400 ppm AAA; (4) significantly increased levels of TSH in positive control rats, as well as in rats fed 410, 1,110 or 2,400 ppm

[4] In reaching a safety decision on a food additive, FDA typically uses NOEL's determined from studies of at least 90 days duration (a subchronic study) and uses the term ''NOEL'' to refer specifically to the no-observed-effect levels determined from such studies. Results from studies in which animals are exposed for shorter test periods are typically used for different purposes (e.g., to gather information for use in designing longer studies). The short-term studies in dogs and rats (14 days) are too short to determine a subchronic NOEL.

[5] Iodine is taken up by the thyroid and converted to the thyroid hormone thyroxine, also known as T4 (which contains four iodine atoms) or to tri-iodothyronine, otherwise known as T3 (which contains three iodine atoms). Thyroid hormone production and release into circulation are stimulated by TSH released by the pituitary in response to decreases in circulating levels of T3 and T4. The biological functions of T4 and T3 are similar. The thyroid hormones are primarily metabolized in the liver and, to a lesser extent, in the kidneys. T4 can be converted to T3 (biologically active) or to reverse T3 (inactive), and then to di-iodothyronine (DIT).

Thyroid hypertrophy, hyperplasia and neoplasia can be caused by a wide range of nongenotoxic compounds. The common factor is prolonged stimulation of the thyroid by TSH following disruption of the normal feedback mechanism that controls the serum level of TSH. This disruption of thyroid hormone economy can be caused by interference with iodide uptake and thyroid hormone synthesis or secretion, interference with the peripheral metabolism of T4 or T3, or increased metabolism and excretion of thyroid hormones (see Refs. 5 and 6).

[6] ''Ample information in experimental animals indicates a relationship between inhibition of thyroid-pituitary homeostasis and the development of thyroid follicular cell neoplasms. This is generally the case when there are long-term reductions in circulating thyroid hormones which have triggered increases in circulating thyroid stimulating hormone * * *. The progression of events leading to thyroid * * * neoplasms can be reversed under certain circumstances by reestablishing thyroid-pituitary homeostasis'' (Ref. 6).

AAA; (5) significantly decreased levels of T4 and reverse T3 in positive control rats and in rats fed diets containing 1,110 or 2,400 ppm AAA; and (6) significantly decreased T3 levels in positive control rats and in rats fed diets containing 2,400 ppm AAA (see Ref. 4).

In further support of its proposed mechanism, Hoechst also submitted the results of an in vitro investigation of the action of AAA on canine thyroperoxidase. In this study, AAA was shown to inhibit enzyme activity in a dose-related manner; the AAA concentration at which 50 percent enzyme inhibition occurred was calculated by Hoechst to be 28.6 micromolar. Hoechst pointed to the consistency between the results of both the preliminary mechanistic study and the thyroperoxidase inhibition study as further evidence for the link it hypothesized between thyroperoxidase inhibition and the thyroid-related effects observed in the oral toxicity studies of AAA.

Hoechst also argued that a substance acting through a TSH-dependent mechanism would be expected to show a threshold below which no excessive stimulation of thyroid follicular cells would occur. The petitioner acknowledged that it is difficult to actually determine thresholds for low-incidence effects because of the small numbers of animals ordinarily used in toxicity studies (see Ref. 8). However, Hoechst cited the results of the preliminary mechanistic study, the results of the in vitro thyroperoxidase inhibition study, and the results of the short-term and subchronic oral studies in rats, rabbits, and dogs as strong evidence of the existence of a threshold for AAA-induced thyroid effects. The petitioner also pointed to the negative results of the genetic toxicity tests of AAA as further support for its argument that a threshold level should exist, below which administration of AAA would not induce thyroid tumors. That is, hypertrophy and hyperplasia and, by extension, possible progression to tumors, would occur only at AAA doses high enough to increase circulating levels of TSH, and not through a genotoxic mechanism.

In summary, Hoechst proposed the following nongenotoxic or ''secondary'' mechanism for the AAA-induced effects observed in the thyroids of several species: (1) At high doses, AAA acts to disrupt thyroid hormone economy by inhibiting thyroperoxidase activity and thus decreasing serum levels of T3 and T4; (2) the disruption in thyroid hormone economy results in hypersecretion of TSH by the pituitary; (3) the elevated blood levels of TSH, if sustained, result in hypertrophy and hyperplasia of the thyroid follicular cells and, eventually, thyroid tumors; and (4) that AAA does not act through a genotoxic mechanism to initiate a neoplastic process.

Hoechst explicitly acknowledged that there was a distinct possibility that AAA, if tested in a 2-year rodent bioassay, would induce thyroid tumors. However, Hoechst also maintained that thyroid tumors would occur only as a result of chronic consumption of AAA in amounts high enough to induce excess TSH production. Hoechst argued that because AAA would be consumed only in extremely low amounts, well below any value they believed likely for the postulated threshold for stimulating excess TSH production, it would be appropriate to base an analysis of the potential health risk from AAA on a comparison between the NOEL's for certain thyroid endpoints and the anticipated low levels of intake (a ''safety factor'' or ''threshold concept'' approach). Hoechst concluded that because the NOEL's for AAA's thyroid effects exceeded its dietary exposure estimate by a factor of approximately 2 million, there would be essentially no risk to human health from dietary exposure to AAA resulting from consumption of beverages sweetened with ACK.

FDA agrees that the anticipated human dietary exposure to AAA is lower than the NOEL's for AAA-related thyroid hypertrophy and hyperplasia by several orders of magnitude. FDA does not agree, however, that Hoechst's approach of simply comparing these NOEL's with dietary exposure is sufficient for evaluating the potential health risk suggested by the AAA-related effects observed in the thyroid. As previously noted, the AAA-related histopathological findings in the thyroid (i.e., hypertrophy and hyperplasia in rats, rabbits, and dogs, together with adenomas in two AAA-treated male rats in the subchronic study) suggest that AAA may induce thyroid tumors in long-term studies. Hoechst's ''safety factor'' approach relies on the firm's proposed mechanism for AAA's action on the thyroid, which explicitly incorporates a presumed threshold for AAA's thyroid effects. FDA has concluded, however, that the available data do not establish the mechanism proposed by the petitioner. The strengths and weaknesses in the data submitted in support of Hoechst's proposed mechanism are discussed in the following paragraphs.

FDA has determined that there is strong evidence that AAA is not genotoxic. The agency also acknowledges that some of the results from the preliminary mechanistic study and the in vitro study of canine thyroperoxidase are consistent with Hoechst's argument that AAA-induced effects on the thyroid are mediated through disruption of thyroid hormone economy. In particular, because inhibition of thyroperoxidase would cause TSH serum levels to increase rapidly, the results of the in vitro thyroperoxidase inhibition study are consistent with results of the preliminary mechanistic study. The preliminary mechanistic study also provides some support for the hypothesis that AAA-induced thyroid effects in rats are mediated by dose-related perturbations in thyroid hormone economy because decreased circulating levels of T3 and T4 and increased serum TSH levels were associated with thyroid follicular cell hypertrophy and hyperplasia in this study.

However, a threshold level for thyroperoxidase inhibition in vivo cannot be determined from the available data, which were obtained in an in vitro system. In addition, a threshold level for AAA-induced TSH induction cannot be determined from the in vivo studies, which were conducted with too few animals. Finally, the in vivo studies of AAA-induced effects on thyroid hormone economy (the preliminary mechanistic study in rats and the second short-term dog study) were both limited to 14 days duration; there are no studies of the effects of longer periods of exposure to AAA on thyroid hormone economy.

Moreover, FDA has determined that some of the data from the short-term and subchronic toxicity studies appear to be inconsistent with Hoechst's proposed mechanism. For example, as discussed above, early AAA-related changes in the thyroid (e.g., hypertrophy and hyperplasia), if induced via the petitioner's proposed mechanism, would be expected to be reversible. However, in the second 14-day dog study, one of the two high-dose animals with thyroid follicular hyperplasia was a ''recovery'' animal (i.e., an animal sacrificed 1 month after dosing ended); the observation of hyperplasia in a ''recovery'' animal indicates that AAA's effect on the thyroid persisted for 1 month after dosing ended. This raises the possibility that the effect may persist for longer than 1 month and may not be readily or completely reversible.

Similarly, some of the data obtained from the subchronic rat study are not entirely consistent with certain features of the mechanism proposed by Hoechst.

Hoechst has advanced, as part of its argument, the observation that rodents are more susceptible to TSH-mediated thyroid effects than other species, and that male rats are ''particularly vulnerable.'' However, FDA notes that the available data do not show clear differences, between rats and dogs, in sensitivity to AAA-induced effects. For example, the NOEL for AAA-induced thyroid effects in rats in the subchronic study and the level at which no AAA-induced effects were observed in the second dog study are approximately the same. In addition, although FDA's review of the subchronic rat study showed that male rats may have been slightly more susceptible to AAA's thyroid effects than female rats, the differences were again small.

FDA concludes that, for several reasons, the petitioner's proposed mechanism has not been established. First, as noted, some of the results of the short-term and subchronic feeding studies (e.g., persistence of thyroid effects in recovery animal in the dog study; the lack of a clear difference, in sensitivity to AAA, between rats and dogs and between male and female rats) appear to be inconsistent with the proposed mechanism. Second, the data on AAA's effects on thyroid hormone economy are limited to short-term exposures of a relatively small number of animals; as previously noted, these limited data do not permit the determination of a threshold for AAA's effects. Thus, FDA has determined that although the mechanism proposed by Hoechst is plausible, it has not been established. Because Hoechst's approach to evaluating the health risk from AAA (a comparison of the NOEL's for certain thyroid endpoints with dietary AAA exposure) relies explicitly on the firm's proposed mechanism, and the proposed mechanism has not been established, FDA concludes that Hoechst's approach is not sufficient for an evaluation of the health risk from AAA.

vi. *Consideration of whether more testing of AAA is necessary—(1) Statement of the issue.* Because the findings in the short-term and subchronic toxicity studies of AAA suggest that AAA could induce thyroid tumors in a long-term study, FDA carefully considered whether conduct of such a study was necessary to evaluate the safety of ACK for use in nonalcoholic beverages. In particular, given the likely human dietary exposure to AAA, FDA considered whether the possibility that AAA might induce tumors in a long-term bioassay raised sufficient concern such that testing of the hypothesis should be required. Said differently, the issue was whether a long-term oral study of AAA, a hydrolysis product expected to be present at extremely low levels (if at all) in only certain nonalcoholic beverages, is needed to evaluate the safety of the petitioned use of the food additive, ACK. In addressing this question, FDA determined that it was critical to assess both the likely putative tumorigenic (neoplastic) potency of AAA and the likely patterns of dietary exposure to AAA resulting from consumption of ACK-sweetened nonalcoholic beverages.

As discussed in detail in the rest of this section, FDA considered several approaches to assessing the risk from AAA, and determined both that long-term testing of AAA is unnecessary and that the petitioned use of ACK in nonalcoholic beverages is safe.

(2) Risk assessment. The usual process of quantitative risk assessment is characterized by four steps. First, a possible toxicological hazard is identified. Second, mathematical modelling techniques are applied to the dose-response information from a toxicity study in order to estimate the probability, or, usually, an upper-bound limit on the probability, of the toxic effect of the substance at any given dose level (see for example, Refs. 9 through 11).[7] Typically, in a risk assessment of a carcinogen, this dose-response information is taken from tumor incidence data from a long-term animal study; most often, this long-term study is conducted in a rodent species. Third, the likely human dietary exposure to the substance is estimated. This estimate of dietary exposure may consider such factors as the age groups likely to be exposed and the type, magnitude, and duration of the anticipated exposures.[8] Finally, the information from the first three steps is combined to characterize the risk associated with the potential human exposure to the substance in question.

In the present case, as in the usual risk assessment process, a possible hazard, thyroid carcinogenicity, has been identified. There are similarities between the thyroid effects produced by oral administration of AAA in short-term and subchronic toxicity studies and those produced by oral administration of other substances known to induce thyroid tumors in long-term rodent studies. Thus, there is the possibility that AAA would also induce tumors if tested in a long-term rodent study and, thus, may ultimately present a carcinogenic hazard to humans.

The risk assessment process used in the present case differs from the usual process, however, in that AAA has not been demonstrated to be an animal (or human) carcinogen. That is, dose-response information from a long-term oral study of AAA in animals has not been used because such a study has not been conducted. As an alternative, FDA has used information from the many existing long-term oral studies of known thyroid tumorigens to assess the probable carcinogenic potency (or range of probable potencies) of AAA that might be determined, were a carcinogenicity study of AAA conducted in a rodent species. The agency believes this is a sound approach because of the substantial amount of information available for a large number of thyroid tumorigens.[9]

As in the usual risk assessment process for a known carcinogenic constituent of a food or color additive, a potential life-time averaged ''daily'' human dietary exposure to the substance in question (in this case, AAA, a putative tumorigen) has been estimated. In calculating this estimate, FDA has used estimates of the likely human dietary exposure to ACK, in conjunction with information from analytical testing conducted on model solutions under exaggerated conditions, to estimate a potential lifetime-averaged level of daily dietary exposure to AAA. FDA's exposure estimate is conservative in that it incorporates numerous assumptions and default values for certain parameters that, when combined, yield a value for ''daily'' dietary exposure to AAA that is likely to overestimate rather than underestimate such exposure. By combining the information regarding potential human dietary exposure with the information regarding the likely tumorigenic potency (or range of probable potencies) of AAA, FDA has characterized the potential human carcinogenic risk from AAA resulting

[7] In the absence of information that would support another approach, FDA uses simple linear extrapolation from the dose-response information in the experimental range to estimate the dose-response outside the experimental range (that is, at lower doses comparable to the anticipated human exposure).

[8] In the risk assessment of carcinogenic constituents of food and color additives used directly in food, FDA most often uses an estimate of the lifetime-averaged daily dietary exposure to the substance in question.

[9] Potency values at the thyroid and at other organ sites are available for a large number of thyroid tumorigens. In addition, the results of genetic toxicity testing, short-term studies, and other toxicity testing are available for many of the these compounds. Mechanistic information, though not complete in many cases, is also available for a significant number of these compounds, as well as information regarding structure-activity relationships.

from the consumption of ACK-sweetened nonalcoholic beverages.

The petitioner and the agency have separately analyzed the likely health risk suggested by the AAA-related thyroid findings in the short-term studies, by considering both estimates of the tumorigenic potency of AAA and the likely patterns of dietary exposure to AAA resulting from consumption of ACK-sweetened nonalcoholic beverages. In the course of its analysis, scientists from FDA's Center for Food Safety and Applied Nutrition consulted with several scientists (hereafter referred to as ''the FDA consultants''), from both within and outside the agency, with expertise in various scientific disciplines relevant to the agency's analysis. Details of the petitioner's analysis and the agency's analysis (including relevant comments from the FDA consultants) are discussed in the following paragraphs.

(3) Hoechst's analysis. In response to the agency's reservations regarding Hoechst's initial, threshold-based approach to evaluating the potential health risk from AAA, Hoechst performed two additional ''extreme-case'' or ''worst-case'' comparative risk assessments. In both assessments, Hoechst assumed that AAA would induce thyroid tumors in a long-term study, even though AAA has not been shown to be a tumorigen. In contrast to the firm's initial approach, neither of Hoechst's comparative risk assessments was predicated on a threshold for AAA's thyroid effects. That is, both of Hoechst's comparative risk assessments assumed that some risk of neoplastic disease would be present at all levels of exposure to AAA.

In presenting its assessments of the tumorigenic potential of AAA, Hoechst continued to argue strongly for the mechanism it had proposed to account for AAA's thyroid effects. Hoechst used several features of its proposed mechanism to select the set of chemicals against which to compare AAA and estimate AAA's tumorigenic potential; Hoechst's selection of these surrogates for AAA is described in the following paragraphs.

Using data from lifetime studies of thyroid tumorigens that Hoechst identified as acting with similar effect and through a mechanism similar to the one it had proposed for AAA, Hoechst estimated AAA's putative thyroid tumor potency. According to Hoechst, these estimates of AAA's putative thyroid tumor potency, coupled with an estimate of dietary exposure, would provide ''comparative risk assessments'' of AAA's potential to induce thyroid tumors. Hoechst drew upon several recognized sources to identify the thyroid tumorigens that it chose as surrogates for AAA. These sources included a publication analyzing target organs for more than 500 chemicals in the Carcinogen Potency Database (CPDB), a published review of the information in the data base maintained by the National Toxicology Program (NTP), the Integrated Risk Information System (IRIS), and a well known literature source on thyroid follicular cell carcinogenesis (Refs. 6 and 12 through 14).[10] From the group of thyroid tumorigens identified using these sources, Hoechst selected those for which long-term rodent bioassays had been conducted and in which the test substance displayed tumorigenic activity in either the thyroid alone or, if tumorigenic at other organ sites as well, with greater potency at the thyroid than at other sites. From this subset of thyroid tumorigens, only those compounds that Hoechst identified as both nonmutagenic and active in inhibiting thyroperoxidase (both of which are critical elements of Hoechst's proposed mechanism) were retained as AAA surrogates. Applying these criteria, Hoechst identified four compounds: Amitrole, methimazole, propylthiouracil, and sulfamethazine.

Hoechst used the same estimated dietary exposure in both of its comparative risk assessments. In calculating this estimate, Hoechst used data on ACK stability and nonalcoholic beverage consumption patterns, incorporating several conservative assumptions similar to those used by FDA and described previously. Hoechst estimated the high-level consumer's potential ''daily'' dietary exposure to AAA to be 3.5 ng/kg bw/day. Hoechst asserted that this estimate of potential ''daily'' dietary exposure was likely to overestimate significantly the actual exposure because of the numerous conservative assumptions used in deriving the estimate.[11]

In its first comparative risk assessment, Hoechst assumed that the putative induction of thyroid tumors by AAA would be directly related to an AAA-induced increase in serum levels of TSH. Using the literature sources listed previously, Hoechst identified three compounds (methimazole, propylthiouracil, and sulfamethazine) that the firm asserted have approximately the same quantitative effect on circulating TSH levels as AAA had on TSH levels in the preliminary mechanistic study in rats. Hoechst then estimated a hypothetical cancer potency for AAA by interpolating between the established tumorigenic potencies of these three substances;[12] the hypothetical cancer potency for AAA in this assessment was 2.3×10^{-3} (mg/kg bw/day)$^{-1}$. When coupled with the firm's estimated ''daily'' dietary exposure of 3.5 ng/kg bw/day, Hoechst's estimated upper-bound limit of lifetime human cancer risk, in its first assessment, was 8.1×10^{-9}.

In the second of Hoechst's nonthreshold risk assessments, the putative induction of thyroid tumors by AAA was assumed to be directly related to AAA-induced inhibition of thyroperoxidase (and thus, indirectly, to elevated serum TSH levels). Hoechst identified four substances (amitrole, methimazole, propylthiouracil, and sulfamethazine) for which it maintained that the induction of thyroid tumors in animals is known to occur as a result of thyroperoxidase inhibition. Hoechst then estimated a hypothetical cancer potency for AAA by calculating a weighted average of the established tumorigenic potencies of these four substances. In this second comparative risk assessment, Hoechst estimated the hypothetical potency of AAA as 4.0×10^{-2} (mg/kg bw/day)$^{-1}$. When coupled with the firm's estimated ''daily'' dietary exposure of 3.5 ng/kg bw/day, Hoechst's estimated upper-bound limit

[10] The CPDB summarizes results of carcinogenicity bioassays published in the open literature and in technical reports of the NTP. The NTP data base, also known as the NCI/NTP data base, contains the results of mouse and rat carcinogenicity studies conducted by NCI/NTP. The published review that was used by Hoechst summarized the results of 343 selected carcinogenicity studies conducted by NCI/NTP; in this subset of the NCI/NTP data base, 14 percent of the studies in male rats, 11 percent of the studies in female rats, 8 percent of the studies in male mice and 9 percent of the studies in female mice were identified as having positive or equivocal, chemically-related thyroid proliferative lesions. (The studies from the NCI/NTP data base are also included in the CPDB.) IRIS is an electronic data base prepared and maintained by the U.S. Environmental Protection Agency (EPA); it contains information on human health effects that may result from exposure to various chemicals in the environment.

[11] Hoechst's estimate of consumer exposure to AAA (3.5 ng/kg bw/d) is essentially the same as FDA's estimate (3.3 ng/kg bw/d, equivalent to 0.2 µg/p/d). FDA has determined that both Hoechst's and the agency's estimate of AAA dietary exposure, because of the particular assumptions used in deriving them, are likely to overestimate rather than underestimate exposure.

[12] The potencies of the AAA surrogates are properly described as tumorigenic potencies; the tumors observed in rodents are more often benign, rather than malignant, follicular cell tumors. In both the petitioner's and the agency's comparative risk assessments, the distribution of tumorigenic potencies of AAA surrogates is used to estimate the putative tumorigenic potency of AAA. This putative tumorigenic potency of AAA is then used as a direct substitute for a hypothetical human cancer potency in the comparative risk assessments.

of lifetime human cancer risk, in its second assessment, was approximately 1.4×10^{-7}.

The petitioner argued that both its estimates of AAA's upper-bound limit of lifetime human cancer risk were well below the level ordinarily regarded by FDA as commensurate with negligible risk. The petitioner also argued that any actual risk would be far lower than these estimated upper-bound limits of risk because of the numerous conservative assumptions used in calculating these estimates.

In addition, the petitioner noted that humans are less sensitive than rats to thyroid effects induced through TSH-dependent mechanisms. Hoechst referenced scientific literature in support of its contention that, although chronic TSH stimulation induces thyroid hypertrophy and hyperplasia in humans as well as in rodents, humans are less likely to develop tumors following chronic stimulation by TSH. Specifically, they noted that prolonged TSH stimulation is known to lead to thyroid enlargement or goiter in humans, but rarely leads to thyroid tumors (Refs. 15 and 16). Hoechst also maintained that the rat's significantly higher baseline TSH levels and more rapid metabolism of the hormone leave rats more vulnerable than humans to the development of thyroid tumors in response to chemically induced increases in circulating TSH levels (see Refs. 8 and 17). Hoechst argued that the lower sensitivity of human thyroid follicular cells to elevated TSH levels would further reduce the likely magnitude of any actual thyroid tumor risk to humans from exposure to any AAA in ACK-sweetened nonalcoholic beverages.

(4) FDA's analysis. FDA has carefully evaluated the petitioner's comparative risk assessments. The agency agrees that it is reasonable to perform an ''extreme-case'' risk assessment of AAA in order to evaluate the potential health concern raised by the thyroid findings in the short-term studies of AAA. To this end, FDA conducted its own analysis of the potential health risk from the low levels of AAA that may be ingested as a result of the consumption of ACK-sweetened nonalcoholic beverages. FDA's two principal comparative risk assessments of AAA, like the petitioner's, are essentially modified carcinogenic risk assessments; however, in several respects the agency's approach differs from the petitioner's.

Like Hoechst, FDA assumed that AAA would be tumorigenic if tested in a long-term bioassay. The agency also assumed, as did Hoechst in its comparative risk assessments, that there is no threshold for AAA's presumed tumorigenic activity. However, in contrast to Hoechst, FDA did not rely on assumptions regarding AAA's mechanism of action on the thyroid. Although FDA believes that it is plausible that AAA may induce thyroid tumors in long-term studies through the mechanism hypothesized by the petitioner, the data supporting the petitioner's hypothesis are limited in several key areas. First, as noted, there are no studies demonstrating long-term effects of AAA on thyroid hormone economy; thus, FDA, in its comparative risk assessments, did not assume a quantitative correlation between TSH induction and AAA's putative thyroid tumorigenic potency. Second, there is no direct evidence of AAA-induced effects on thyroperoxidase activity in vivo; consequently, FDA did not assume that AAA's putative potency would be similar to potencies of thyroid carcinogens known or asserted to act through inhibition of thyroperoxidase activity.

To provide assurance that the risk presented by AAA is not underestimated, FDA included in its set of AAA surrogates all substances it identified, using the 1996 CPDB (see Ref. 18), as having induced tumors in the thyroid, including substances that also induced tumors in other organs, regardless of the relative potencies involved.[13] This set of surrogates includes both genotoxic and nongenotoxic substances. Because the potency distribution for genotoxic chemicals is shifted to higher potencies than the potency distribution for nongenotoxic chemicals, FDA's set of 91 surrogates includes substances of higher potency than those in Hoechst's set of 4 surrogates (Ref. 2). FDA included this frank and deliberate conservatism to ensure that neither the putative potency of AAA nor the attendant estimate of AAA's potential carcinogenic risk would be underestimated.

In the first of FDA's comparative risk assessments, the agency used potency values from the distribution of the thyroid tumor potencies of the 91 surrogates. FDA chose this approach because the data from the short-term and subchronic studies of AAA in rats, rabbits, and dogs identify the thyroid as the potential target organ for putative AAA-induced tumors and do not suggest other likely target organs. The distribution of thyroid tumor potencies for the 91 surrogates has a peak, or ''most probable'' value, of 7.0×10^{-3} $(mg/kg\ bw/day)^{-1}$. FDA used this potency value as an estimate for the likely potency of AAA. This potency, coupled with the agency's estimated ''daily'' dietary exposure to AAA of 3.3 ng/kg bw/day, yields an estimated upper-bound limit of lifetime risk from AAA of 2.3×10^{-8} (Ref. 2). This hypothetical upper-bound limit of lifetime risk from AAA is well below the level that FDA ordinarily considers commensurate with negligible risk.

To provide further assurance that AAA's potential risk was not being underestimated, the agency performed a second risk assessment. In this second assessment, FDA hypothesized that AAA might, in addition to inducing thyroid tumors, induce tumors at sites other than the thyroid and that AAA's potency at these other sites could be higher than for tumors induced at the thyroid.[14] In essence, this scenario describes the most adverse outcome of a long-term bioassay with AAA, were such a bioassay actually conducted. Thus, FDA's second risk assessment included an assumption of the most adverse outcome for a study testing the hypothesis that AAA causes thyroid tumors so that the potential risk posed by AAA would not be underestimated.

In this assessment, to estimate AAA's most likely tumorigenic potency, FDA used the peak, or ''most probable value'' value from the distribution of highest tumor potencies at any organ site for FDA's 91 surrogates. Using this estimate of the putative tumorigenic potency of AAA (2.0×10^{-2} $(mg/kg\ bw/d)^{-1}$) and the agency's conservative estimate of ''daily'' dietary exposure to AAA of 3.3 ng/kg bw/d, FDA estimated the upper-bound limit of lifetime human cancer risk from exposure to AAA to be 6.6×10^{-8} (Ref. 2). This hypothetical upper-bound limit of lifetime risk from AAA, like the value obtained in FDA's first

[13] Taken together, the six plots of the 1996 CPDB include results of 5,002 experiments on 1,230 chemicals. The agency notes that of the 91 compounds in the CPDB that were reported to induce thyroid tumors in rodents, only three (methimazole, deltamethrin, and sulfamethazine) produced thyroid tumors only. Of the remaining 88 compounds, 70 percent had a higher cancer potency for tumors other than thyroid tumors. Thus, the majority of compounds that have been found to induce thyroid tumors (by any mechanism) have also been found to induce tumors at other sites, for which the estimated cancer potency is higher than the potency estimated for thyroid tumors alone (see Ref. 2).

[14] One of the FDA consultants noted that some, but not all thyroid peroxidase inhibitors lead to tumors at sites other than the thyroid, especially the liver of mice. This consultant further commented that ''* * * FDA is on strong ground to look at the potency for tumors other than thyroid, as well as looking at those for the thyroid.'' Including the higher potencies for tumors other than thyroid tumors in FDA's assessment is, however, a conservative measure in that the data in the studies of AAA submitted to the petition do not suggest that there are other likely target organs for neoplasia.

risk assessment, is well below the level ordinarily considered by FDA as commensurate with negligible risk.

Based on its risk assessments, the agency believes that AAA is highly unlikely to pose more than a negligible cancer risk to consumers. For example, even if, in FDA's first risk assessment, AAA's thyroid tumor potency were as high as that of the 90th percentile most potent compound in FDA's set of AAA surrogates, the estimated upper-bound limit of lifetime risk from AAA, using all of the conservative features and assumptions described previously, would still be less than 7×10^{-7}. To produce the same estimate of upper-bound risk from AAA using the approach in FDA's second risk assessment, AAA's potency at any organ site would have to approach that of the 90th percentile most potent compound in FDA's set of AAA surrogates. The agency considers these potency levels highly unlikely for several reasons. First, AAA's potency at the thyroid would need to approach that of methimazole, the positive control in the preliminary mechanistic study. That AAA would be as potent as methimazole is unlikely, however, given the fact that almost 100-fold greater doses of AAA than of methimazole were needed to induce comparable degrees of thyroid follicular cell hypertrophy and hyperplasia, the presumed precursors to any thyroid neoplasia (see Ref. 2). Second, the thyroid tumorigens in the set of 91 surrogates with potencies in this range (approaching the 90th percentile and above) are almost all genotoxic or have strong structural indicators of genotoxicity while the results of the genetic toxicity tests of AAA show that AAA is not genotoxic. As previously noted, the potency distribution for genotoxic compounds is shifted to higher values than the potency distribution of nongenotoxic compounds; thus, the probability that AAA, a nongenotoxic compound, will be more potent than the most potent genotoxic compounds in FDA's set of AAA surrogates is extremely low (see Ref. 2).

As noted previously, the agency's comparative risk assessments were based on numerous conservative assumptions so that any risk from AAA would not be underestimated; FDA believes that any actual risk from AAA would be substantially lower than either of its estimates of the upper-bound limit of lifetime risk. The agency also notes that all of the FDA consultants agreed that the numerous conservative assumptions used in the agency's comparative risk assessments were likely to lead to an overestimate, rather than an underestimate, of the risk from AAA.[15]

The conservative nature of FDA's risk estimates was amplified by the agency's assumption, in its comparative risk assessments, that consumers would be subject to ''chronic'' or ''daily'' dietary exposure to AAA through consumption of ACK-sweetened nonalcoholic beverages. In fact, frequent exposure to AAA is unlikely because few containers of beverages are likely to be stored under the conditions necessary to produce significant quantities of AAA. Thus, any actual dietary exposure to AAA through consumption of ACK-sweetened beverages is likely to be at very low levels, to be intermittent, and to be infrequent.[16]

In summary, the agency has used information from the many long-term oral studies of known thyroid tumorigens to estimate the range of possible tumorigenic potencies of AAA; this estimate has then been used to represent the tumorigenic potency for AAA that might be determined by a carcinogenicity study of AAA in a rodent species. FDA has combined this information with a conservative estimate of ''daily'' dietary exposure to AAA in order to assess the risk that might be posed to individuals consuming ACK-sweetened beverages. FDA's risk assessments for AAA all yield upper-bound limits of lifetime risk that are not only very low, but are also expected to be substantially higher than any actual risk from AAA.

(5) Resolution of the issue. FDA has carefully evaluated the data from the available short-term and subchronic oral toxicity tests of AAA. As previously noted, the findings in these studies suggested that AAA might induce thyroid tumors in a long-term oral study, raising the question of AAA's possible carcinogenic risk. Thus, FDA has considered whether conduct of a long-term study was necessary to assess the possible carcinogenic risk from AAA.

FDA has concluded that, for several reasons, it is not necessary to require the conduct of a long-term study of AAA. First, the primary purpose of such a study would be to determine whether AAA actually induced thyroid tumors. As an alternative, in its assessment of the potential health risk of AAA, the agency has simply chosen to assume that AAA would, indeed, induce thyroid tumors in a long-term study, thus obviating the first purpose of such a study.

The second purpose of a long-term study of AAA, in the event that AAA were found to be tumorigenic, would be to determine AAA's tumorigenic potency. As an alternative, in its risk assessments for AAA, FDA has conservatively estimated AAA's putative potency by considering the range of potencies of the many known thyroid tumorigens (AAA surrogates) for which long-term testing has been conducted. As noted previously, FDA believes this is a sound approach because the results of the short-term tests of AAA indicate the thyroid as a likely target organ for the assumed neoplasia, and because of the substantial amount of chemical and toxicological information available for a large number of thyroid tumorigens.

FDA has also used several deliberate conservatisms in constructing its set of surrogates in order to ensure that AAA's putative potency and any attendant estimate of AAA's hypothetical cancer risk are not underestimated: (1) FDA's set of surrogates includes genotoxic compounds which, as a group, are generally more potent than nongenotoxic compounds (AAA is nongenotoxic); (2) FDA's set of AAA surrogates also includes compounds for which genetic toxicity testing data are not available, but which have features in their chemical structures that are widely recognized as strong indicators of mutagenicity/carcinogenicity and, thus, are expected to be of higher potency than nongenotoxic compounds; and (3)

[15] One of the FDA consultants also provided two additional approaches to calculating a conservative upper-bound limit of lifetime human cancer risk, one that made use of a feature of the petitioner's proposed mechanism for AAA's action on the thyroid and one that did not. The estimates of AAA's upper-bound carcinogenic risk derived by these two additional approaches were 8.0×10^{-8} and 3.3×10^{-8}, respectively (see Ref. 2). Both of the consultant's estimates for the upper-bound risk from AAA, like the upper-bound risks calculated by FDA (2.3×10^{-8} and 6.6×10^{-8}) and by the petitioner (8.1×10^{-9} and 1.4×10^{-7}), are very low.

[16] FDA notes that approaches to modifying risk assessments for intermittent exposures to carcinogens generally reduce the estimated risk substantially (see for example, Refs. 19 and 20). Such modification can be particularly important for carcinogens that are nongenotoxic. In general, continuous exposure to such substances for a prolonged period of time is needed before tumors develop; removal of the carcinogen from the diet for a significant portion of that time, will stop progression toward tumor development and may even result in partial or complete reversal of the treatment-related preneoplastic changes (see Ref. 6). If AAA were to induce thyroid tumors, and if it were to do so through a nongenotoxic or indirect mechanism, the intermittent nature of the exposure to AAA from consumption of ACK-sweetened nonalcoholic beverages would reduce the risk from AAA so that it is even more likely to be significantly less than the value estimated by the agency's method, and perhaps to be zero. On this point, one of the FDA consultants also commented that explicit consideration of the expected intermittent nature of any dietary exposure to AAA was particularly important in placing the calculations of AAA's estimated risk into perspective.

FDA's set of surrogates includes thyroid tumorigens that are tumorigenic at sites other than the thyroid and with higher potency than at the thyroid. Using information regarding the AAA surrogates and the distribution of their potencies, FDA estimated a range of hypothetical carcinogenic potencies for AAA. Thus, by conservatively estimating the range of likely tumorigenic potencies for AAA, FDA believes that it has obviated the need to determine AAA's potency through long-term testing.

Using the estimates of AAA's likely tumorigenic potency, the agency performed several comparative risk assessments for AAA, combining the estimates of AAA's potency with a deliberately exaggerated estimate of dietary exposure to AAA to assess the possible risk from the compound; these conservative estimates of AAA's hypothetical upper-bound limit of cancer risk are very low. As previously noted, the risk estimates calculated by the FDA consultant and by Hoechst, though derived using different assumptions about the range of possible potencies for AAA, are also very low. In addition, the conservative nature of all of the risk estimates for AAA is amplified by the assumption that consumers would be subject to ''chronic'' or ''daily'' exposure to AAA through consumption of ACK-sweetened nonalcoholic beverages when, in fact, such exposure is likely to be both intermittent and infrequent.

FDA's risk assessments show that, even assuming that AAA were carcinogenic in a long-term test, the hypothetical upper-bound of risk associated with an exaggerated estimate of dietary exposure to the compound would be extremely small. Because of the numerous conservatisms used in calculating these upper-bound limits of risk, FDA concludes that any actual risk from AAA would be far lower than these limits and, in fact, negligible. In this way, the results of FDA's risk assessments corroborate the agency's determination that a long-term study of AAA is not necessary to assess the potential risk to the public health from consumption of this compound.

Thus, based on the available data and information, including the risk assessments described previously, FDA concludes that there is a reasonable certainty that no harm will result from the exposure to AAA that might result from the proposed use of ACK in nonalcoholic beverages. Accordingly, the agency has determined that requiring the petitioner to conduct further testing of AAA is not necessary and would not serve a useful purpose from the public health perspective.

E. Summary of FDA's Safety Evaluation

The safety of ACK has been thoroughly tested and the data have been carefully reviewed by the agency. FDA has considered the data and information submitted in the present petition as well as other information in its files, including data and information in previous petitions for ACK.

The agency has determined that the toxicological data on ACK establish that: (1) There is no association between neoplastic disease (cancer) and consumption of the additive and (2) the ADI for the additive is 15 mg/kg bw/day. FDA has also determined that the estimated dietary exposure to ACK from all currently permitted uses of the additive as well as the proposed use in nonalcoholic beverages (1.6 mg/kg bw/day for the mean consumer, 3.0 mg/kg bw/day for the 90th percentile consumer) is well below the ADI. In addition, the agency has concluded that there is a reasonable certainty of no harm from the exposure to methylene chloride (a chemical used in the manufacture of ACK) that might result from all currently permitted uses of the additive as well as the proposed use in nonalcoholic beverages.

Finally, FDA has considered the special conditions that are relevant to the proposed use in nonalcoholic beverages. In this regard, FDA has considered toxicological data and other information, including estimates of dietary exposure, regarding AAS and AAA, the principal hydrolysis products of ACK. Based on the data and information described previously in this document, including FDA's comparative risk assessments for AAA, the agency has concluded that there is a reasonable certainty of no harm from the exposure to AAS and AAA that might result from the proposed use of ACK in nonalcoholic beverages.

Thus, based on a full and fair evaluation of the relevant data and information, FDA concludes that the proposed use of ACK in nonalcoholic beverages is safe.

IV. Response to Comments

During the course of FDA's evaluation of the present petition, the agency received several sets of comments on the petition. FDA received multiple submissions from CSPI, who also transmitted comments from other interested parties. Later, Hoechst transmitted additional remarks from two of these same parties. Several letters were also received from trade groups and other organizations.

A. Summary of Comments

1. Center for Science in the Public Interest's (CSPI's) First Submission

The first of CSPI's submissions was a letter, dated October 18, 1990, in which CSPI referred to the organization's 1988 objections to FDA's initial approval of the use of ACK (the dry uses final rule). CSPI asked that FDA not consider expanding the permitted uses of ACK ''without first resolving [CSPI's] objections, hearing request, and petition[17] [sic].'' As noted previously in this document, FDA considered the issues raised by CSPI in its objections and responded, in detail, to those objections in the **Federal Register** of February 27, 1992 (57 FR 6667). After reviewing the objections, the agency concluded that no genuine issues of material fact had been raised that would justify either a hearing or a stay of the regulation and, accordingly, denied CSPI's requests. Because the agency has responded to CSPI's objections to the dry uses final rule and to the organization's related requests, no further discussion of CSPI's first submission is warranted.

2. CSPI's Second Submission

CSPI's second submission was a letter, dated January 29, 1996, in which CSPI asserted that the long-term toxicity testing of ACK was inadequate and that ACK was ''possibly carcinogenic.'' Once again, CSPI referred to its previous objections to the dry uses final rule, and urged FDA to deny the present petition and to require the petitioner to conduct additional carcinogenicity testing of ACK. CSPI did not, however, supply any substantive information to support these requests.[18] In its letter, CSPI also mentioned certain results from the toxicity tests of AAA[19] in support of its request for additional carcinogenicity testing of ACK, but did not supply any substantive information that had not already been considered by FDA or any explanation of how the AAA test results related to the organization's request for additional testing of ACK. Because CSPI did not provide any substantive information to support its requests, no

[17] CSPI uses the term ''petition'' to refer to its request for a stay of the dry uses final rule.

[18] In its January 29, 1996, letter, CSPI indicated that it intended to submit a detailed analysis of the ACK safety data at a future date.

[19] CSPI mentioned histologic changes in the thyroid glands of rats, rabbits, and dogs, referring specifically to ''hypertrophic and neoplastic changes'' when AAA was administered at high dose levels in short-term studies. As previously noted in this document, AAA-related thyroid follicular cell hypertrophy occurred in all three animal species; adenomas occurred only in two male rats in a subchronic study.

further discussion of this submission is warranted.

3. CSPI's Third Submission

CSPI's third submission consisted of a letter to FDA, dated May 29, 1996, in which CSPI reiterated its concerns about the carcinogenicity testing of ACK, and also included copies of the materials the organization had submitted to the National Toxicology Program (NTP) in nominating ACK for ''chronic toxicity (carcinogenicity) testing'' by NTP (''CSPI's NTP nomination package''). CSPI's NTP nomination package consisted of a cover letter, dated May 29, 1996, and a narrative describing CSPI's rationale for nominating ACK for testing under the NTP program (a document entitled ''Summary of Data on Acesulfame Potassium''), including a list of nine references and seven attachments.[20]

The seven attachments in CSPI's NTP nomination package were three FDA review memoranda; the final report for a subchronic toxicity study of ACK in rats; a letter from Hoechst responding to FDA questions regarding histopathology data from two of the long-term studies of ACK in rodents; and two FDA memoranda, each summarizing a different meeting of Hoechst and FDA representatives. The agency notes that the attachments are all copies of publicly available documents contained in the administrative record for the dry uses final rule. The agency also notes, however, that CSPI did not provide NTP with all of the information from the administrative record for the dry uses final rule.[21] Specifically, CSPI did not provide NTP with the reports on the long-term studies of ACK in rats or mice, the reports of the genetic toxicity studies of ACK, or any of the review memoranda from FDA's pathologists or FDA's Cancer Assessment Committee.

The narrative describing CSPI's rationale for nominating ACK for NTP testing raised various issues with respect to the three long-term ACK feeding studies in rodents that were submitted in the original ACK petition. FDA's analysis of the specific issues raised in CSPI's third submission is discussed in section IV.B.2 of this document.

4. CSPI's Fourth Submission

CSPI's fourth submission consisted of a letter, dated July 31, 1996, addressed to the Director of FDA's CFSAN, in which the organization reiterated its concerns regarding the long-term testing of ACK and also mentioned its nomination of ACK for chronic toxicity (carcinogenicity) testing by NTP. In addition, CSPI cited certain of the results from the toxicity testing of AAA and urged FDA to require the petitioner to conduct long-term testing of AAA. CSPI again asked FDA to deny the present petition and to revoke ''all existing regulations permitting the use of acesulfame potassium.''

In support of its requests, CSPI enclosed copies of letters from ''ten experts in the fields of carcinogenesis, toxicology, and statistics'' who had, at CSPI's request, ''reviewed the Hoechst test protocols and results'' (hereinafter, these individuals will be referred to as ''CSPI's ten consultants''). Seven of the letters were addressed to CSPI; the authors of these particular letters expressed support for CSPI's nomination of ACK for testing under the NTP program. Three of the letters were addressed to the Commissioner of the Food and Drug Administration. The authors of these three letters urged FDA to require additional carcinogenicity tests of ACK; one of the authors also urged FDA not to approve the present petition.[22] CSPI claimed that ''[b]ased on the experts' conclusions regarding Hoechst's tests, it is clear that Hoechst has failed to demonstrate a 'reasonable certainty of no harm' for the use of acesulfame potassium in soft drinks (or other foods).''

In partial response to CSPI's letter of July 31, 1996, FDA requested copies of the materials supplied to CSPI's ten consultants and on which, presumably, the consultants had based their comments. CSPI responded by submitting copies of materials that it characterized as ''a standard data set,'' consisting of ten complete documents and selected portions of several other documents (19 items altogether) drawn from the administrative record for the dry uses final rule.[23] Based on the ''standard data set'' submitted by CSPI, it appears that the ten consultants were not provided, however, with all of the Hoechst study reports and other relevant supporting information, nor were they provided with all of the FDA review memoranda filed in the administrative record for the prior approvals of ACK.[24] For example, neither the results of the ACK genetic toxicity testing nor FDA's final pathology review memorandum (Ref. 21), which articulated FDA's resolution of the outstanding questions regarding missing data and incomplete initial reporting of histopathology results raised in earlier FDA review memoranda, were included in CSPI's ''standard data set.''

As previously noted, most of the letters from CSPI's ten consultants did not raise specific issues regarding either the long-term testing of ACK or other safety data relevant to FDA's evaluation of the present petition; only one consultant provided detailed criticism of FDA's interpretation of the data. FDA's analysis of the few specific points raised in letters from the ten consultants is discussed below, along with FDA's analysis of the issues raised in CSPI's NTP nomination package.

5. Hoechst's Submission

In response to the letters from CSPI's ten consultants, Hoechst transmitted to FDA copies of letters from two CSPI

[20] FDA has assumed that the NTP nomination package is the detailed analysis of the safety data on ACK that CSPI indicated, in its letter of January 29, 1996, that it would send to the agency at a future date.

[21] The administrative record for the dry uses final rule contains all of the Hoechst study reports submitted in support of the original petition for ACK, other data and supporting information, FDA review memoranda, and other documents. Hoechst submitted reports for 6 genetic toxicity tests, 2 acute toxicity studies, a subchronic toxicity study, 4 reproduction or developmental toxicity studies, 3 long-term studies in rodents referred to previously in this document, a 2-year study in dogs, 11 metabolism studies, and 7 other specialized studies.

[22] Several of the letters to CSPI and to FDA raised specific issues regarding the procedures used in, or the interpretation of results from, the long-term studies of ACK in rodents. None provided any new data or other information that had not already been considered by the agency. FDA's analysis of the specific issues raised in these letters is discussed later in this document.

[23] The ten complete documents in CSPI's ''standard data set'' were six FDA review memoranda, including the final review memorandum from FDA's Cancer Assessment Committee; the dry uses final rule (53 FR 28379); FDA's response to CSPI's objections to the dry uses final rule (57 FR 6667); and two letters addressed to Hoechst from an independent pathology lab, supplying additional information regarding histopathology data (one letter in regard to a long-term study in rats, the other in regard to a long-term study in mice). The other items in CSPI's ''standard data set'' consisted primarily of narrative sections from, or excerpts from various tables (e.g., mortality data, tumor incidence data) included in, the study reports for the three long-term feeding studies of ACK in rodents.

[24] Judging from their remarks, some of CSPI's ten consultants may have been under the impression that all of the data and information on ACK had been made available to them. For example, one of these individuals stated: ''I agree strongly with [CSPI's] evaluation that the available data on this compound is at best incomplete * * * I could not find any information related to mutagenicity or other genotoxicity or any studies on reproduction and development.'' Another of CSPI's consultants also made similar remarks regarding the apparent lack of ACK genetic toxicity data.

However, as noted previously in this document, the ACK toxicity data base submitted to the original petition for ACK included the results of six genetic toxicity tests and four studies of reproductive or developmental toxicity. The agency concluded that the results of the genetic toxicity tests did not indicate ACK-induced genotoxic effects and that the results of the reproduction and teratology studies produced no evidence of ACK-related teratogenic or adverse reproductive effects (see 53 FR 28379 at 28380).

consultants to whom the firm had provided supplementary information regarding the toxicity testing of ACK. In their letters, these two individuals stated that, after reviewing additional information provided to them by Hoechst, they had concluded that the long-term testing of ACK was adequate and that the test results did not indicate that ACK was a carcinogen.

Hoechst also submitted to FDA copies of the materials it had provided to the two CSPI consultants for review. These materials included several documents from the administrative record for the dry uses final rule as well as a copy of the dry uses final rule. Also included in Hoechst's information package was a copy of a document entitled ''Executive Summary,'' a document that, according to Hoechst, was a summary of toxicology information on ACK that had been submitted to Health Canada as part of a petition for the use of ACK; and a book, entitled *Acesulfame Potassium*.[25]

Because the additional letters from these two particular consultants provided no data or other substantive information, FDA regards them solely as further elaboration of the earlier remarks from the two individuals in question. No further discussion of any of these remarks is necessary.

6. Other Submissions

FDA also received several letters from trade groups and other organizations urging FDA to approve the present petition. Because none of these letters provided any substantive information, no further discussion of these submissions is necessary.

B. Analysis of Specific Issues Raised in the Comments

1. AAA Test Results

CSPI, in its fourth submission, and two of CSPI's ten consultants, commented on the results of short-term toxicity tests of ACK's breakdown product, AAA, and raised the issue of AAA's possible carcinogenic potential.[26] FDA agrees that the results of the short-term studies of AAA raised concerns that required resolution. As discussed previously, the agency carefully evaluated the data from the short-term toxicity tests of AAA, along with other data and information from the petition and in its files. As discussed previously, FDA has concluded that AAA is highly unlikely to pose a significant cancer risk to individuals consuming ACK-sweetened beverages; none of the information in the comments provides a basis to reconsider that conclusion. Because the agency's detailed analysis of the issue of AAA's possible carcinogenic potential has already been presented (see sections III.D.2.b.v and vi of this document), that analysis will not be repeated here. The agency's analysis of the remaining issues raised in the comments on the present petition follows.

2. ACK Test Results

In its NTP nomination package, CSPI again raised some of the same questions regarding the adequacy of, and the results from, the long-term testing of ACK that it raised in its previous objections to the dry uses final rule; CSPI also raised some new points with respect to the safety testing of ACK. CSPI's NTP nomination package is clearly addressed to NTP and is not written as a comment, per se, on the present petition; the narrative in CSPI's NTP nomination package focuses on the differences between the designs of, and procedures used in, the long-term feeding studies of ACK and specific elements of NTP study designs or other ''NTP standards.'' Nevertheless, FDA has assumed that CSPI's NTP nomination package constitutes the ''detailed analysis of the safety data on ACK'' that CSPI had intended to send to the agency at a future date and that FDA had indicated it would treat as a comment on the present petition. Thus, FDA has attempted to extract from CSPI's NTP nomination package those remarks on specific issues that could be construed as comments on the present petition.

As noted previously, there is considerable overlap between the specific issues raised by certain of CSPI's ten consultants and those raised by CSPI. Because CSPI's NTP nomination package provides the most detailed discussion of specific issues, those remarks will be the focus of FDA's response. Where the other parties have raised additional points or points that differ substantively from those raised by CSPI, FDA will indicate that in its discussion.

a. *The second rat study*. In its original evaluation of the safety of ACK, FDA reviewed a long-term study conducted in CPB–WU Wistar rats in which ACK was administered at 0, 0.3, 1.0, or 3.0 percent in the test diet (the ''second rat study''). In the preamble to the dry uses final rule, the agency concluded that this study was adequate for an evaluation of a food additive and that it demonstrated the safety of acesulfame potassium (see 53 FR 28379 at 28380). Implicit in FDA's determination of the adequacy of the second rat study was that the dosing levels in this study were appropriate (see 57 FR 6667 at 6669).

i. *Issues raised previously—(1) Appropriateness of the dosing.* CSPI's NTP nomination package asserts that the second rat study was inadequate because the highest dose tested (3 percent in the diet) was too low. To support its assertion, CSPI compares the dosing regimen used in the second rat study with NTP ''requirements'': ''NTP requires that long-term feeding studies be carried out at the minimally toxic dose (MTD), which is functionally equivalent to the maximum tolerated dose * * *.'' CSPI also states that ''NTP requires that when a test chemical is administered in the diet, the high dose should not exceed 5 percent of the diet, but use of a 5 percent dose could meet NTP standards. Since rats in the subchronic test tolerated 10 percent acesulfame potassium in the diet with what were reported as only minimal effects* * *, 5 percent should have been the highest dose tested in the two rat studies.''[27] CSPI's submission does not, however, contain or identify any data or other evidence to establish that the dosing used in the second rat study was, in fact, too low to permit an assessment of ACK's carcinogenic potential.

CSPI implies that, in order for long-term toxicity (carcinogenicity) testing to be valid, it must conform to NTP ''requirements.'' FDA does not agree. The NTP document cited by CSPI[28]

[25] This book, co-edited by a Hoechst scientist and a professor at a German university, discusses various studies of ACK submitted in the original petition, including genetic toxicity studies, acute studies, the three long-term feeding studies in rodents referred to previously in this document, a subchronic feeding study, reproduction and teratology studies, metabolism studies and others. The book also discusses several additional studies of ACK (e.g., additional genetic toxicity studies), conducted after FDA's initial approval decision, that were submitted to the present petition and have been discussed previously in this document.

[26] One of these individuals referred to AAA as a ''metabolic breakdown product.'' FDA notes, however, that AAA has not been shown to be a metabolite of ACK. As discussed previously in this document, the ACK toxicity data base submitted to the original petition for ACK included the results of 11 metabolism studies. FDA carefully evaluated the results of these studies and concluded that they revealed no evidence that ACK was metabolized (53 FR 28379 at 28380, see also Ref. 4).

[27] FDA notes that, in the subchronic study, ACK was administered at dose levels of 0, 1.0, 3.0, or 10.0 percent in the diet. ACK-related reductions in body weight of greater than 10 percent, along with various other effects, were observed in the 10 percent dose group. Body weight reductions were also observed in the 3 percent dose group, but such reductions were less than 10 percent. Based on the findings in the 10 percent and 3 percent dose groups, Hoechst chose to use 3 percent as the highest dose level in the long-term study; there are no data to suggest that 5 percent was required.

[28] This document is entitled ''Specifications for the Conduct of Studies to Evaluate the Toxic and

Continued

establishes standardized protocol elements and reporting formats for certain toxicity and carcinogenicity tests conducted by contract laboratories under the auspices of the NTP program. The NTP document does not establish criteria for evaluating the scientific validity of toxicity and carcinogenicity tests in general, nor does it establish regulatory requirements with respect to safety decisions on food additives. The NTP document provides specifications that must be met in order for the results of a particular toxicity study to be included in the NCI/NTP data base (described previously in this document).

FDA notes that the agency's own guidelines, ''Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food'' (the FDA Redbook), do not establish regulatory requirements or requirements for establishing the scientific validity of testing. Rather, the Redbook represents the agency's best advice to manufacturers of food and color additives on how to satisfy the legal safety standard of ''reasonable certainty * * * that a substance is not harmful'' (see § 170.3(i)); and contains general toxicological principles that are to be applied using good scientific judgment.

It is important to note that although the details provided in the NTP document differ from those provided in the Redbook, a study that follows either the NTP ''specifications'' or the Redbook guidance[29] and is conducted in accordance with good laboratory practices will generally be appropriate for use in a safety evaluation. Strict adherence to any particular set of guidelines is not necessary, however, to ensure either scientific validity or suitability for a regulatory safety decision. Accordingly, in reaching a final decision on the safety of a food additive, FDA considers all of the relevant data and information available, including the design of, and results from, toxicity testing. The suitability and validity of any particular toxicity study submitted in support of a food additive is evaluated on its own merits, using good scientific judgment, by FDA.

The agency notes that, in its objections to the dry uses final rule, CSPI raised the same issue regarding the adequacy of the dosing in the second rat study, and FDA addressed this issue in its response to CSPI's objections (57 FR 6667 at 6668 and 6669). The agency incorporates that discussion, in full, into the safety determination on the present petition. Because CSPI has presented no new evidence to support its opinion regarding the adequacy of the dosing in this study, nor identified evidence that the agency overlooked in its previous evaluations, FDA reaffirms its earlier determination that the dosing in the second rat study was adequate for an assessment of the carcinogenic potential of acesulfame potassium (57 FR 6667 at 6669, see also 53 FR 28379, 28380).

With respect to dosing, one of CSPI's consultants asserted that the dose range in the second rat study was too narrow, citing ''[the] increased tumorigenesis at even the 'lowest' dose used * * *.'' FDA has previously concluded, however, that the data from the second rat study do not establish an association between tumors and treatment with ACK (53 FR 28379 at 28380 and 28381). The issue of tumor incidence in the second rat study is also discussed later in this document.

CSPI, in its NTP nomination package, also implies that the second rat study is inadequate because the subchronic testing of ACK, used as an aid in determining doses for the second rat study, did not conform in each and every respect to the standardized elements in the NTP guidelines. Specifically, CSPI stated that a subchronic study was not conducted in the same strain of rat as that used in the second rat study; CSPI also disagrees with the use, in the subchronic study, of fewer dose groups than the number NTP ''requires.''[30]

FDA disagrees. First, the agency notes that the purposes of subchronic testing are generally acknowledged to be twofold: To identify likely target organs in longer-term studies and to aid in determining doses for the longer-term testing. Second, as previously noted, the NTP document does not establish scientific or regulatory requirements for either subchronic or long-term toxicity testing, including carcinogenicity testing. In particular, the NTP document does not establish a subchronic testing regimen that must be followed in order for long-term testing to be valid. Moreover, FDA is not aware of any relevant guideline, including the NTP document, that states that deviations from the guidelines for a subchronic toxicity study conducted to determine appropriate dose levels in a subsequent carcinogenicity study necessarily invalidates the results of the carcinogenicity study.

Because CSPI has not provided any substantive information to support its assertions regarding the effect of the design of the ACK subchronic study on the validity of the long-term testing of ACK, it has provided no basis for FDA to reconsider its conclusions regarding the second rat study. Thus, FDA reaffirms its earlier conclusions that the dosing in the second rat study was appropriate for an assessment of the carcinogenic potential of ACK and that the study was suitable for a safety assessment of ACK (57 FR 6667 at 6669, see also 53 FR 28379 at 28380).

(2) Incidence of mammary tumors. In its NTP nomination package, CSPI stated that there was an increased incidence of mammary tumors in treated females in the second rat study. CSPI also claimed that ''* * * FDA discounted these data because [the] incidence was not strongly dose-related.'' CSPI thus implies that the lack of a strong dose-response was the only reason FDA concluded, in its previous evaluation, that the incidence of mammary tumors in female rats in the second rat study was not ACK-related. CSPI also criticizes the agency's use of historical control data in evaluating the results of the second rat study and asserts that more information on ''animals or test conditions'' (e.g., diets, animal husbandry) should have been obtained by FDA before using the data from ''previous studies'' conducted at the testing laboratory where the long-term studies of ACK were conducted.[31]

The agency notes that CSPI has previously raised these particular points in its objections to the dry uses final rule, and that FDA has previously addressed these points at length in responding to CSPI's objections (57 FR 6667 at 6674 and 6675). Specifically, in the original safety evaluation of ACK, FDA gave careful and detailed consideration to the incidence of mammary gland tumors in female rats in the second rat study. After a review of

Carcinogenic Potential of Chemical, Biological and Physical Agents in Laboratory Animals for the National Toxicology Program (NTP).''

[29] Other guidelines, such as those issued by EPA or the Organization for Economic Cooperation and Development (OECD), are also frequently used as resources in the design, conduct, and evaluation of toxicological tests (see for example, Ref. 22).

[30] CSPI specifically noted that the NTP document stipulates the use of five dose groups in addition to controls. FDA notes that the use of five dose groups is not a requirement, either for the scientific validity of the test, or for utility of the test in reaching a regulatory decision. FDA's own Redbook recommends (but does not require) the use of at least three dose groups in addition to controls; EPA's guidelines for subchronic toxicity testing contain a similar recommendation.

[31] One of CSPI's consultants criticized the petitioner's use of historical control data, commenting that the ''historical database'' is ''actually very small.'' CSPI's consultant did not, however, provide any information to indicate that FDA made inappropriate use of the relevant historical control data. (As previously noted, FDA's final pathology review memorandum, which discusses the agency's use of the historical control data, was apparently not included in the materials supplied by CSPI to its ten consultants.)

all the data, the agency concluded that mammary gland neoplasms were not associated with treatment with ACK. The preamble to the dry uses final rule cited several reasons for this conclusion, including the lack of a dose response. However, the agency also took into account the lack of evidence of progressive stages of mammary gland neoplasms and certain information obtained from historical control data (53 FR 28379 at 28381, see also Ref. 21).

With respect to the use of historical control data, the agency notes that, as in its objections to the dry uses final rule, CSPI mischaracterizes the information on historical controls and fails to acknowledge the detailed information on this point that FDA has evaluated. In its response to CSPI's objections, the agency noted that the historical control data were from the same type of studies conducted in the same laboratory, with the same strain of rat, under similar conditions, with continuity of pathological standards, and, furthermore, were from the same time period as the long-term studies evaluated in FDA's original review (57 FR 6667 at 6672 and Ref. 8 of that document). CSPI has presented no new information to support its allegation that FDA made inappropriate use of the relevant historical control data.

In summary, CSPI has presented no new evidence that would change the agency's previous conclusion that the occurrence of mammary gland neoplasms was not associated with treatment with ACK, and FDA incorporates its earlier discussion of the results of the second rat study, in full, into the safety determination on the present petition. Because CSPI has presented no new evidence to support its opinion nor identified evidence that the agency overlooked in its previous evaluations, FDA reaffirms its earlier determination that the data from the second rat study do not establish an association between the occurrence of neoplasms and treatment with ACK (53 FR 28379 at 28380 and 28381).

ii. *Issues not raised previously—(1) Incidence of respiratory disease.* In its NTP nomination package, CSPI claims that the incidence of respiratory disease in the animals used in the second rat study was too high[32] and questioned whether this study or the other long-term studies of ACK in rodents were adequate: ''The poor health of the animals used in the Hoechst studies raises the question as to whether any of the test results in the subchronic and chronic studies were good enough to be used.'' However, CSPI's submission neither identifies nor contains any data or other evidence that establish that the second rat study was, in fact, rendered inadequate for an assessment of ACK's carcinogenic potential by the incidence of respiratory disease in the test animals.

In its original evaluation of the safety of ACK, FDA carefully considered all of the data and information relevant to an evaluation of the long-term testing of ACK, including the general health of, and the incidence of respiratory disease in, test animals. In the case of the second rat study, FDA determined that the mortality rate was low in all dose groups and the signs of chronic respiratory disease randomly distributed (Refs. 21 and 23). Only in the case of the first rat study did FDA conclude that the incidence of respiratory disease in test animals confounded the test results to such an extent that such incidence contributed to a finding that the study was inadequate for assessing the safety of ACK (53 FR 28379 at 28380, see also Ref. 24). Because CSPI has not presented any new evidence to support its allegation nor has the organization identified evidence that the agency overlooked in its previous evaluations, FDA reaffirms its earlier determination that the second rat study was adequate for an assessment of the carcinogenic potential of acesulfame potassium.

(2) Assignment of animals to test groups. CSPI's NTP nomination package also raises a question regarding the procedure used to assign animals to the various test groups in the second rat study. CSPI implies that improper assignment procedures were used, which confounded the results of the second rat study. CSPI does not, however, provide any data or other information to support its speculation.[33]

In its original evaluation of the safety of ACK, FDA carefully considered all of the data and information relevant to an evaluation of the long-term testing of ACK, including the question of whether the assignment procedures or other aspects of the study designs compromised the suitability of the studies for an assessment of ACK's carcinogenic potential (Ref. 23). FDA concluded that the second rat study was adequate for an assessment of ACK's carcinogenic potential (Ref. 24, see also 53 FR 28379, 28380, and 57 FR 6667 at 6669). Because CSPI, in support of its allegations, has neither presented evidence that has not already been evaluated by the agency nor identified evidence that the agency overlooked in its previous evaluations, FDA reaffirms its earlier conclusion that the second rat study was adequate for an assessment of ACK's carcinogenic potential.

b. *The mouse study.* In concluding that ACK had been shown to be safe, FDA reviewed a long-term study conducted in Swiss mice in which ACK was administered at 0, 0.3, 1.0, or 3.0 percent in the test diet (''the mouse study''). FDA concluded that the results of this study showed no association between neoplastic disease and treatment with ACK (53 FR 28379 at 28380). In the preamble to the dry uses final rule, the agency explicitly discussed the adequacy of the mouse study with respect to study duration. FDA concluded that the length of the study was adequate because it had been conducted for the majority of the animals' lifespan (53 FR 28379 at 28380; see also 57 FR 6669 at 6670). Implicit in FDA's determination of the mouse study's adequacy was that the dosing levels in this study were appropriate (57 FR 6667).

i. *Issues raised previously—(1) Adequacy of the study length.* In its NTP nomination package, CSPI asserts that the mouse study was inadequate because the study was too short. To support its assertion, CSPI again refers to NTP ''requirements'': ''NTP generally requires that long-term studies on rats and mice be carried out for a 104-week period. Hoechst's study in mice lasted only 80 weeks.'' CSPI also presents some figures for survival levels in the various test groups (apparently derived from information in the final report for the mouse study, a document not included in CSPI's NTP nomination package) and remarks that ''survival of the mice was very high at 80 weeks.'' CSPI implies that the survival statistics suggest that the study was not conducted for the majority of the animals' lifespan. However, CSPI provides no data or other evidence to support its view.

FDA disagrees with CSPI's comments regarding the length of the mouse study. First, as previously noted in this document, the NTP document cited by CSPI does not establish either scientific or regulatory requirements. Second, in its original evaluation of the safety of ACK, FDA carefully considered all of the data and information relevant to an

[32] CSPI presents some figures for the incidence of pneumonia in the rats in the second study that are apparently derived from information in the final report for this study, a document not included in CSPI's NTP nomination package.

[33] In its NTP nomination package, CSPI remarks: ''* * * the likelihood that animals were of different ages when exposure to the test agent began, and that female animals may have been considerably older than males, makes it difficult to know what to make of the data.'' While CSPI speculates, at length, on the ages of the animals in the subchronic study, CSPI does not provide any substantive information to support its claims regarding the long-term study, nor does the organization provide an explanation of the significance of its allegations.

evaluation of the long-term testing of ACK, including the duration of, and survival data from, the mouse study. As previously noted, FDA concluded that length of the study was adequate because it had been conducted for the majority of the animals' lifespan (see 53 FR 28379 at 28380, see also Ref. 24.) Specifically, the agency found that at the time the study was conducted, survival of the Swiss strain of mice tended to decline severely between 18 and 24 months of age; thus, at that time, 80 weeks was representative of a time period corresponding to the majority of the animals' lifespan (Ref. 24).

CSPI previously raised this issue in its objections to the dry uses final rule, and the agency previously discussed this issue in responding to CSPI's objections (57 FR 6667). FDA incorporates that discussion, in full, into the safety determination on the present petition. Because CSPI has not identified any evidence that the agency overlooked in its previous evaluations, FDA reaffirms its earlier determination that the mouse study was of adequate duration for an assessment of the carcinogenic potential of ACK.

(2) Appropriateness of dosing. CSPI, in its NTP nomination package, comments on the appropriateness of the dosing in the mouse study: ''* * * the high survival at 80 weeks of mice fed 3% acesulfame potassium in the diet suggests that a higher dose might have been more in keeping with NTP recommendations.'' CSPI provides no other further explanation of the significance of its remarks, nor does it provide any data or other information that would establish that the dosing in the mouse study was too low to permit an assessment of ACK's carcinogenic potential. CSPI previously questioned the adequacy of the dosing in the mouse study in its objections to the dry uses final rule, and the agency previously discussed this issue in responding to CSPI's objections (57 FR 6667). FDA incorporates that discussion, in full, into the safety determination on the present petition. Because CSPI has presented no new evidence to support its opinion nor identified evidence that FDA overlooked in its previous evaluations, FDA reaffirms its earlier determination that the dosing in the mouse study was appropriate for an assessment of the carcinogenic potential of acesulfame potassium (see 57 FR 6667 at 6669).

ii. *Issues not raised previously—(1) Incidence of respiratory disease.* In its NTP nomination package, CSPI notes that respiratory infections occurred in the mice, but offers no specific supporting information.[34] In particular, CSPI neither identifies nor provides any data or other evidence regarding the actual incidence of respiratory infections in the mice, nor does it provide any information that would establish that the mouse study was rendered inadequate for an assessment of ACK's carcinogenic potential by the alleged incidence of respiratory disease in the test animals.

FDA notes that, in its original evaluation of the safety of ACK, the agency carefully considered all of the data and information relevant to an evaluation of the long-term testing of ACK, including the health of the test animals (Ref. 23). CSPI has presented no evidence to support its claim that has not already been evaluated by the agency nor identified evidence that the agency overlooked in its previous evaluations. Thus, FDA reaffirms its earlier conclusion that the mouse study was suitable for an assessment of ACK's carcinogenic potential (see 53 FR 28379 at 28380, and 57 FR 6667 at 6669).

(2) Histopathology data. CSPI also criticizes aspects of the histopathological examinations in the mouse study. CSPI specifically compares the extent of the histopathology review of tissues from animals from the low and mid-dose test groups with ''NTP requirements.'' CSPI implies that the histopathology review was not extensive enough and, thus, obscured the results of the mouse study. CSPI does not, however, provide any data or other information that would establish that the histopathological examinations of tissues from the animals in the mouse study were inadequate for an assessment of ACK's carcinogenic potential.

FDA notes that, in its original evaluation of the safety of ACK, the agency carefully considered all of the data and information relevant to an evaluation of the long-term testing of ACK, including the histopathology data from the mouse study. FDA concluded both that the mouse study was adequate for an assessment of ACK's carcinogenic potential and that the results of the study showed no association between neoplastic disease and treatment with ACK (53 FR 28379 at 28380 and 57 FR 6667 at 6669, see also Ref. 24). Again, because CSPI has presented no evidence to support its assertions that has not already been evaluated by the agency nor has CSPI identified evidence that the agency overlooked in its previous evaluations, FDA reaffirms its prior conclusion that the mouse study was suitable for an assessment of ACK's carcinogenic potential.

(3) Time-to-tumor. In its NTP nomination package, CSPI also claims that the data in the mouse study showed that ACK caused tumors: ''[i]n the mouse study, there was an early time-to-tumor reported for first tumors in treated animals relative to first tumors in controls.'' However, CSPI provides no additional data or other information to support this claim, nor does it provide further explanation of the significance of this alleged time-to-tumor differential.

In the original safety evaluation of ACK, FDA carefully considered all of the data in the mouse study, including data in the study report that showed an apparent ACK-related decreased time-to-tumor for first tumors. After an interim review of all the data, the agency concluded that the only finding of possible significance was an increase in lymphocytic leukemia in female mice in the highest dose group (Ref. 25). After detailed consideration of this reported finding, FDA concluded that this finding was not treatment-related and that no increase in neoplastic disease of the lymphoreticular system could be attributed to ACK (Ref. 24).

Because CSPI has presented no new evidence to support its opinion nor identified evidence that the agency overlooked in its previous evaluations, it has provided no basis for FDA to change its previous conclusions regarding the results of the mouse study. Thus, FDA reaffirms its earlier determination that the data from the mouse study do not establish an association between neoplasia and treatment with ACK (see 53 FR 28379 at 28380 and 57 FR 6667 at 6669).

c. *The first rat study.* In its evaluation of the original petition for the use of ACK, the agency reviewed a long-term study conducted in CIVO-bred Wistar rats in which ACK was administered at 0, 0.3, 1.0, or 3.0 percent in the diet (the ''first rat study''). In the preamble to the dry uses final rule, the agency concluded that the data from this study did not establish a carcinogenic effect of ACK (53 FR 28379 at 28380). However, the agency further concluded, because of deficiencies and confounding factors in this study (e.g., a high incidence of respiratory disease in the test animals), that it was ''inadequate for assessing the carcinogenic potential of the test compound or for any other purposes of

[34] As noted previously in this document, CSPI questions, in its NTP nomination package, the health of the test animals in all of the long-term studies of ACK in rodents. However, CSPI also cites the high survival rates of the test animals in the mouse study in support of some of the organization's criticisms of this study. The agency notes that CSPI's positions regarding animal health and survival rates in the mouse study are not entirely consistent.

a safety evaluation'' (53 FR 28379 at 28381).

Issues raised previously. In its NTP nomination package, CSPI asserts that, despite the prevalence of chronic respiratory disease in the test animals in the first rat study, the test results were suggestive of a carcinogenic effect of ACK.[35] Specifically, CSPI claims that the data in the first rat study showed a dose-dependent effect on incidence of lymphoreticular cancers of pulmonary origin and on time-to-tumor. In support of its claims, CSPI cites a single FDA interim review memorandum (Ref. 23). CSPI also asserts that the agency made inappropriate use of historical control data in evaluating the results of the first rat study.[36] With respect to the use of historical control data, CSPI merely expresses its opinion that more information on ''animals and test conditions'' (e.g., diets and animal husbandry) should have been obtained by FDA before using the data from ''previous studies'' conducted at the testing laboratory where the long-term studies of ACK were conducted.

The agency notes that the issue of a possible dose-dependent effect of ACK on the incidence of lymphoreticular tumors and on time-to-tumor was raised by CSPI in its letter to FDA dated September 23, 1987, and this issue was addressed by the agency in the preamble to the dry uses final rule (53 FR 28379). Specifically, the agency noted that, in the first rat study, there was a slightly higher incidence, and earlier appearance, of lymphoreticular tumors in dosed rats than in the concurrent control group. However, the agency concluded that under the circumstances of severe chronic respiratory disease, sampling limitations, and the very high rate of spontaneously-occurring lung tumors in this strain of rat, no conclusions could be made regarding any effect of ACK on the lungs (53 FR 28379 at 28380; see also Ref. 24).[37] FDA also notes that CSPI previously raised this particular issue in its objections to FDA's original approval decision on ACK, and the agency discussed these issues, at length, in responding to CSPI's objections (57 FR 6667 at 6671 and 6672). FDA incorporates those discussions, in full, into the safety determination on the present petition. Because CSPI has presented no new evidence to support its opinion nor identified evidence that the agency overlooked in its previous evaluations that would change the outcome of those evaluations, FDA reaffirms its earlier determination that the data from the first rat study do not establish a carcinogenic effect of ACK.

C. Summary of FDA's Response to Comments

In determining that ACK is safe for use in nonalcoholic beverages, FDA carefully considered all of the data and information in the present petition, as well as other information in its files, including relevant information from previous petitions for ACK. FDA has also carefully considered all of the issues raised in the comments on the present petition.

As previously noted in this document, many of the specific issues raised in the comments on the present petition are the same as those raised in earlier objections to the dry uses final rule, and the agency has previously considered and responded to these issues in detail (see 57 FR 6667). Also as noted, the comments supply no new information that would change any of the agency's prior conclusions on any of the issues previously raised. Likewise, with respect to specific issues raised in the comments on the present petition that have not been raised previously, the comments neither provide new evidence nor identify evidence that FDA has overlooked that would change the agency's conclusion that the use of ACK in nonalcoholic beverages is safe.

Because no outstanding issues in the comments undermine FDA's determination of safety, FDA is denying the requests that: (1) The petitioner be required to conduct additional testing of ACK or AAA, (2) the present petition be denied, and (3) all existing regulations permitting the use of ACK in food be revoked.

V. Conclusion of Safety

FDA has evaluated the data in the petition, published scientific literature, and other relevant material from its files and concludes that the use of ACK in nonalcoholic beverages is safe. Therefore, the agency concludes that § 172.800 should be amended 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.

VI. 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.

VII. Paperwork Reduction Act

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 5, 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

[35] Several of CSPI's ten consultants made similar remarks. None of these individuals, however, provided any substantive information in support of their remarks.

[36] Importantly, as in its objections to the dry uses final rule, CSPI mischaracterizes the information on historical controls and fails to acknowledge the information on this point that FDA evaluated. The agency has previously discussed, in detail, its use of historical control data in the evaluation of the first rat study in responding to CSPI's objections to the dry uses final rule. In its response to CSPI's objections, the agency noted that the historical control data were from the same type of studies conducted in the same laboratory, with the same strain of rat, under similar conditions, with continuity of pathological standards, and, furthermore, were from the same time period as the first rat study (57 FR 6667 at 6672).

[37] Because the first rat study was inadequate for use in assessing the carcinogenic potential of ACK, the petitioner conducted a second long-term study in a different strain of rat. This second rat study did not show lymphoreticular tumors in the lungs (53 FR 28379 at 28380).

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.

IX. References

The following sources are referred to in this document. References marked with an asterisk (*) 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. References without an asterisk are not on display; they are available as published articles, books, and reports.

*1. Memorandum, from M. DiNovi, Chemistry Review Branch, to P. Hansen, Biotechnology Policy Branch, dated April 28, 1994.

*2. Memorandum to the file FAP 0A4212, from M. DiNovi, K. Ekelman, and P. Hansen, dated June 3, 1998.

*3. Memorandum, from M. DiNovi, Chemistry Review Branch, to P. Hansen, Biotechnology Policy Branch, dated November 9, 1994.

*4. Memorandum, from K. Ekelman, Division of Health Effects Evaluation, to P. Hansen, Regulatory Policy Branch, dated June 2, 1998.

5. Green, W. L., ''Mechanisms of Action of Antithyroid Compounds,'' pp. 77–87 in: *The Thyroid*, edited by S. C. Werner and S. H. Ingbar, Harper & Row, New York, 1978.

6. Hill, R. N. et al., ''Thyroid Follicular Cell Carcinogenesis,'' *Fundamental and Applied Toxicology*, 12:629–697, 1989.

*7. Report, Borzelleca, J. F., C. C. Capen, M. S. Christian, and B. N. LaDu, ''Summary and Consensus of the Acesulfame K Scientific Expert Panel on the Safety of Acetoacetamide-N-Sulfonic Acid and Acetoacetamide,'' dated October 13, 1992.

*8. Letter, from C.C. Capen, Ohio State University, to J. Simplicio, Hoechst-Celanese Corp., dated December 6, 1991.

9. Gaylor, D. W., and R. L. Kodell, ''Linear Interpolation Algorithm for Low Dose Assessment of Toxic Substances,'' *Journal of Environmental Pathology and Toxicology*, 4:305–315, 1980.

10. National Academy of Sciences/National Research Council, ''Risk Assessment in the Federal Government: Managing the Process,'' Washington, DC, 1983.

11. Lorentzen, R. J., ''FDA Procedures for Carcinogenic Risk Assessment,'' *Food Technology*, pp. 108–111, 1984.

12. Gold, L.S. et al., ''Target Organs in Chronic Bioassays of 533 Chemical Carcinogens,'' *Environmental Health Perspectives*, 93:233–246, 1991.

13. McConnell, E. E., ''Thyroid Follicular Cell Carcinogenesis: Results from 343 2–Year Carcinogenicity Studies Conducted by the NCI/NTP,'' *Regulatory Toxicology and Pharmacology*, 16:177–188, 1992.

14. IRIS (1995), Cincinnati: Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, EPA.

15. Curran, P. G., and L. J. DeGroot, ''The Effect of Hepatic Enzyme-Inducing Drugs on Thyroid Hormones and the Thyroid Gland,'' *Endocrine Reviews*, 12(2):135–150, 1991.

16. Donaich, I., ''Aetiological Considerations of Thyroid Carcinoma,'' vol. 6, pp. 55–72, in: *Tumors of the Thyroid Gland*, edited by D. Smithers, E & S Livingstone, Edinburgh, 1970.

17. Capen, C. C. and S. L. Martin, ''Mechanisms that Lead to Disease in the Endocrine System in Animals,'' *Toxicologic Pathology*, 17:234–249, 1989.

18. *Handbook of Carcinogenic Potency and Genotoxicity Databases*, edited by L. S. Gold and E. Zeiger, CRC Press, Boca Raton, FL, 1997.

19. Goddard, M. J., D. J. Murdoch, and D. Krewski, ''Temporal Aspects of Risk Characterization,'' *Inhalation Toxicology*, 7:1005–1018, 1995.

20. Kodell, R. L., D. W. Gaylor, and J. J. Chen, ''Using Average Lifetime Dose Rate for Intermittent Exposures to Carcinogens,'' *Risk Analysis*, 7:339–345, 1987.

*21. Memorandum, from F. Hines, Diagnostic Pathology Branch, to L. Taylor, Additives Evaluation Branch, dated June 6, 1986.

22. ''Health Effects Test Guidelines,'' U.S. EPA, June, 1996.

*23. Memorandum, from L. Taylor, Additives Evaluation Branch, to P. McLaughlin, Petitions Control Branch, dated November 17, 1982.

*24. Memorandum, Cancer Assessment Committee (CAC) (covers conferences of November 21, 1983, February 21, 1985, December 12, 1985, and June 17, 1986, and information in Ref. 25 of this document).

*25. Memorandum, from L. Taylor, Additives Evaluation Branch, to Cancer Assessment Committee, dated June 19, 1986.

List of Subjects in 21 CFR 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.800 is amended by adding paragraph (c)(13) to read as follows:

§ 172.800 Acesulfame potassium.

* * * * *

(c) * * *

(13) Nonalcoholic beverages, including beverage bases.

* * * * *

Dated: June 29, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

[FR Doc. 98–17700 Filed 6–30–98; 10:34 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 93F–0286]

Food Additives Permitted for Direct Addition to Foods for Human Consumption; Acesulfame Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objection, confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is overruling the objection that it has received on the final rule that amended the food additive regulations to provide for the safe use of acesulfame potassium (ACK) as a nonnutritive sweetener in alcoholic beverages. After reviewing the objection to the final rule, the agency has concluded that the objection does not provide a basis for revoking the amendment to the regulation. Therefore, FDA is confirming the effective date for the final rule. The final rule was issued in response to a food additive petition filed by Hoechst Celanese Corp.

DATES: The effective date of the final rule published at 60 FR 21700 is confirmed as May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3093.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of May 3, 1995 (60 FR 21700), FDA issued a final rule amending its regulations to permit the use of acesulfame potassium (ACK) as a nonnutritive sweetener in alcoholic beverages (the ''alcoholic beverages final rule''). This amendment of the regulation, codified at 21 CFR 172.800(c)(12), was issued in response to a food additive petition (FAP No. 3A4391) filed by Hoechst Celanese Corp. FDA based its decision to permit the use of ACK in alcoholic beverages on the data in this petition and other relevant information in its files, including data and information from

previous petitions for various uses of ACK.[1]

II. Summary of Objection

Following the publication of the alcoholic beverages final rule, the Center for Science in the Public Interest (CSPI) filed a timely submission objecting to the approval of ACK for use in alcoholic beverages. CSPI's submission consisted of a letter, dated June 1, 1995, and a copy of CSPI's objections to FDA's original approval decision on ACK (the ''dry uses final rule'') (July 28, 1988, 53 FR 28379).[2] CSPI specifically requests that FDA ''withdraw this approval, and, instead, require that acesulfame potassium (including its breakdown products) be evaluated for carcinogenicity in properly conducted long-term animal feeding tests.'' CSPI also requests that FDA reconsider and act favorably on its previous objections to the dry uses final rule, alleging that FDA has not addressed these previous objections in a substantive manner. CSPI does not request a hearing on its objection to the alcoholic beverages final rule, nor does it request a stay of the rule.[3]

III. Provisions for Objections and Hearing Requests

The agency's regulations regarding food additive petitions (21 CFR 171.110) provide that objections and hearings relating to food additive regulations are to be governed by part 12 (21 CFR part 12). Under § 12.24(a), the Commissioner of Food and Drugs is to review all objections and hearing requests and make three determinations: (1) Whether the regulation at issue should be modified or revoked, (2) whether a hearing has been justified, and (3) whether an alternative form of hearing (e.g., before a Public Board of Inquiry under 21 CFR part 13), if requested, has been justified. As provided for in § 12.30(a), a person may submit objections and waive the right to a hearing; such waiver may be express or may result from the failure to request a hearing (see § 12.22(a)). Even when no hearing has been requested, the Commissioner has the discretion to order a hearing under § 12.30(b) and should exercise such discretion when it is in the public interest to do so. Because issuance of a final rule constitutes a finding that such action is in the public interest, a substantial showing is required to justify the Commissioner's exercise of his discretion to order a hearing to reconsider a final rule.

The objector to the alcoholic beverages final rule for ACK, CSPI, has waived its right to a hearing by failing to request a hearing (see § 12.22(a)(4)). Thus, the only remaining question under § 12.24(a) is whether CSPI's objection, and the information submitted in support of the objection, establish that the food additive regulation for ACK should be revoked or modified. If revocation or modification has not been justified, FDA must then evaluate the record to determine whether there is a reason for the Commissioner to exercise his discretion to order a hearing.

As discussed in detail in section IV of this document, FDA has concluded that CSPI has not established a basis for revocation or modification of the food additive regulation for ACK. Thus, the agency is overruling CSPI's objection. Likewise, because CSPI has not identified new relevant information or articulated an interpretation of existing information not previously addressed by FDA, there is no factual dispute to be resolved. Further, there has been no showing that such a hearing would otherwise be in the public interest. Accordingly, there is no reason for the Commissioner to exercise his discretion and order a hearing.

IV. Analysis of the Objection

In order to justify a revocation or modification of the food additive regulation authorizing the use of ACK in alcoholic beverages, CSPI must establish that FDA failed to conduct a fair evaluation of the evidence in the record and thus erroneously concluded that there is a reasonable certainty of no harm from the use of ACK in alcoholic beverages. As shown in section IV of this document, CSPI's objections cite no new data or information and simply reiterate issues that FDA has previously considered and resolved. Thus, FDA has concluded that there is no basis to modify or revoke the food additive regulation for ACK.

A. FDA's Determination of Safety

In its June 1, 1995 letter, objecting to the alcoholic beverages final rule, CSPI quotes from an FDA memorandum[4] ''* * * The use of acesulfame potassium in alcoholic beverages contributes only a very small percentage of acesulfame potassium intake to the total because of the limited number of users of these products and their low intakes.'' CSPI indicates its agreement with FDA's assessment of the dietary intake of ACK, but also goes on to state: ''* * * we expect minimal public exposure to acesulfame potassium in the alcoholic beverages covered in the approval. However, *de minimis* exposure of the public does not solve the safety problems associated with acesulfame potassium * * *.''

Although CSPI implies that FDA's decision on the safe use of ACK in alcoholic beverages was based on intake data alone, this is not the case. In concluding that the use of ACK in alcoholic beverages was safe, FDA reviewed data and information in the petition as well as other relevant information from its files, including data and information contained in previous petitions for various uses of ACK. As discussed in the alcoholic beverages final rule (60 FR 21700 at 21701), FDA made its determination based on an analysis of the safety data and a consideration of conditions relevant to the proposed use in alcoholic beverages, including the estimated low increase in dietary exposure to ACK from its use in alcoholic beverages.[5]

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[1] Acesulfame potassium, the potassium salt of 6-methyl-1,2,3-oxathiazine-4(3*H*)-one-2,2-dioxide, was first approved for a variety of uses as a nonnutritive sweetener on July 28, 1988 (53 FR 28379). Subsequent to its initial approval decision on the use of ACK, FDA approved the following additional uses for ACK in response to petitions in: Baked goods and baking mixes, including frostings, icings, and fillings for baked goods; yogurt and yogurt-type products; frozen and refrigerated desserts; sweet sauces, toppings, and syrups; and alcoholic beverages on December 1, 1994 (59 FR 61538, 61540, 61543) and on May 3, 1995 (60 FR 21700).

[2] In its 1988 objections to the dry uses final rule, CSPI objected to the agency conclusions drawn from each of the three long-term safety studies of ACK conducted in rodents and sought revocation of the rule. CSPI asked FDA to consider four separate objections to the rule and to hold a public evidentiary hearing on the issues raised in each of its objections. FDA considered the issues raised by CSPI and responded to them, in detail, in the **Federal Register** of February 27, 1992 (57 FR 6667, ''1992 response to objections''). The agency concluded, after reviewing the objections, that no genuine issues of material fact had been raised that would justify a hearing and, accordingly, denied CSPI's requests for a hearing.

[3] In its 1988 objections to the dry uses final rule, CSPI requested a stay of the rule until the hearing it had also requested could be held. FDA denied both the requests for a hearing and a stay.

[4] Memorandum from M. DiNovi, Chemistry Review Branch, CFSAN, FDA to P. Hansen, Biotechnology Policy Branch, CFSAN, FDA, April 28, 1994 (Ref. 1 in the alcoholic beverages final rule).

[5] Specifically, in its original review of the safety of ACK, FDA concluded that a review of animal feeding studies showed that there is no association between neoplastic disease (cancer) and consumption of this additive (53 FR 28379 at 28380 and 28381, July 28, 1988). FDA also established an acceptable daily intake (ADI) for ACK, based on the information from the animal feeding studies. Based on all of the information before it, FDA concluded that ACK was safe for the uses proposed in the original petition.

In its evaluation of the safety of ACK for use in alcoholic beverages, FDA considered, among other things, various conditions relevant to the proposed use. One consideration was whether an individual's estimated daily intake (EDI) of ACK would be less

Continued

CSPI's objection to the alcoholic beverages final rule does not provide any new evidence or identify any evidence that FDA overlooked in previous evaluations that would call into question FDA's determination of safety. Moreover, CSPI has not provided a basis for concluding that the information FDA has evaluated is inadequate to support a finding that the use of ACK in alcoholic beverages is safe. Thus, with respect to this issue, CSPI has not provided any basis for FDA to revoke the alcoholic beverages final rule.

B. Long-Term Testing; Breakdown Products of ACK

As previously noted, in CSPI's objection to the alcoholic beverages final rule, the organization requests that FDA require long-term animal testing of the breakdown products of ACK.[6] CSPI's submission does not, however, provide any information to support its view that such testing is necessary to establish the safety of ACK for use in alcoholic beverages. Because CSPI's submission provides no information to support its request, it provides no basis for FDA to reconsider its decision to issue the alcoholic beverages final rule. Thus, the agency is overruling this aspect of CSPI's objection and is denying the request that FDA require additional testing of the breakdown products of ACK.

C. Long-Term Testing; ACK

In its objection to the alcoholic beverages final rule, CSPI also asks that FDA require additional long-term testing of ACK.[7] CSPI alleges that ''* * * technical flaws render several key safety studies inadequate, and * * * available evidence suggests that acesulfame potassium may pose a cancer risk'' and mentions four specific issues with respect to the existing long-term animal testing of ACK, quoting directly from its objections to the dry uses final rule. In support of this aspect of its objection to the alcoholic beverages final rule, CSPI submitted a copy of its objections to the dry uses final rule. CSPI asked FDA to ''* * * reconsider and act favorably on our 1988 objections.''

One of the issues raised by CSPI in its June 1, 1995, letter concerns the adequacy of one of the long-term studies of ACK that was conducted in rats: ''* * * the doses of acesulfame potassium given in the petitioner's second long-term rat study were too low to make that study adequate to show that the chemical does not cause cancer in rats * * *.'' CSPI raised exactly the same issue in its objections to the dry uses final rule, and FDA responded, in detail, to this issue in the agency's 1992 response to objections.[8] In its objection to the alcoholic beverages final rule, CSPI provides no additional evidence or analysis to support its assertion regarding dosing. Thus, the agency incorporates its 1992 discussion of the dosing in the second rat study, in full, into the present response. Specifically, FDA reaffirms its earlier determination that the dosing levels in this study were appropriate to evaluate the safe use of ACK, and that this study demonstrated the safety of ACK (57 FR 6667 at 6669, see also 53 FR 28379, 28380).

Once an issue has been considered in a prior proceeding, a party is estopped from raising that same issue in a subsequent proceeding in the absence of new evidence.[9] Because CSPI's objection to the alcoholic beverages final rule neither identifies nor contains any new evidence or new analysis to support its assertion that the dosing in the second rat study was inadequate, it provides no basis for reconsideration of this issue by FDA. Moreover, CSPI's objection does not provide any information that links this issue to FDA's determination that the use of ACK in alcoholic beverages is safe and, thus, provides no basis for FDA to revoke the alcoholic beverages final rule.

Another issue raised by CSPI in its June 1, 1995, letter concerns the adequacy of the long-term study of ACK that was conducted in mice: ''* * * the petitioner's long-term mouse study fell short of FDA guidelines and standards because: (1) A subchronic study needed to set the proper high dose was not done, and the high dose used was too low, and (2) the chronic study lasted only 80 weeks, not the minimum 104 weeks * * *.'' CSPI made precisely the same claims in its objections to the dry uses final rule, and FDA responded, in detail, to this issue in the agency's 1992 response to objections.[10] In its objection to the alcoholic beverages final rule, CSPI provides no additional evidence or analysis to support its assertions regarding dosing and study length. Thus, the agency incorporates its 1992 discussion of the mouse study, in full, into the present response. Specifically, FDA reaffirms its earlier determination that both the length of, and the dosing in, the mouse study were adequate for an assessment of ACK's carcinogenic potential and that the mouse study demonstrated the safety of ACK (57 FR 6667 at 6669, see also 53 FR 28379, 28380).

As noted, once an issue has been considered in a prior proceeding, a party is estopped from raising that same issue in a subsequent proceeding in the absence of new evidence. Because CSPI's objection to the alcoholic beverages final rule neither identifies nor contains any new evidence or new analysis to support its assertion that the mouse study was inadequate, it provides no basis for reconsideration of

than the ADI that had been previously established from toxicological information. The agency concluded that the EDI for ACK resulting from its use in alcoholic beverages, as well as all uses listed at that time and other uses in a pending petition, was well below the ADI. On the basis of all the information before it, FDA concluded that the proposed use in alcoholic beverages was safe.

[6] These products are acetoacetamide-N-sulfonic acid (AAS) and acetoacetamide (AAA).

[7] As discussed in detail in the dry uses final rule (53 FR 28379 at 28380), the safety data originally submitted by the petitioner included a feeding study performed in mice and a feeding study performed in rats. FDA concluded that the mouse study was adequate for the safety evaluation of ACK, but that the rat study (''the first rat study'') was inadequate for a safety evaluation of ACK. The petitioner then conducted a second feeding study in rats (''the second rat study''); the agency concluded that this second rat study was adequate to assess the safety of ACK. The agency also concluded that the results of the second rat study, together with the results of the mouse study, established that there was no association between neoplastic disease (cancer) and consumption of ACK.

[8] In the 1992 response to objections (57 FR 6667 at 6669) FDA denied CSPI's request for a hearing on this issue because the data and information identified by CSPI in support of this objection, even if established at a hearing, would not have been adequate to justify resolution, in CSPI's favor, of the factual questions about adequacy of dosing. Because the information cited was not sufficient to establish CSPI's factual assertion, a hearing was not granted on this issue (see § 12.24(b)(3)).

[9] Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality are validly applied to the administrative process. In explaining why these principles ''self-evidently'' ought to apply to an agency proceeding, the D.C. Circuit wrote: ''The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.'' (*Retail Clerks Union, Local 1401, R.C.I.A.* v. *National Labor Relations Board*, 463 F.2d 316, 322 (D.C. Cir. 1972). (See *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980), *reh. den.*, 445 U.S. 947 (1980). See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1966))).

[10] In the 1992 response to objections (57 FR 6667 at 6669 through 6670) FDA denied CSPI's request for a hearing on this objection because the data and information identified by CSPI in support of this objection, even if established at a hearing, would not have been adequate to justify resolution, in CSPI's favor, of the factual questions about the duration of, and dosing used in, this study. Because the information cited was not sufficient to establish CSPI's factual assertion, a hearing was not granted on this issue (see § 12.24(b)(3)).

this issue by FDA. Moreover, CSPI's objection does not provide any information that would link this issue to FDA's determination that the use of ACK in alcoholic beverages is safe and, thus, provides no basis for FDA to revoke the alcoholic beverages final rule.

A third issue raised by CSPI in its June 1, 1995, letter concerns the results of the first rat study: ''* * * the petitioner's first long-term rat study shows that acesulfame potassium induced tumors in rats, even though design flaws biased this study against finding carcinogenicity* * *.'' CSPI has raised this particular issue twice before, once as a comment on the petition that supported the dry uses final rule and once as an objection to the dry uses final rule. FDA considered this issue and addressed it in the dry uses final rule; FDA also responded, in detail, to this issue in the agency's 1992 response to objections.[11] In its objection to the alcoholic beverages final rule, CSPI provides no additional evidence or analysis to support its claim that ACK induced tumors in the animals used in the first rat study. Thus, the agency incorporates both of its earlier discussions of this issue (from both the dry uses final rule and the agency's 1992 response to objections), in full, into the present response. Specifically, the agency reaffirms its earlier determination that the data and information from the first rat study do not establish a carcinogenic effect of ACK (57 FR 6667 at 6670).[12]

Again, because this particular issue has been considered in a prior proceeding, CSPI is estopped from raising that same issue subsequently in the absence of new evidence. Because CSPI's objection to the alcoholic beverages final rule neither identifies nor contains any new evidence or new analysis to support its assertion that the first rat study shows that ACK induces tumors in rats, it provides no basis for reconsideration of this issue by FDA. Moreover, CSPI's objection does not provide any information that would undermine FDA's determination that the use of ACK in alcoholic beverages is safe and, thus, provides no basis for FDA to revoke the alcoholic beverages final rule.

A fourth issue raised by CSPI in its June 1, 1995, letter concerns the results of the second rat study: ''* * * the second long-term rat study shows that acesulfame potassium induces tumors in rats * * *.'' CSPI raised precisely this same issue in its objections to the dry uses final rule, and FDA responded, in detail, to this issue in the agency's 1992 response to objections.[13] In its objection to the alcoholic beverages final rule, CSPI provides no additional evidence or analysis to support its assertion regarding the results of the second rat study. Thus, the agency incorporates its 1992 discussion of the results of the second rat study, in full, into the present response. Specifically, FDA reaffirms its earlier determination that the second rat study did not demonstrate an association between the occurrence of tumors and treatment with ACK (57 FR 6667 at 6674, see also 53 FR 28379 at 28380 and 28381).

Once an issue has been considered in a prior proceeding, a party is estopped from raising that same issue in a subsequent proceeding in the absence of new evidence. Because CSPI's objection to the alcoholic beverages final rule neither identifies nor contains any new evidence or new analysis to support its assertion that the second rat study shows that ACK induces tumors in rats, it provides no basis for reconsideration of this issue by FDA. Moreover, CSPI's objection provides no information that would call into question FDA's determination that the use of ACK in alcoholic beverages is safe and, thus, provides no basis for FDA to revoke the alcoholic beverages final rule.

V. Conclusions

The safety of ACK has been thoroughly tested and the data have been reviewed by the agency. As discussed previously, FDA concluded that the available data and information establish the safety of ACK as a nonnutritive sweetener in alcoholic beverages.

The petitioner has the burden to demonstrate safety before FDA can approve a particular use of a food additive. Nevertheless, once the agency makes a finding of safety in an approval document, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion (*American Cyanamid Co.* v. *FDA*, 606 F2d. 1307, 1314–1315 (D.C. Cir. 1979)).

CSPI has not identified any information in the record to support its claim that the FDA incorrectly concluded that the use of ACK in alcoholic beverages is safe. Nor has CSPI established that the agency overlooked significant information in reaching its conclusion. Indeed, the objection has not presented any information or analysis that has not already been carefully reviewed and weighed by the agency. FDA has determined that the objection provides no basis for FDA to revoke the alcoholic beverages final rule or to require additional safety testing. Accordingly, FDA is overruling the objection.

FDA is confirming May 3, 1995, as the effective date of the amendment to the regulation.

Dated: June 29, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

[FR Doc. 98–17701 Filed 6-30-98; 10:34 am]

BILLING CODE 4160–01–F

[11] CSPI claimed that there were increased incidences in lymphoreticular tumors and several types of other tumors; CSPI also disputed FDA's reasons for concluding that this study was inadequate for a safety evaluation of ACK. FDA considered and addressed all of the points in this objection in the 1992 response to objections (57 FR 6667 at 6670 to 6677). FDA denied CSPI's request for a hearing on this objection on several different grounds, specifically, a threshold burden of identifying specific evidence was not met (see § 12.24(b)(2)), the data and information identified were insufficient to justify the factual determination in CSPI's favor (see § 12.24(b)(3)), and the factual issues identified were not determinative with respect to the action requested (see § 12.24(b)(4)).

[12] Because of deficiencies and confounding factors in the first rat study, FDA further concluded that this study is ''inadequate for assessing the carcinogenic potential of the test compound or for any other purposes of a safety evaluation'' (53 FR 28379 at 28381). As noted, the petitioner subsequently performed a second study in a different strain of rat.

[13] CSPI identified two issues in this objection: (1) The incidence of rare tumors and (2) the incidence of mammary gland tumors. CSPI also raised four separate points with regard to the occurrence of mammary tumors. FDA considered and addressed all of the points in this objection in the 1992 response to objections (57 FR 6667 at 6674 through 6675). FDA denied CSPI's request for a hearing on this objection on several different grounds: (1) A threshold burden of identifying specific evidence was not met (see § 12.24(b)(2)), (2) the data and information identified were insufficient to justify the factual determination in CSPI's favor (see § 12.24(b)(3)), and (3) the factual issues identified were not determinative with respect to the action requested (see § 12.24(b)(4)).

DEPARTMENT OF STATE

22 CFR Parts 40 and 41

[Public Notice 2800]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Place of Application

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule; correction.

SUMMARY: This document confirms as a final rule the interim rule published on January 7, 1998, that establishes the venue for a nonimmigrant visa application by an applicant whose previous nonimmigrant visa has been voided due to an overstay of an authorized period of admission. This

notice also contains a correction of a citation in the interim rule.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: An interim rule implementing the new subsection 222(g) of the Immigration and Nationality Act (INA), and requesting comments, was published on January 7, 1998 [63 FR 669]. The period for comments has expired; no comments have been received. The rule will thus stand as originally published, with a correction of the reference to INA 214(k) in 22 CFR 41.101(c)(1) which should read 214(l). As there are now two 214(l)'s in the INA, this reference is to the first one, i.e., the subsection relating to a waiver of the 2-year foreign residence requirement.

As the final regulation is identical to the interim regulation other than for the correction of a citation, it is not being reprinted in full herein.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, the interim rule amending 22 CFR parts 40 and 41 which was published at 63 FR 669 on January 7, 1998, is adopted as a final rule with the following change:

PART 41—[CORRECTED]

1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

§ 41.101 [Corrected]

2. In § 41.101(c)(1), correct the reference to ''INA 214(k)'' to read ''INA 214(l)''.

Dated: May 20, 1998.

Donna J. Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–17735 Filed 7–2–98; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300666; FRL–5794–6]

RIN 2070–AB78

Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pyriproxfen in or on cotton seed and cotton gin byproducts. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective July 6, 1998. Objections and requests for hearings must be received by EPA on or before September 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300666], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300666], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300666]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6411, e-mail: tavano.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 6, 1998 (63 FR 11240) (FRL–5777–5), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6F4737) for tolerance by Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596. This notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.534 be amended by establishing tolerances for combined residues of the insecticide, pyriproxfen, in or on cotton seed and cotton gin byproducts at 0.05 and 2.0 parts per million (ppm) respectively.

I. Risk Assessment and Statutory Findings

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

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

A. Toxicity

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

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

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

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

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

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

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

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

B. Aggregate Exposure

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

of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine and to make a determination on aggregate exposure, consistent with section 408(b)(2), tolerances for combined residues of pyriproxfen on cotton seed and cotton gin byproducts at 0.05 and 2.0 ppm respectively EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine are discussed below.

1. *Acute toxicity— Acute toxicity studies with technical pyriproxyfen*. Oral LD_{50} in the rat is >5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category IV; dermal LD_{50} in the rabbit at >2,000 mg/kg - Toxicity Category IV; inhalation LC_{50} in the rat is >1.3 mg/L (highest dose attainable) - Toxicity Category III; primary eye irritation in the rabbit (mild irritatant) - Toxicity Category III; primary dermal irritation in the rabbit (not an irritant: non-irritating to the skin under conditions of test))- Toxicity Category IV. Pyriproxyfen is not a sensitizer.

2. *Subchronic toxicity*— i. *Rats*. In the subchronic feeding study in rats, the no-observed effect level (NOEL) was 27.68 mg/kg/day. The lowest oberved effect level (LOEL) was 141.28 mg/kg/day, based upon higher mean total cholesteral and phospholipids, decreased mean RBCs, hematocrit and hemoglobin counts and increased relative liver weight.

ii. *Dogs*. In the subchronic feeding study in dogs, the NOEL was 100 mg/kg/day and the LOEL was 300 mg/kg/day. The effects were based on increased absolute and relative liver weight in males and hepatocellular hypertrophy in females. These findings were also observed at 1,000 mg/kg/day and may represent adaptive changes at both 300 mg/kg/day and the limit dose of 1,000 mg/kg/day.

iii. *Dermal study - Rats*. In a 21-day dermal study in rats, the NOEL for systemic effects was >1,000 mg/kg/day (limit dose). The LOEL for systemic effects was not established in this study. No dermal or systemic toxicity was observed at any dose tested.

3. *Chronic toxicity/carcinogenicity*— i. *Dogs*. In a one-year chronic feeding study in dogs, the NOEL was 100 mg/kg/day. The LOEL was 300 mg/kg/day based on decreased weight gain, increased absolute and relative liver weight, mild anemia, increased cholesterol and triglycerides.

ii. *Mice*. The oncogenicity study in mice the NOEL and LOEL for systemic toxicity in males are 600 ppm and 3,000 ppm, respectively, based on an renal lesions in males. The technical grade test material was given to male and female CD-1 mice in diet for 18 months at 0, 120, 600, or 3,000 ppm. No statistically significant increase in tumor incidence relative to controls were observed in either sex at any does up to 3,000 ppm (highest dose tested).

iii. *Rats*. In the chronic feeding/oncogenicity study in rats, the NOEL (systemic) was 35.1 mg/kg/day and the LOEL (systemic) was 182.7 mg/kg/day. The technical grade test material was administered to male and female Sprague-Dawley rats in diet for 24 months at 0, 120, 600, or 3,000 ppm. A decrease of 16.9% in bogy weight gain in females at 3,000 ppm (182.7 mg/kg/day) was basis for the systemic LOEL.

4. *Developmental toxicity*— i. *Rabbits*. In the developmental study in rabbits, the maternal NOEL/LOEL for maternal toxicity were 100 and 300 mg/kg/day based on premature delivery/abortions, soft stools, emaciation, decreased activity and bradypnea. The developmental NOEL was determined to be 300 mg/kg/day and developmental LOEL was determined to be undetermined; no dose related anomalies occurred in the 4 remaining litters studied at 1,000 mg/kg/day.

ii. *Rats*. In the developmental study in rats, a maternal NOEL/LOEL were determined to be 100 mg/kg/day and 300 mg/kg/day, respectively. These findings were based on increased incidences in mortality and clinical signs at 1,000 mg/kg/day with decreases in food consumption, body weight, and body weight gain together with increases in water consumption at 300 and 1,000 mg/kg/day. The developmental NOEL/LOEL were 100 mg/kg/day and 300 mg/kg/day based on the increase of skeletal variations at 300 mg/kg/day and above.

5. *Reproductive toxicity*. In a two-generation reproduction study in rats, the systemic NOEL was 1,000 ppm (87 mg/kg/day). The LOEL for sytemic toxicity was 5,000 ppm (453 mg/kg/day). Effects were based on decreased body weight, weight gain and food consumption in both sexes and both generations, and increased liver weights in both sexes associated with liver and kidney histopathology in males. The reproductive NOEL was 5,000 ppm. A reproductive LOEL was not established.

6. *Mutagenicity*. Studies on gene mutation and other genotoxic effects: In a Gene Mutation Assay (Ames Test)/Reverse Mutation, finding were determined as negative for induction of gene mutation measured as the reversion to histine protrophy of 5 *S.typhimurium* strains and *E.Coli* WP2 uvra at doses from 10 to 5,000 µg/plate with & without S-9 activation. The highest dose was insoluble. A Gene Mutation assay in Mammalian Cells was found to be negative f or mutagencity in CHO (Chinese hamster ovary) V79 cells with and without metabolic activation up to cytotoxic doses (300 µg/mL). In a Structural Chromosomal Aberration Assay *in vivo*, findings proved nonclastogenic in CHO cells both with and without S-9 activation up to cytotoxic doses (300 µg/mL). In Other Genotoxicity Assays, an increase in unscheduled DNA synthesis was not induced both with and without activation in HeLa cells exposed up to insoluble doses ranging to 6.4 µg/mL (without activation) and 51.2 µg/mL (with activation).

7. *Metabolism*. The results of the metabolism studies are as follows:

Acceptable: Rats were orally dosed with ^{14}C-labeled pyriproxyfen at 2 or

1,000 mg/kg and at repeated oral doses (14 daily doses) of unlabeled pyriproxyfen at 2 mg/kg followed by administration of a single oral dose of labeled pyriproxyfen at 2 mg/kg. Most radioactivity was excreted in the feces (81-92%) and urine (5-12%) over a 7 day collection period. Expired air was not detected. Tissue radioactivity levels were very low (less than 0.3%) except for fat. Examination of urine, feces, liver, kidney, bile and blood metabolites yielded numerous (>20) identified metabolites when compared to synthetic standards. The major biotransformation reactions of pyriproxyfen include: (i) Oxidation of the 4′ - position of the terminal phenyl group; (ii) oxidation at the 5′ - position of pyridine; and (iii) cleavage of the ether linkage and conjugation of the resultant phenols with sulfuric acid.

8. *Neurotoxicity*. Neurotoxicity has not been observed in any of the acute, subchronic, chronic, developmental or reproductive studies performed with pyriproxyfen.

B. Toxicological Endpoints

1. *Acute toxicity*. An acute dietary dose and endpoint was not identified in the database. The Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

2. *Short - and intermediate - term toxicity*. Doses and endpoints were not identified for short and intermediate-term dermal and inhalation exposure. The Agency concludes that there are reasonable certainties of no harm from these exposures.

3. *Chronic toxicity*. EPA has established the RfD for pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine at 0.35 mg/kg/day. This RfD is based on a NOEL of 35.1 mg/kg/day and an uncertainty factor (UF) of 100. The NOEL was established from the combined chronic feeding/oncogenicity study in rats where the LOEL was 3,000 ppm, based on a 16.9% decrease in body weight gain in females when compared to controls.

4. *Carcinogenicity*. Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

C. Exposures and Risks

1. *From food and feed uses*. In today's action tolerances will be established (40 CFR 180.534) for the combined residues of pyriproxfen, in or on the raw agricultural commodities: cotton seed and cotton gin byproducts at 0.05 and 2.0 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk*. The chronic dietary exposure analysis from food sources was conducted using the RfD of 0.35 mg/kg/day. The RfD is based on the NOEL of 35.1 mg/kg/day in male and female rats from the Chronic Feeding/Oncogenicity study in rats, and an uncertainty factor of 100 applicable to all population subgroups.

In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of cottonseed having pyriproxyfen tolerances will contain pyriproxyfen residues and those residues will be at the level of the established tolerance. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing pyriproxyfen tolerances (published, pending, and including the necessary Section 18 tolerances) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD: U.S. population (48 states) 0.00029%; Nursing infants (< 1 year old) 0.00003%; Non-nursing infants (< 1 year old) 0.00009%; Children (1-6 years old) 0.00053%; Children (7-12 years old) 0.00045%; Non-Hispanic Whites 0.00030%; Males (13-19 years old) 0.00032%.

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water*— i. *Acute exposure and risk*. As previously stated, no acute dietary endpoint was identified for assessment of acute dietary risk. Thus the risk from acute exposure is considered to be negligible.

ii. *Chronic exposure and risk*. No monitoring data is available to perform a quantitative drinking water risk assessment for pyriproxyfen at this time. Thus, the GENEEC model and the SCI-GROW model were run to produce estimates of pyriproxyfen concentrations in surface and ground water respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which OPP has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of concern (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which OPP has reliable data.

For chronic (non-cancer) exposure to pyriproxyfen in surface and ground water, the drinking water levels of concern are 12,250 g/L for males (13 yrs+), 10,500 g/L for females (13 yrs+) and 3,500 g/L for children (1-6 yrs). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DRES) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to pyriproxyfen in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated average concentrations of pyriproxyfen in surface and ground water are 0.011 ppb (after adjustment for the highly conservative nature of the GENEEC model and 0.006 ppb, respectively). The estimated average concentrations of pyriproxyfen in surface and ground water are less than OPP's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of pyriproxyfen in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure*. Pyriproxyfen is the active ingredient in many registered residential (indoor, non-food) products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars). Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine is currently registered for use on the following residential non-food sites: indoor premise, pet bedding, dogs and cats.

i. *Acute exposure and risk*. An acute dietary dose and endpoint was not

identified. Thus the risk from acute aggregate exposure is considered to be negligible.

ii. *Chronic exposure and risk.* Long-term exposure to pyriproxyfen in residential use products is not expected. Therefore there is no chronic risk. Consumer use of these products typically results in short-term, intermittent exposures.

iii. *Short- and intermediate-term exposure and risk.* The Agency concludes that there is reasonable certainty of no harm from short term and intermediate-term dermal and inhalation occupational and residential exposure due to the lack of significant toxicological effects observed.

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

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

EPA does not have, at this time, available data to determine whether pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine from food will utilize 0.0003% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old). See discussion below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are currently no chronic residential scenarios. The estimated average concentrations of pyriproxyfen in surface and ground water are less than OPP's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time when considering the present uses and uses proposed by this action.

E. Aggregate Cancer Risk for U.S. Population

Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

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

1. *Safety factor for infants and children*— i. *In general* . In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* In the rat developmental study, the developmental NOEL was 100 mg/kg/day and the maternal NOEL was 100 mg/kg/day. Therefore, there was no prenatal developmental toxicity in the presence of maternal toxicity. Similarly in rabbits, the prenatal developmental NOEL was 300 mg/kg/day and the maternal NOEL was 300 mg/kg/day. Therefore, prenatally exposed fetuses were not more sensitive to the effects of pyriproxyfen than maternal animals.

iii. *Reproductive toxicity study.* In the rat reproduction study, the parental NOEL of 1,000 ppm was identical to the pup NOEL of 1,000 ppm and decreased body weight was seen in both pup and parental animals. This finding demonstrates that there are no extra sensitivities with respect to pre- and post-natal toxicity between adult and infant animals.

iv. *Pre- and post-natal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to pyriproxyfen.

v. *Conclusion.* The 10x factor for infants and children (as required by FQPA) was removed, since there was no special sensitivity for infants and children and the data base is complete. For chronic dietary risk assessment, a UF of 100 is adequate for protection from exposure to pyriproxyfen.

2. *Acute risk.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine from food will utilize 0.00053% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are currently no chronic residential scenarios. The estimated average concentrations of pyriproxyfen in surface and ground water are less than OPP's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, OPP concludes with reasonable certainty that residues of pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time when considering the present uses and uses proposed by this action. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine residues.

4. *Short- or intermediate-term risk.* Short-term and intermediate-term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed.

III. Other Considerations

A. Metabolism In Plants and Animals

EPA considers the nature of the residue in cotton to be adequately understood. Metabolism of pyriproxyfen in cotton proceeds through hydroxylation and cleavage of the phenoxy ether linkage, with additional metabolism by oxidation and conjugation reactions. Much of the metabolized pyriproxyfen is reincorporated into natural products. The HED Metabolism Committee previously issued a tentative conclusion (15-JUL-1996) that the residue of concern in plants is pyriproxyfen *per se*. A meeting of the Chemistry Science Advisory Council (25-FEB-1998) confirmed this conclusion for cotton and determined that future food uses involving pyriproxyfen should be reviewed by the HED Metabolism Committee. Metabolism of phenyl-^{14}C pyriproxyfen in poultry proceeds through hydroxylation of the phenoxyphenyl ring, sulfation of the 4′-OH phenoxyphenyl moiety, hydroxylation of the pyridyl ring, and cleavage of the ether linkage. Metabolism of pyridyl-^{14}C pyriproxyfen in poultry proceeds through hydroxylation of the phenoxyphenyl ring, sulfation of the 4′-OH phenoxyphenyl moiety, hydroxylation of the pyridyl ring, cleavage of the ether linkage and oxidation of the side chain. EPA concludes that the nature of the residue in poultry is adequately understood, and that tolerances are not needed.

Metabolism of phenyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, and cleavage of the ether linkage. Metabolism of pyridyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, cleavage of the ether linkage and oxidation of the side chain. EPA concludes that the nature of the residue in ruminants is adequately understood for this present use and that tolerances are not required.

B. Analytical Enforcement Methodology

Residue analytical method RM-33P-2 has undergone validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances.

The multiresidue method will serve as a confirmatory method for residues of pyriproxyfen.

C. Magnitude of Residues

Based on the radioactive metabolic studies and the calculated dietary burden, EPA concludes that the proposed uses on cotton fall under 40 CFR 180.6(a)(3) since there is no reasonable expectation of finite residues in meat, milk, poultry, and eggs and thus tolerances are not required at this time. If additional uses are sought that could result in greater livestock dietary exposure from feedstuffs, the need for milk, meat, poultry and eggs tolerances will be reassessed.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances for pyriproxyfen residues on cottonseed or cotton gin byproducts. Therefore, international harmonization is not an issue at this time. Pyriproxyfen is scheduled as a new compound for JMPR review (both toxicology and residue chemistry) in 1999.

E. Rotational Crop Restrictions

An acceptable confined accumulation in rotational crops study with Ph-^{14}C and Py-^{14}C pyriproxyfen was submitted . The study showed no significant uptake (<0.01 ppm) of radioactive residues (pyriproxyfen) by lettuce, radish, or wheat. The majority of the ^{14}C was found in the unextractable material in the post extraction solids. These findings indicated that the ^{14}C has been reincorporated in other, non-pyriproxyfen related compounds. Therefore a plant back interval is not necessary for cotton treated with pyriproxyfen.

IV. Conclusion

Therefore, tolerances are established for combined residues of pyriproxfen in cotton seed and cotton gin byproducts at 0.05 and 2.0 ppm respectively.

V. Objections and Hearing Requests

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

Any person may, by September 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300666] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

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

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

VIII. Submission to Congress and the 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. 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).

List of Subjects in 40 CFR Part 180

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

Dated: June 18, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. Section 180.534 is added to subpart C to read as follows:

§ 180.534 Pyriproxyfen; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the insecticide pyriproxyfen in or on the following agricultural commodities:

Commodity	Parts per million
Cotton gin byproducts ...	2.0

Commodity	Parts per million
Cottonseed	0.05

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

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

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

[FR Doc. 98–17729 Filed 7-2-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2362; Amdt. 195–62]

RIN 2137—AD05

Pipeline Safety: Incorporation by Reference of Industry Standard on Leak Detection

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This rule adopts as a referenced document an industry publication for pipeline leak detection, API 1130, ''Computational Pipeline Monitoring,'' published by the American Petroleum Institute (API). This rule requires that an operator of a hazardous liquid pipeline use API 1130 in conjunction with other information, in designing, evaluating, operating, maintaining, and testing its software-based leak detection system. The use of this document will significantly advance the acceptance of leak detection technology on hazardous liquid pipelines. However, this rule does not require operators to install such systems.

DATES: This final rule takes effect July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov regarding the subject matter of this final rule, or Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket. Further information can be obtained by accessing OPS' Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background on Requiring Leak Detection Equipment

A. Congressional Mandate To Issue Regulations

Congress, in section 212 of the Pipeline Safety Act of 1992 (codified at 49 U.S.C. 60102(j)), required the Secretary of Transportation, by October 24, 1994, to survey and assess the effectiveness of emergency flow restricting devices (EFRDs) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities. Congress further mandated that the Secretary issue regulations two years after completing the survey and assessment (no later than October 24, 1996). These regulations would prescribe the circumstances under which hazardous liquid pipeline operators would use EFRDs or other procedures, systems, and equipment used to detect and locate pipeline ruptures and minimize product releases from pipeline facilities. The Secretary delegated this authority to the Research and Special Programs Administration (RSPA).

B. Advance Notice of Proposed Rulemaking, Volpe Center Report and Public Workshop

RSPA used several means to gather information on EFRDs and leak detection equipment. We issued an advance notice of proposed rulemaking (ANPRM) (59 FR 2802, Jan. 19, 1994) to solicit information primarily from hazardous liquid pipeline operators about operational data and costs related to EFRDs and about the performance of leak detection systems to detect and locate hazardous liquid pipeline ruptures and minimize product release. The ANPRM also sought information to help determine which critical pipeline locations should be protected from product releases. Commenters provided limited usable data and generally opposed requiring leak detection equipment and EFRDs.

We contracted with the Volpe National Transportation Systems Center (Volpe Center) to conduct a research study on SCADA [1] systems, including leak detection systems. Its report, ''Remote Control Spill Reduction Technology: A Survey and Analysis of Applications for Liquid Pipeline Systems'' (September 29, 1996), found that because of the pipeline industry's diversity, each system used for leak detection must be custom configured for a particular pipeline system, that SCADA and leak detection systems were dependent on the sophistication of the host computer and how rapidly and diverse remote field data can be collected, and that operators have invested in SCADA systems, but have invested much less in software-based leak detection systems.

RSPA also held a public workshop on October 19, 1995, to obtain more data on EFRDs and leak detection systems. Participants confirmed the Volpe Center report's finding that each leak detection system is unique to the pipeline on which it is installed. Discussions included operational and economic problems with leak detection systems, as well as their operational, economic and environmental benefits.

Detailed discussion of the ANPRM, Volpe Center report, and workshop can be found at 62 FR 56141; October 29, 1997.

C. Development of API 1130

In 1994, the API formed a task force to develop a document on computational pipeline monitoring (CPM). The task force produced API 1130, entitled ''Computational Pipeline Monitoring,'' which addressed the use of software-based leak detection equipment. API 1130 defines computational pipeline monitoring as ''an algorithmic monitoring tool that allows the pipeline controller to respond to a pipeline operating anomaly which may be indicative of a commodity release.'' The document's stated purpose is to assist the pipeline operator in selecting, implementing, testing, and operating a CPM system, and to help to identify the complexities, limitations, and other implications of detecting anomalies on liquid pipelines using CPM systems.

RSPA and the Volpe Center staff monitored the task force's work. Minutes of the task force meetings, and copies of final drafts of API 1130, are available in Docket No. PS–133.

D. Definition of Areas Unusually Sensitive to Environmental Damage

Congress required that in prescribing standards, RSPA identify the circumstances where EFRDs and other equipment must be installed. RSPA's current policy is to base regulations on risk assessment. We believe that a

[1] SCADA is an acronym for Supervisory Control and Data Acquisition. SCADA systems utilize computer technology to continuously gather data (e.g., pressure, temperature, and delivery flow rates) from remote locations on the pipeline. Dispatchers use SCADA systems to assist in day-to-day operating decisions on the pipeline. SCADA systems can also provide input for real-time models of the pipeline operation. Such models compare current operating conditions with calculated data values. A deviation may indicate the possibility of a leak.

primary high risk circumstance would be where a pipeline is located in an environmentally sensitive area.

RSPA has been conducting public workshops since 1995 to identify a subset of environmentally sensitive areas, areas unusually sensitive to environmental damage, or USAs. Because of this ongoing regulatory effort to define USAs and the definition's relevance to locating EFRDs, RSPA has decided to wait before proposing a rule prescribing where leak detection systems would be required.

E. First Step

Although RSPA has delayed proposing the circumstances where EFRDs and other equipment must be installed on hazardous liquid pipeline systems until it has an USA definition, RSPA did not want to delay addressing the safety and environmental advantages of using software-based leak detection technology to reduce releases from pipeline ruptures.

Pipeline safety regulations do not require hazardous liquid pipeline operators to meet any leak detection system performance standards. Thus, as a first step in RSPA's statutory requirement to issue regulations prescribing where hazardous liquid pipeline operators would use EFRDs or other leak detection systems, RSPA considered adopting API 1130. RSPA would adopt API 1130 and require operators to use it in operating, maintaining, and testing their existing software-based leak detection systems and in designing and installing new software-based leak detection systems or replacing components of existing systems. RSPA considered this action because—

(1) We monitored the development of API 1130 and its development is well documented in Docket No. PS–133. The API task force members who developed API 1130 are experts in the pipeline industry, well versed in leak detection systems.

(2) API 1130 is a comprehensive document that advances safety by providing for more rapid detection of ruptures and response to those ruptures, limiting releases of hazardous liquids.

(3) Adopting API 1130 complies with the spirit of the President's initiative to reduce and simplify regulations by adopting industry-developed standards. Its adoption would not be controversial because the pipeline industry, the primary user, developed the publication.

F. Role of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC)

We proposed adopting API 1130 as a referenced document in the pipeline safety regulations to the THLPSSC at its meeting on November 6, 1996. The THLPSSC is a 15-member Congressionally mandated advisory committee (49 U.S.C. 60115) responsible for reviewing proposed pipeline safety standards for technical feasibility, reasonableness, and practicability. The THLPSSC Chairperson appointed a three-person subcommittee to work with RSPA to provide technical expertise on the feasibility of adopting API 1130. The subcommittee submitted to the THLPSSC Chairperson several recommendations, which THLPSSC accepted:

(1) API 1130 in its entirety should be referenced in the 49 CFR Part 195 regulations.

(2) The operations, maintenance, and testing portions of API 1130 should apply to all existing and newly-installed CPM systems, and API 1130 in its entirety should apply to all newly installed CPM systems and replacement sections of existing CPM systems.

(3) Compliance with API 1130 should be within twelve months of incorporation of the document into the regulations.

(4) The document should apply only to single phase liquid pipelines (see Section 1.3 of API 1130, which limits the document's application to single phase liquid pipelines).

(5) The preamble to the draft and final rule should state that referencing API 1130 is a first step in meeting the requirements of 49 U.S.C. 60102(j), and is not intended to delay issuing additional requirements or actions.

II. Notice of Proposed Rulemaking (NPRM)

A. Proposal

RSPA published an NPRM on October 29, 1997 (62 FR 56141) proposing to incorporate API 1130 into the regulations as a referenced document. The NPRM incorporated THLPSSC's recommendations. The rule proposed requiring an operator of a hazardous liquid pipeline to comply with API 1130 in designing, operating, maintaining, and testing the operator's software-based leak detection system. The proposed rule did not require an operator to install a software-based leak detection system, but proposed that whenever such a leak detection system is installed or a component replaced, API 1130 would have to be followed. Similarly, each existing software-based leak detection system would have to comply with the operating, maintenance, testing, and training provisions of API 1130.

To be consistent with API 1130's scope limitations (Section 1.3), the NPRM limited API 1130's applicability to single-phase liquid pipelines. Pipelines transporting both gas and liquid simultaneously, called dual phase pipelines, are prevalent in offshore operations. A pipeline transports gas and liquid to onshore facilities, where it is more economical to separate the gas and liquid for further transport. Designing a leak detection system for such a pipeline is extremely complex because of the different physical and chemical characteristics of gases and liquids.

The NPRM's comment period closed on December 29, 1997.

B. Discussion of the Comments

Three comments were filed in the docket: two from hazardous liquid operators and one from API.

One operator asked three questions. The first dealt with a ''Special Note'' in API 1130 that API documents are reviewed, revised, reaffirmed, or withdrawn at least every five years. The commenter asked how incorporating API 1130 would affect the hazardous liquid pipeline safety regulations should API not reaffirm the document, and the document was no longer available. We review and revise the regulations periodically to update the references to industry and other voluntary standards. In this rule, we are incorporating the current version of API 1130. An operator will have to comply with this version of the document until we revise the rule. Whatever API does with API 1130 in the future will not affect an operator's compliance with the version we are incorporating.

The second question concerned the use of CPM systems not described in section 4.1.2 of API 1130. Section 4.1.2 describes seven CPM systems: line balance, volume balance, modified volume balance, real time transient mode, pressure/flow monitoring, acoustic/negative pressure wave, and statistical analysis. The commenter asked if CPM systems not described could be used.

API 1130 lists and describes the seven CPM systems that are used by the pipeline industry today. Section 4.1.2 does not limit the use of CPM systems to only those described. Our intent in referencing API 1130 is to include any CPM system, whether or not described in the document, as long as the system meets the requirements of API 1130.

The third question concerned how we would enforce compliance with API 1130. Enforcement strategies are not included in the safety standards, but rather are developed by the RSPA enforcement staff. Each operator who has installed a CPM system will have to demonstrate that it is complying with the requirements in API 1130, as it does with any pipeline safety regulation.

The second operator suggested that the effective date for complying with API 1130 should be 24 months instead of the proposed 12 months. RSPA believes that 12 months is sufficient compliance time for at least three reasons. First, the operator is not required to install a CPM system, just to follow API 1130 if one is installed. Second, our conversations with API indicate that the vast majority of operators who use CPM systems have already adopted the practices embodied in the document. Third, a 12-month compliance timetable follows THLPSSC's recommendation.

API commented on the proposed rule's reference to the CPM selection criteria in section 4.2. API stated that the NPRM can be interpreted as requiring compliance with all the listed criteria in Section 4.2. However, the introduction to Section 4.2 makes clear that no system meets all the criteria. RSPA has revised § 195.134 in the final rule to clarify that all of the selection criteria do not have to be met.

In addition, we have revised the definition for Computation Pipeline Monitoring to clarify that a CPM system alerts the pipeline dispatcher of a possible operating anomaly rather than allows the dispatcher to respond to an operating anomaly. This revision better describes the function of the monitoring tool. Also, § 195.134 has been revised by eliminating the superfluous term ''that will be installed'' referring to new CPM systems.

C. Advisory Committee Review

As mentioned previously, the THLPSSC accepted the subcommittee's recommendation to reference API 1130 in 49 CFR part 195. The NPRM was discussed at the THLPSSC meeting in Houston, Texas, on November 18, 1997. The eight members present voted unanimously to adopt API 1130 as proposed in the NPRM.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by OMB. It is not considered significant under the Department of Transportation Policies and Procedures (44 FR 11034, Feb. 26, 1979).

As THLPSSC recommended, this rule adopts an industry document, API 1130. Our adopting API 1130 should result in leak detection systems that allow for faster leak detection, resulting in reduced commodity loss, lower short-term cleanup costs from releases, and lower long-term remediation costs. The rule does not require an operator to install a CPM if the operator does not already have one. It only requires that an operator with such a system follow API 1130. API 1130 represents good industry practices. Our conversations with API officials confirm that the vast majority of the industry that uses CPM already has adopted these practices.

In the NPRM, RSPA solicited information on any costs to industry of referencing API 1130. No one submitted any information on costs in response to this request. Therefore, RSPA believes that the cost of this regulation will be minimal and that a regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

The rule does not mandate the use of CPM but simply adopts the practices already instituted and developed by industry. Most operators, large, medium and small, with such systems already comply with these requirements and will not incur additional costs. Therefore, based on the facts available, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities.

C. Federalism Assessment

The rulemaking action would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685, Oct. 30, 1987), RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

There are minimal record keeping requirements included in API 1130. This rule does not require an operator to have a CPM. The industry developed API 1130; the vast majority of the industry that uses CPM already has adopted the practices in API 1130. Because the record keeping requirements represent the usual and customary practices of the industry, there is minimal paperwork burden on the public. Nevertheless, RSPA has prepared a paperwork analysis and, on April 1, 1998 submitted it to the Office of Management and Budget (OMB) for review. The estimated annual information collection burden for the entire industry is estimated to be only 100 hours per year.

Comments on the paperwork burden have been solicited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

No comments were submitted in response to the request for comment. OMB approved the information collection and assigned the information collection control number 2137–0598, which is approved through April 30, 2001. Federal agencies are required to publish the OMB control number for information collections in the **Federal Register**. Failure to publish the information collection control number would mean that respondents would not be required to respond to the information collection.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart A—General

2. Section 195.2 is amended by adding the definition for Computational Pipeline Monitoring to read as follows:

§ 195.2 Definitions.

* * * * *

Computation Pipeline Monitoring (CPM) means a software-based monitoring tool that alerts the pipeline dispatcher of a possible pipeline operating anomaly that may be indicative of a commodity release.

* * * * *

3. Section 195.3 is amended by redesignating paragraphs (c)(2)(i) through (c)(2)(iii), as paragraphs (c)(2)(ii) through (c)(2)(iv), and adding a new paragraph (c)(2)(i) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(2) * * *

(i) API 1130 ''Computational Pipeline Monitoring'' (1st Edition, 1995).

* * * * *

Subpart C—Design Requirements

4. Section 195.134 is added to read as follows:

§ 195.134 CPM leak detection.

This section applies to each hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid). On such systems, each new computational pipeline monitoring (CPM) leak detection system and each replaced component of an existing CPM system must comply with section 4.2 of API 1130 in its design and with any other design criteria addressed in API 1130 for components of the CPM leak detection system.

Subpart F—Operation and Maintenance

5. Section 195.444 is added to read as follows:

§ 195.444 CPM leak detection.

Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid) must comply with API 1130 in operating, maintaining, testing, record keeping, and dispatcher training of the system.

Issued in Washington, DC on June 29, 1998.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 98–17721 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 223

[FRA Docket No. PTEP–1, Notice No. 4]

RIN 2130–AA96

Passenger Train Emergency Preparedness; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule correction.

SUMMARY: This document contains a correction to the text of the final rule amending the safety glazing standards for locomotives, passenger cars and cabooses that was issued jointly with the new final rule on passenger train emergency preparedness and was published on Monday, May 4, 1998 (63 FR 24630).

DATES: Effective on July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW., RRS–10, Mail Stop 25, Washington, DC 20590 (telephone number: 202–632–3384), or John A. Winkle, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone number: 202–632–3167).

SUPPLEMENTARY INFORMATION:

Background

In conjunction with promulgating the final rule on passenger train emergency preparedness, FRA revised part 223 of title 49 of the Code of Federal Regulations concerning the safety glazing standards for locomotives, passenger cars, and cabooses. Part of that revision included adding definitions for both Railroad and Person to part 223. During the revision, FRA inadvertently used the incorrect definition of Person. Instead of incorporating the proper definition, which currently appears in the final rule on passenger train emergency preparedness under section 239.7, FRA repeated the definition of Railroad under Person.

Need for Correction

As published, 49 CFR 223.5 does not correctly define *Person* and could cause confusion in determining the scope of the regulation. Thus, that portion of the revised safety glazing standards is in need of clarification.

Correction of Publication

Accordingly, the publication on May 4, 1998, of the modification to the safety glazing standards for locomotives, passenger cars and cabooses, which was contained in FR Doc. 98–11393, is corrected as follows:

§ 223.5 [Corrected]

On page 24675, in the second column, after the definition of Passenger train service, the definition of ''Person'' is corrected to read as follows:

§ 223.5 Definition.

* * * * *

Person includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger, any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

* * * * *

Issued in Washington, DC.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 98–17767 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 63, No. 128
Monday, July 6, 1998

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RIN 0572–AB41

Special Equipment Specifications

AGENCY: Rural Utilities Service, USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation on RUS Telecommunications Standards and Specifications for Materials, Equipment and Construction to add to RUS Form 397, Special Equipment Contract (including installation). This action will amend the Special Equipment Specifications which include RUS Form 397b, Trunk Carrier System Specifications; RUS Form 397c, Subscriber Carrier Specifications; RUS Form 397d, Design Specifications for Point-to-Point Microwave Radio Systems; RUS Form 397e, Design Specifications for Mobile and Fixed Dial Radio Telephone Equipment; RUS Form 397g, Performance Specifications for Line Concentrators; and RUS Form 397h, Design Specifications for Digital Lightwave Transmission Systems. Changes to the Special Equipment Specifications will incorporate the latest technology, remove redundant or outdated requirements, and simplify specification format.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than September 4, 1998.

ADDRESSES: Comments should be mailed to Gary B. Allan, Chief, Transmission Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC, 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection at room 2838 South Building (above address) during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Melanie L. Umstead, Transmission Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC, 20250–1598, telephone number (202) 720–0665, fax (202) 720–4099, e-mail mumstead@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

RUS is considering replacing RUS Form 397b, Trunk Carrier System Specifications; RUS Form 397c, Subscriber Carrier Specifications; RUS Form 397d, Design Specifications for Point-to-Point Microwave Radio Systems; RUS Form 397e, Design Specifications for Mobile and Fixed Dial Radio Telephone Equipment; RUS Form 397g, Performance Specifications for Line Concentrators; and RUS Form 397h, Design Specifications for Digital Lightwave Transmission Systems with two (2) specifications.

One specification will address wireline systems and the other will address wireless systems. The wireline systems specification will address lightwave systems, digital and analog carrier systems, concentrators and related wireline technologies. The wireless systems specifications will address microwave radio systems, wireless local loop systems and other wireless technologies. These specifications will address the latest advances in telecommunications systems and recognize new technologies. The specifications will also recognize established industry standards by removing outdated requirements and incorporating new relevant requirements. RUS is requesting comments from RUS borrowers, consulting engineers, manufacturers and any other interested bodies on recommended changes for special equipment specifications to ensure rural telecommunications networks continue to provide reliable and progressive telecommunications services without an undue burden to the parties involved.

Dated: June 24, 1998.

Jill Long Thompson,
Under Secretary, Rural Development.

[FR Doc. 98–17747 Filed 7–2–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–23–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B and 214B–1 Helicopters

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B and 214B–1 helicopters, that would have established a mandatory retirement life of 15,000 high-power events for the pillow block bearing bolts (bearing bolts). That proposal was prompted by fatigue analyses and tests that show certain bearing bolts fail sooner than originally anticipated because of the unanticipated high number of lifts and takeoffs (torque events) performed with those bearing bolts in addition to the time-in-service (TIS) accrued under normal operating conditions. This action revises the proposed rule by proposing the creation of a component history card using a Retirement Index Number (RIN) system, establishment of a system for tracking increases to the accumulated RIN, and establishment of a maximum accumulated RIN for the bearing bolts. The actions specified by this proposed AD are intended to prevent fatigue failure of the bearing bolts, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 94–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location

between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Edmiston, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5158, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–23–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 94–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39), applicable to BHTI Model 214B and 214B–1 helicopters, was published in the **Federal Register** on May 3, 1993 (58 FR 35902; July 2, 1993). That NPRM would have required changing the method of calculating the retirement life for the bearing bolts, part number (P/N) 20–057–12–48D and P/N 20–057–12–50D, from flight hours to equivalent operating hours based on high-power events calculated using the number of takeoffs and external load lifts, or a maximum of 15,000 high power events, whichever occurred first. That NPRM was prompted by fatigue analyses and tests that show certain bearing bolts fail sooner than originally anticipated because of the unanticipated high number of lifts and takeoffs (torque events) performed with those bearing bolts in addition to the TIS accrued under normal operating conditions. That condition, if not corrected, could result in fatigue failure of the bearing bolts, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, BHTI has issued BHTI Information Letter GEN–94–54, dated April 15, 1994, Subject: Retirement Index Number (RIN) For Cycle Lifed Components, which introduces a different method of accounting for fatigue damage on components that have shortened service lives as a result of frequent torque events. Additionally, BHTI has issued BHTI Alert Service Bulletin (ASB) 214–94–54, dated November 7, 1994, which describes procedures for converting flight hours and total number of torque events into a RIN for the bearing bolts, P/N 20–057–12–48D.

The FAA desires to implement a standardized system to account for the high power torque events and the retirement lives of these bearing bolts. Therefore, the FAA now proposes to require the RIN method of accounting for high power torque events. The proposed AD would require creation of a component history card using the RIN system; establishment of a system for tracking increases to the accumulated RIN; and establishment of a maximum accumulated RIN for the bearing bolts of 17,000 before they must be removed from service.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 54 helicopters of U.S. registry would be affected by this proposed AD, and that it would take (1) 24 work hours per helicopter to replace the affected bearing bolts due to the new method of determining the retirement life; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $224,640 for the first year and $128,520 for each subsequent year. These costs assume replacement of the bearing bolts in the fleet the first year, creation and maintenance of the records for all the fleet; and replacement of one-half of the fleet's bolts, creation of the records for one-half of the fleet, and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Company, Inc. (BHTI): Docket No. 94–SW–23–AD.

Applicability: Model 214B and 214B–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS), unless accomplished previously.

To prevent fatigue failure of the pillow block bearing bolts (bearing bolts), part number (P/N) 20–057–12–48D or –50D, which could result in failure of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a Retirement Index Number (RIN) component history card or an equivalent record for the bearing bolts, P/N 20–057–12–48D or –50D.

(b) Calculate and record on the component history card the historical accumulated RIN for the bearing bolts as follows:

(1) When the type of operation (internal or external load lift), actual flight hours, and number of external load lifts or takeoffs per hour are known, multiply the actual flight hours by the appropriate factor in the following table for external load lift operation:

Average No. of external load lift events per flight hour	Factor
0–2.00	6.8
2.01–5.00	13.6
5.01–16.00	27.2
16.01–27.00	40.8
Above 27.00	54.4

When the type of operation is internal load and no external lifting is involved, each hour of actual operating time is equal to 6.8 RIN.

(2) When the actual flight hours on the bolts are known, but the type of operation (internal or external load lift) is unknown, multiply the actual flight hours by a factor of 40.8.

(3) When the actual flight hours on the bolts are unknown, assume 75 flight hours per month.

(4) When the flight hours on the bolts are assumed, but the type of operation (internal or external load lift) is known,

(i) Multiply the number of flight hours assumed for internal load operations by a factor of 6.8.

(ii) Multiply the number of flight hours assumed for external load operations by a factor of 40.8.

(5) When the flight hours on the bolts are assumed and the type of operation (internal or external load lift) is unknown, multiply the assumed flight hours by a factor of 40.8.

(c) After compliance with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of each lift or takeoff performed and at the end of each day's operations, increase the accumulated RIN on the bearing bolts component history card as follows:

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

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

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin 214–94–54, dated November 7, 1994, pertains to the subject of this AD.

(d) Remove the bearing bolts from service on or before attaining an accumulated RIN of 17,000. The bearing bolts are no longer retired based upon flight hours. If any of the four bolts require replacement for any reason, then all four bolts must be replaced at that time. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the bearing bolts of 17,000 RIN.

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

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

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

Issued in Fort Worth, Texas, on June 23, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–17765 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

RIN 1515–AC29

Boarding of Vessels in the United States

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes, as a primary focus, to amend the Customs Regulations regarding the boarding of vessels arriving in ports of the United States. It is intended that the Customs Regulations regarding this subject accurately reflect and implement amendments to the underlying statutory authority, enacted as part of the Customs Modernization Act, as well as policy determinations necessitated as a result of those amendments. To this same end, certain general amendments are proposed to the regulations concerning vessel entry and clearance as well as the issuance of permits to lade and unlade merchandise.

DATES: Comments must be received on or before September 4, 1998.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

Operational aspects: William Scopa, Office of Field Operations, 202–927–3112.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182), Title VI of which is popularly known as the Customs Modernization Act (the Act). Sections 653 and 656 of the Act significantly amended the statutes governing the entry and the lading and unlading of vessels in the United States. These operations are governed, respectively, by §§ 434 and 448 of the Tariff Act of 1930, as amended (19 U.S.C. 1434 and 1448).

Prior to the subject amendments, the entry of vessels of the United States and vessels of foreign countries had been governed by separate statutes (19 U.S.C.

1434 and 1435), neither of which included elements concerning preliminary vessel entry or the boarding of vessels. The Act repealed 19 U.S.C. 1435 and amended 19 U.S.C. 1434 to provide for the entry of American and foreign-documented vessels under the same statute. Additionally, the amended 19 U.S.C. 1434 now provides authority for the promulgation of regulations regarding preliminary vessel entry, and while neither mandating boarding for all vessels nor specifying that optional boarding must be accomplished at any particular stage of the vessel entry process, the amended law does require that a sufficient number of vessels be boarded to ensure compliance with the laws enforced by the Customs Service.

The general authority provided for Customs to board vessels is found in § 581, Tariff Act of 1930, as amended (19 U.S.C. 1581). Prior to amendment, 19 U.S.C. 1448 as previously cited had linked the granting of preliminary vessel entry to a mandatory boarding requirement and physical presentation of manifest documents to a Customs boarding officer. The amended 19 U.S.C. 1448 no longer contains provisions regarding preliminary vessel entry, vessel boarding, or manifest presentation, all of which are now provided for in other statutes; the statute now provides that Customs may electronically issue permits to lade or unlade merchandise pursuant to an authorized data interchange system as an alternative to physical document presentation.

The regulations which implement the statutory authority for boarding, the granting of preliminary and formal vessel entry, the issuance of permits to lade and unlade merchandise, and vessel clearance are contained in §§ 4.1, 4.3, 4.8, 4.9, 4.30, 4.60 and 4.61 of the Customs Regulations (19 CFR 4.1, 4.3, 4.8, 4.9, 4.30, 4.60 and 4.61). Various of these provisions still contain mandatory boarding and physical document presentation requirements, and of course do not include any reference to the new electronic permit issuance option. This document proposes to amend the cited sections in order to properly implement the amended statutory authority and revised Customs interpretations.

This document proposes to amend § 4.1 by removing all reference to the mandatory boarding of vessels. The amended 19 U.S.C. 1434 makes it clear that boarding is discretionary with Customs and is only required to the extent determined necessary to enforce the laws with which we are charged. This is accomplished by deleting paragraph (b) and making necessary amendments to paragraph (a) of the section.

Section 4.3 is proposed to be amended by identifying the vessels subject to entry in the simplified outline format presented in the statute itself. The use of this format makes much of the current language of § 4.3 unnecessary. The proposal provides for vessel entry within 24 hours after arrival. Although the amended statute provides that the time may be extended by regulation to a period not to exceed 48 hours, Customs believes that 24 hours is adequate. The proposal also includes procedures for allowing Customs, in its discretion, to allow vessels to enter at places other than the customhouse as well as at locations outside of the actual port of entry limits. This discretion is conferred by statute.

Proposed amendments to § 4.8 are offered in this document. The proposal would amend the regulation by providing that preliminary entry may be granted after, at the time of, or even before the actual arrival of a vessel in the United States. Different procedures are established to apply to these differing circumstances.

Also proposed are amendments to § 4.9 of the regulations concerning the actual vessel entry process. The proposed amendments make it clear that for the purpose of the vessel entry statute, Customs does not interpret bonded merchandise to include bonded vessel stores or ship's supplies. We consider the term to refer to in-bond transportation of merchandise. This interpretation makes it necessary to define specific procedures applicable to certain United States vessels sailing between domestic ports.

It is proposed that § 4.16 be removed from the regulations. The section currently provides that parties may apply for entry and clearance to be accomplished aboard a vessel. The amended entry and clearance statutes permit those functions to be accomplished elsewhere than at the customhouse pursuant to regulations. Amendments to §§ 4.3 and 4.61 as proposed in this document would permit entry and clearance aboard vessels. These changes would render § 4.16 redundant.

The regulation relating to the granting of lading and unlading permits in § 4.30 is also proposed to be amended. Specifically, procedures are established which are applicable to newly-emerging commercial entities, such as those created by vessel sharing and slot chartering agreements.

Section 4.60 is sought to be amended by utilizing the simplified outline format appearing in the amended vessel clearance statute (46 U.S.C. App. 91). This would replace the present paragraph format which reflects the clearance language prior to its amendment.

It is proposed to amend § 4.61 by allowing clearance filings to be accomplished by authorized electronic means. The proposal also establishes that clearances may be necessary for departures other than for foreign ports as was the case under the law prior to its amendment. As in the proposed entry regulation, this section would also incorporate special procedures applicable to certain United States vessels sailing between domestic ports.

The proposal also makes some changes to the list of elements appearing in current § 4.61(b), which are required to be satisfied prior to the granting of clearance. The reference to ''crew'' is removed from paragraph (b)(8) of the current section, due to the repeal of the underlying statute (46 U.S.C. App. 674) by enactment of section 690(a)(22) of Pub. L. 103–182 (December 8, 1993). The reference to ''pratique'' is removed from paragraph (b)(14) of the current section, as a result of amendments to the Public Health Service Regulations which eliminate the pratique but leave in place other health-related documentary requirements. Finally, paragraph (b)(17) of the current section is removed because the underlying statute in this regard, 7 U.S.C. 516, which restricted the exportation of tobacco seeds, was repealed by § 1019 of Pub. L. 102–237 (December 13, 1991).

Amendments are proposed to § 4.68 to reflect amendments to laws enforced by Customs on behalf of other agencies, and to eliminate the antiquated reference to the whale fishery.

Finally, § 4.70 is proposed to be amended to eliminate the reference to the former Public Health Service's certificate of free pratique. New Public Health Service foreign quarantine regulations are now in effect.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule would amend the Customs Regulations principally in order to accurately reflect and implement changes to the underlying statutory authority regarding the boarding of vessels arriving in ports of the United States. To this same end, certain general amendments to the regulations are proposed concerning vessel entry and clearance as well as the issuance of permits to lade and unlade merchandise. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does the document meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers:

1515–0013—Application-Permit-Special License, Unlading-Lading-Overtime Services (Customs Form 3171);
1515–0060—Master's Oath of Vessels in Foreign Trade (Customs Form 1300);
1515–0078—Cargo Declaration (inward and outward) (Customs Form 1302); and
1515–0144—Customs Bond Structure (Customs Form 301 and Customs Form 5297).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of the collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

Drafting Information: The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Entry, Freight, Harbors, Inspection, Merchandise, Reporting and recordkeeping requirements, Vessels.

Proposed Amendments to the Regulations

It is proposed to amend part 4, Customs Regulations (19 CFR part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The specific authority citations for §§ 4.1, 4.9 and 4.68 would be revised, and a specific authority citation for § 4.61 would be added in appropriate numerical order, to read as follows:

Authority: * * *

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 163;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * *

2. It is proposed to amend § 4.1 by revising paragraph (a) to read as set forth below; and by removing paragraph (b) and redesignating paragraphs (c), (d), (e), (f), and (g), as paragraphs (b), (c), (d), (e) and (f), respectively:

§ 4.1 Boarding of vessels; cutter and dock passes.

(a) Every vessel arriving at a Customs port shall be subject to such supervision while in port as the port director considers necessary. The port director may detail Customs officers to remain on board a vessel to secure enforcement of this part. Customs may determine to board as many vessels as considered necessary to ensure compliance with the laws it enforces.

* * * * *

3. It is proposed to amend part 4 by removing and reserving Footnote 1.

4. It is proposed to revise § 4.3 to read as follows:

§ 4.3 Vessels required to enter; place of entry.

(a) *Formal entry required.* Unless specifically excepted by law, within 24 hours after the arrival at any port or place in the United States, the following vessels are required to make formal entry:

(1) Any vessel from a foreign port or place;

(2) Any foreign vessel from a domestic port;

(3) Any vessel of the United States having merchandise on board that is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; or

(4) Any vessel that has visited a hovering vessel as defined in 19 U.S.C. 1401(k), or has delivered or received merchandise or passengers while outside the territorial sea.

(b) *Completion of entry.* (1) When vessel entry is to be made at the customhouse, either the master, licensed deck officer, or purser may appear in person during regular working hours to complete preliminary or formal vessel entry; or, necessary documents properly executed by the master or other authorized officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(2) The appropriate Customs port director may permit the entry of vessels to be accomplished at locations other than the customhouse, and services may be requested outside of normal business hours. Customs may take local resources into consideration in allowing formal entry to be transacted on board vessels themselves or at other mutually convenient approved sites and times within or of outside port limits. When services are requested to be provided outside the limits of a Customs port, the appropriate port director to whom an application must be submitted is the director of the port located nearest to the point where the proposed services would be provided. That port director must be satisfied that the place designated for formal entry will be sufficiently under Customs control at the time of entry, and that the expenses incurred by Customs will be reimbursed as authorized. It may be required that advance notice of vessel arrival be given as a condition for granting requests for optional entry locations. A master, owner, or agent of a vessel who desires that entry be made at an optional location shall file with the appropriate port director an application on Customs Form 3171 and a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as that port director deems appropriate but not less than $1,000. If the application is approved, the port

director or a designated Customs officer shall formally enter the vessel.

5. It is proposed to revise § 4.8 to read as follows:

§ 4.8 Preliminary entry.

(a) *Generally.* Preliminary entry allows a U.S. or foreign vessel arriving under circumstances that require it formally to enter, to commence lading and unlading operations prior to making formal entry. Preliminary entry may be accomplished electronically pursuant to an authorized electronic data interchange system, or by any other means of communication approved by the Customs Service.

(b) *Requirements and conditions.* Preliminary entry must be made in compliance with § 4.30, and may be granted prior to, at, or subsequent to arrival of the vessel. The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7. Vessels seeking preliminary entry in advance of arrival may do so by presenting to Customs a complete Customs Form 1302 (Cargo Declaration) showing all cargo on board the vessel and Customs Form 3171, electronically or otherwise, no less than 48 hours prior to vessel arrival. The CF 3171 shall also serve as notice of intended date of arrival. The port director may allow for the presentation of the CF 1302 and CF 3171 less than 48 hours prior to arrival in order to grant advanced preliminary entry if a vessel voyage takes less than 48 hours to complete from the last foreign port to the first U.S. port, or if other reasonable circumstances warrant. Preliminary entry granted in advance of arrival will become effective upon arrival at the port granting preliminary entry. Additionally, Customs must receive confirmation of a vessel's estimated time of arrival in a manner acceptable to the port director.

6. It is proposed to revise § 4.9 to read as follows:

§ 4.9 Formal entry.

(a) *General.* Section 4.3 provides which vessels are subject to formal entry and where and when entry must be made. The formal entry of an American vessel is governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term ''American vessel'' means a vessel of the United States (see § 4.0(b)) as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c)). The formal entry of a foreign vessel arriving within the limits of any Customs port is also governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). The required oath on entry shall be executed on Customs Form 1300. Alternatively, information necessary for formal entry may be transmitted electronically pursuant to a system authorized by Customs.

(b) *Procedures.* Under certain circumstances, American vessels arriving in ports of the United States directly from other United States ports must make entry. Entry of such vessels is required when they have merchandise aboard that is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel entry requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with the usual formal entry procedures, American vessels carrying no unentered foreign merchandise but that have in-bond merchandise aboard may satisfy vessel entry requirements by making a required report of arrival, and providing certain bill of lading information to Customs concerning the in-bond cargo. If the cargo in question is being moved under the ''paperless'' in-bond procedures described in the Customs Handbook on Automated Manifest Interface Requirements (a copy of which is provided to each Automated Manifest System participant), a list of the bill of lading numbers for the in-bond cargo must be provided to Customs. If ''paperless'' in-bond procedures are not applicable to the cargo, copies of the relevant bills of lading must be presented to Customs prior to the start of any cargo unlading. Report of arrival together with providing bill of lading information to Customs as specified in this paragraph satisfies all entry requirements for the subject vessels.

(c) *Delivery of vessel document.* The master of any foreign vessel shall exhibit the vessel's document to the port director on or before the entry of the vessel. After the net tonnage has been noted, the document may be delivered to the consul of the nation to which such vessel belongs, in which event the vessel master shall certify to the port director the fact of such delivery (see section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434), as applied through section 438, Tariff Act of 1930, as amended (19 U.S.C. 1438)). If not delivered to the consul, the document shall be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document shall not be delivered to the master of the foreign vessel until clearance is granted under § 4.61. It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of 19 U.S.C. 1434 until such master shall produce to him a clearance in due form from the director of the port where such vessel has been entered. Any consul violating the provisions of this section is liable to a fine of not more than $5,000 (section 438, Tariff Act of 1930, as amended; 19 U.S.C. 1438).

(d) *Failure to make required entry; penalties.* Any master who fails to make entry as required by this section or who presents or transmits electronically any document required by this section that is forged, altered, or false, may be liable for certain civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. Further, any vessel used in connection with any such violation is subject to seizure and forfeiture.

7. It is proposed to amend part 4 by removing and reserving § 4.16.

8. It is proposed to amend § 4.30 by adding the word ''fees'' between the words ''clearance'' and ''under'' where appearing in paragraph (a); and by revising paragraph (b) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(b) Application for a permit or special license shall be made by the master, owner, or agent of the vessel on Customs Form 3171, or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service, and shall specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Vessels that arrive in a Customs port with more than one vessel carrier sharing or leasing space on board the vessel (such as under a vessel sharing or slot charter arrangement) are required to indicate on the CF 3171 all carriers on board the vessel and indicate whether each carrier is transmitting its cargo declaration electronically or is presenting it on the Customs Form 1302. In the case of a term permit or term special license, upon entry of each vessel, a copy of the term permit or special license must be submitted to Customs during official hours in advance of the rendering of services so as to update the nature of the services desired and the exact times they will be needed. Permits must also be updated to reflect any other needed changes including those in name of vessel and in slot charter or vessel

sharing parties. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation shall be specifically noted on the application.

* * * * *

9. It is proposed to amend § 4.60 by revising paragraph (a) to read as follows:

§ 4.60 Vessels required to clear.

(a) Unless specifically excepted by law, the following vessels must obtain clearance from the Customs Service before departing from a port or place in the United States:

(1) All vessels departing for a foreign port or place;

(2) All foreign vessels departing for another port or place in the United States;

(3) All American vessels departing for another port or place in the United States that have merchandise on board which is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; and

(4) All vessels departing for points outside the territorial sea to visit a hovering vessel or to receive merchandise or passengers while outside the territorial sea.

* * * * *

10. It is proposed to revise § 4.61 to read as follows:

§ 4.61 Requirements for clearance.

(a) *Application for clearance.* Application for clearance for a vessel shall be made by filing the oath, Customs Form 1300, and a General Declaration, Customs Form 1301, by or on behalf of the master at the customhouse. The master, licensed deck officer, or purser may appear in person to clear the vessel, or documents properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by Customs. Clearance shall be granted either on Customs Form 1378 or by approved electronic means. Customs port directors may permit the clearance of vessels at locations other than the customhouse, and at times outside of normal business hours. Customs may take local resources into consideration in allowing clearance to be transacted on board vessels themselves or at other mutually convenient sites and times either within or outside of port limits. Customs must be satisfied that the place designated for clearance is sufficiently under Customs control at the time of clearance, and that the expenses incurred by Customs will be reimbursed as authorized. Customs may require that advance notice of vessel departure be given prior to granting requests for optional clearance locations.

(b) *When clearance required.* Under certain circumstances, American vessels departing from ports of the United States directly for other United States ports must obtain Customs clearance. The clearance of such vessels is required when they have merchandise aboard that is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel clearance requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with usual clearance procedures, American vessels carrying no unentered foreign merchandise but that have in-bond merchandise aboard may satisfy vessel clearance requirements by reporting intended departure within 72 hours prior thereto by any means of communication that is satisfactory to the local Customs port director, and by providing certain bill of lading information to Customs concerning the in-bond cargo. If the cargo in question is being moved under the ''paperless'' in-bond procedures as described in the Customs Handbook on Automated Manifest Interface Requirements (a copy of which is provided to each Automated Manifest System participant), a list of the bill of lading numbers for the in-bond cargo must be provided to Customs. If ''paperless'' in-bond procedures are not applicable to the cargo, copies of the relevant bills of lading must be presented to Customs prior to vessel departure. Report of departure together with providing bill of lading information to Customs as specified in this paragraph satisfies all clearance requirements for the subject vessels.

(c) *Verification of compliance.* Before clearance is granted to a vessel bound to a foreign port as provided in § 4.60 and this section, the port director shall verify compliance with respect to the following matters:

(1) Accounting for inward cargo (see § 4.62).

(2) Outward Cargo Declarations; shippers export declarations (see § 4.63).

(3) Documentation (see § 4.0(c)).

(4) Verification of nationality and tonnage (see § 4.65).

(5) Verification of inspection (see § 4.66).

(6) Inspection under State laws (46 U.S.C. App. 97).

(7) Closed ports or places (see § 4.67).

(8) Passengers (see § 4.68).

(9) Shipping articles and enforcement of Seamen's Act (see § 4.69).

(10) Medicine and slop chests.

(11) Load line regulations (see § 4.65a).

(12) Carriage of United States securities, etc. (46 U.S.C. App. 98).

(13) Carriage of mail.

(14) Public Health regulations (see § 4.70).

(15) Inspection of vessels carrying livestock (see § 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (see § 4.72).

(17) Neutrality exportation of arms and munitions (see § 4.73).

(18) Payment of State and Federal fees and fees due the Government of the Virgin Islands of the United States (46 U.S.C. App. 100).

(19) Orders restricting shipping (see § 4.74).

(20) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the United States (see § 4.14).

(21) Illegal discharge of oil (see § 4.66a).

(22) Attached or arrested vessel.

(23) Immigration laws.

(d) *Vessel built for foreign account.* A new vessel built in the United States for a foreign account shall be cleared under a certificate of record, Coast-Guard Form 1316, in lieu of a marine document.

(e) *Clearance not granted.* Clearance shall not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel (22 U.S.C. 454a).

(f) *Clearance in order of itinerary.* Unless otherwise provided in this section, every vessel bound for a foreign port or ports shall be cleared for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

11. It is proposed to amend part 4 by removing and reserving Footnotes 97, 99 and 100a through 101.

12. It is proposed to revise § 4.68 to read as follows:

§ 4.68 Federal Maritime Commission certificates for certain passenger vessels.

No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at

U.S. ports shall be granted a clearance at the port or place of departure from the United States unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission.

13. It is proposed to revise § 4.70 to read as follows:

§ 4.70 Public Health Service requirements.

No clearance shall be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service.

Bonni G. Tischler,

Acting Commissioner of Customs.

Approved: June 8, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–17815 Filed 7–2–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[USCG–1998–3798]

RIN 2115–AF13

Numbering of Undocumented Barges

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public comments on establishing a statutorily required numbering system for operating undocumented barges more than 100 gross tons. The numbering of these barges would increase owner accountability and deter their abandonment, making fewer barges available for disposal of oil and hazardous substances.

DATES: Comments must reach the Coast Guard on or before November 3, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1998–3798], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call Mr. Thomas Willis, Director, National Vessel Documentation Center, U.S. Coast Guard, telephone 304–271–2506. For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in the early stages of this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this document [USCG–1998–3798], the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public meeting. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a meeting should be held, we will announce the time and place in a later notice in the **Federal Register**.

Background and Purpose

The Abandoned Barge Act of 1992, sections 5301 to 5305 of Pub. L. 102–587 (the Act), enacted on November 4, 1992, added a new chapter 47 to Title 46 of the United States Code (46 U.S.C. 4701–4705) and amended 46 U.S.C. 12301 to require the numbering of undocumented barges measuring more than 100 gross tons operating on the navigable waters of the U.S. In enacting this legislation, Congress noted that an abandoned barge could become the site for the disposal of hazardous cargoes, wastes, and petroleum products, which can lead to water pollution incidents. Numbering these undocumented barges will increase owner accountability, reducing the likelihood barges will be abandoned and used for disposal of oil and hazardous substances.

Regulatory History

On October 18, 1994, the Coast Guard published a notice in the **Federal Register** [59 FR 52646] requesting comments on issues related to a numbering system for undocumented barges measuring more than 100 gross tons. The primary issues addressed in the notice concerned who should administer a barge numbering system, what type of number should be required, and how much the numbering would cost. The Coast Guard received twenty-two comments in response to the notice.

Summary of Comments

The following is a summary of the comments received in response to the questions and issues addressed in the 1994 Notice of Request for Comments. Comments can be viewed on the Internet at *http://dms.dot.gov*.

Administering Agency

All comments recommended the Coast Guard, not the States, administer a numbering system for undocumented barges. The comments noted several difficulties the States would encounter administering barge numbering programs, including coordination with other States, resource burdens, and enacting State legislation.

The comments discussed several advantages of having the Coast Guard administer a barge numbering system, such as its experience with the vessel documentation system, the Marine Safety Information System (MSIS), and providing a single source for barge registration.

Undocumented Barge Number

Several comments suggested the Coast Guard should use a numbering code similar to the code used for documented vessels, as long as codes differentiate between documented and undocumented barges. Some comments suggested assigning undocumented barges Hull Identification Numbers (HINs), while others suggested painting the company name and homeport on barges instead of numbers.

A few comments discussed a perceived difference between *inspected* undocumented barges and *uninspected* undocumented barges, and suggested addressing only uninspected undocumented barges.

Attaching Numbers to Barges

Some comments suggested that the barge numbers be permanently welded

on a structural component of a barge and clearly visible. Other comments stated that welding a number on the interior of a barge could make the number difficult to locate.

Some comments recommended numbering undocumented barges in a manner similar to recreational vessels, and others pointed out that these numbers are not permanently affixed, and could be easily removed.

Application Information

Several comments suggested that a barge numbering application should require information similar to that required to document a barge.

Other comments stated that barge owners should only provide proof of vessel ownership or a signed affidavit of ownership because it may be difficult to provide information proving ownership for an undocumented barge.

Some comments stated that a number should not change when barge ownership changes, and additional registration or renewal should be required only if ownership changes.

Economic Impacts

A few comments indicated that it would take a survey of the barge industry to determine the total undocumented barge population and the potential economic impact of any regulations. Several comments mentioned that it is difficult to identify how many undocumented barges are in operation because many barges are not tracked by government agencies or other organizations. One comment estimated that there are approximately 13,000 to 14,000 undocumented barges measuring more than 100 gross tons in operation.

Several comments supported an estimated cost for attaching barge numbers of $500–$1,500 per barge. Another comment stated that related costs to be considered include barge out-of-service time, fleeting expenses, shifting expenses, tug service, and gas free certificates. Attaching numbers during regularly scheduled maintenance or inspections could minimize such overhead costs. The comments recommended a two-year phase-in period for any regulations.

Some comments stated that barge owners should not be charged a fee for initial registration, and that any charges for subsequent registration (change of ownership, for example) should be scaled to vessel documentation service fees. Other comments stated that the Coast Guard should charge fees to recover its costs for setting up and administering a numbering program.

Other Issues

One comment suggested that barge owners should be allowed to voluntarily number undocumented barges measuring 100 gross tons or less.

Another comment opposed a costly numbering system that would not solve the abandoned barge problem, and suggested the repeal of the Abandoned Barge Act of 1992. One comment pointed out that even identifying a few barge owners through barge numbers would probably not lead to an owner with sufficient assets to remove the barge, and the taxpayers would continue to pay for removal of barges.

General Proposals and Related Questions

Based on the comments received, the Coast Guard is considering options for establishing a Coast Guard numbering system administered by the National Vessel Documentation Center (NVDC). Unlike vessel documentation, which serves multiple purposes such as establishing vessel nationality, admitting vessels to restricted trades, and permitting vessels to be the subject of preferred mortgages, the numbering of operating undocumented barges more than 100 gross tons would be used to simply identify their owners.

The Coast Guard requests comments on the following questions, although comments on other issues addressed in this advance notice are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under **Request for Comments** above.

Inspected Undocumented Barges

Only documented vessels are required to obtain and mark Official Numbers per 46 CFR part 67, subparts H and I. The Coast Guard acknowledges that some inspected undocumented barges may have Official Numbers and these numbers may still be marked on the vessels. However, Official Numbers on existing undocumented barges may not provide accurate owner information.

- How should the Coast Guard address undocumented inspected barges with Official Numbers? Should the barge owner be required to obtain a number under this proposed system?

What Number Should the Coast Guard Use for Undocumented Barges?

The Coast Guard believes assigned barge numbers should be similar to the numbers used for documented vessels. We do not plan on including undocumented barges in the Hull Identification Number (HIN) system since most existing undocumented barges do not have HINs.

- Are there other options the Coast Guard should consider for undocumented barge numbers?

How Should Owners Attach Numbers to Barges?

At this point, the Coast Guard believes numbers should be permanently welded externally to discourage removal and be clearly visible from a distance to help identify barge owners. The Coast Guard does not believe numbers should be marked on the interior as this makes identification difficult.

- Should barge numbers be attached to the exterior of a vessel's hull? How large should the numbers be? Where exactly should the numbers be attached? Would numbers possibly interfere with other barge markings?
- Should barge numbers be bead welded to the hull? Are there other attachment methods that the Coast Guard could consider?

What Information Should Barge Owners Provide on Barge Numbering Applications?

The Coast Guard recognizes that in many cases, it may be impossible for owners of undocumented barges to prove vessel ownership. The purpose of the proposed barge numbering system is to identify the owners of barges. The Coast Guard does not expect owners of undocumented barges to provide the same information that is required to document a vessel. The Coast Guard plans to propose accepting any available information indicating ownership (such as a bill of sale), or a signed affidavit of ownership.

Under this approach, barge owners may be required to submit an application with the following identifying information: owner name, address, e-mail, and phone number; company name; proof or affidavit of ownership; general barge description; and barge operating area. We do not anticipate requiring application renewal, except when ownership changes. Barge owners would also be responsible for updating application information as appropriate (change of address, new phone numbers, etc.).

- Is the proposed application information discussed above adequate to identify barge owners? Should the application request barge operator information? Is the proposed information readily available?
- How long after the effective date of any future regulations should owners submit their numbering applications to the Coast Guard?
- Who should initiate numbering application renewal upon change of

ownership, the seller or the new owner? How long after a change of ownership should this paperwork be submitted to the Coast Guard?

• If you had the option of submitting a numbering application or application update electronically via the Internet, would you take advantage of the service?

How Many Operating Undocumented Barges Measuring More Than 100 Gross Tons are There?

Based on available information, we estimate that there are approximately 10,000 to 14,000 undocumented barges measuring more than 100 gross tons and operating on the navigable waters of the United States. The Coast Guard's Marine Safety Information System (MSIS) contains records on just under 10,000 undocumented barges measuring more than 100 gross tons.

However, since most undocumented and uninspected barges are listed in the database only when Coast Guard personnel enter information as a result of marine safety-related activity (casualty, boarding, etc.), many barges may not even be listed in the database. It is also possible that many undocumented barges listed in the database are no longer operating. The Coast Guard is in the process of commencing a study of the barge industry to determine the number of undocumented barges.

• Is the population range of 10,000 to 14,000 undocumented barges measuring more than 100 gross tons accurate?

• How can the Coast Guard obtain a more accurate population estimate? What is the best way to contact owners and operators of undocumented barges measuring more than 100 gross tons?

What are the Potential Economic Impacts of the Proposed Numbering System?

The *Preliminary Regulatory Assessment* section of this document discusses the potential economic impacts of this rulemaking. Please refer to that section when reviewing the following questions. This rulemaking will affect owners of undocumented barges measuring more than 100 gross tons. Barge owners would bear the cost of providing needed owner and barge information and costs associated with attaching numbers to the barges. Submitting this information to the Coast Guard should impose only a minimum cost burden. Costs associated with attaching barge numbers depend on the form, size, and attachment method(s) established.

The Coast Guard may charge a fee for initial and subsequent barge numbering to offset agency costs, and is interested in comments regarding the appropriateness of such fees.

• Is the cost estimate of $500 to $1,500 for attaching permanent numbers to barges accurate? Does it include all costs associated with barge numbering (barge out-of-service costs, shifting expenses, etc.)? Will most barge owners attach numbers in-house or have a shipyard do the work? How would costs differ according to types of barges (tank barge versus construction barge, for example)?

• What are the common uses (services) for undocumented and uninspected barges measuring more than 100 gross tons? Where do most barges operate?

• What are the average maintenance intervals for undocumented barges measuring more than 100 gross tons?

• What is the average barge service life for undocumented barges measuring more than 100 gross tons?

• What is the average annual construction rate for new undocumented barges measuring more than 100 gross tons?

• How often, on average, do barges measuring more than 100 gross tons change owners?

How Will any Future Regulations Affect Small Entities?

The *Small Entities* section of this advance notice discusses potential impacts on small entities and available assistance for small entities. Please refer to that section when reviewing the following question. We believe many undocumented barge owners are small entities, and are interested in feedback from potentially affected small businesses, agencies, and organizations.

• If your small business, organization, or agency may be affected by any future barge numbering system, please tell how, and what flexibility or compliance alternatives we should consider to minimize the regulatory burden on you while promoting the intent of the Abandoned Barge Act.

Preliminary Regulatory Assessment

The cost for mandatory numbering of undocumented barges more than 100 gross tons is not expected to exceed $100 million. As discussed, preliminary population estimates for the number of undocumented barges measuring more than 100 gross tons ranges from just under 10,000 to 14,000 barges.

An industry-provided cost estimate for attaching barge numbers ranges from $500 to $1,500 per barge, depending on the method used and whether the work is done in-house or at a shipyard. Assuming a per barge cost of $500 to $1,500 for as many as 14,000 barges, the preliminary cost estimate ranges from $7.0 to $21.0 million. Other associated costs to consider include shipyard tug services, barge out-of-service costs, numbering fees, fleeting expense, and shifting expense. Avoiding future environmental damage and potentially reducing clean-up costs are the primary benefits associated with this rulemaking. From January 1988 to September 1991, the Coast Guard spent an estimated $4.4 million to clean up pollutants from abandoned vessels. Approximately 15% of these pollution incidents were attributable to abandoned barges. According to 1997 figures, there are just over 1,000 abandoned barges in our nation's waterways; approximately 25 barges pose hazards to navigation, and 15 pose a potential pollution threat.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether any potential rulemaking would have significant economic impacts on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Many owners of undocumented barges subject to future barge-numbering regulations may be small entities. Because we have not yet proposed specific requirements and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. The Coast Guard would like comments discussing the potential impacts of any future regulatory changes on small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–21], the Coast Guard wants to assist small entities to understand this document so they can better evaluate the potential effects of this rulemaking on them and participate in the rulemaking process. If you believe that your small business, organization, or agency may be affected by this rulemaking, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you.

If you have questions concerning this document, you may call the Coast Guard point of contact designated in **FOR FURTHER INFORMATION CONTACT**. We also

maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.htm which has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, the Coast Guard will mail copies of this advance notice to Small Business Development Center (SBDC) State Directors nationwide for distribution to local SBDC offices and interested small businesses.

Collection-of-Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, record-keeping, notification, and other similar actions. This proposal would include new collection-of-information requirements. Barge owners would have to provide readily available information identifying undocumented barges and barge owners to the Coast Guard. This information should be readily available, so the burden should be minimal. We cannot estimate the exact paperwork burden associated with this rulemaking because specific requirements have not been proposed. We expect that comments received in response to this advance notice will assist us in estimating the potential paperwork burden, as required under the Paperwork Reduction Act. Once a specific proposal is developed, the Coast Guard will prepare a request for OMB approval of any collection-of-information requirements.

Environment

The Coast Guard will consider preparing an Environmental Assessment before publication of a notice of proposed rulemaking. The Coast Guard expects that an environmental impact statement would not be required. By increasing owner accountability, this rulemaking may prevent future marine pollution incidents from abandoned barges and providing a beneficial impact on the environment. The Coast 1 Guard invites comments addressing possible effects that this rulemaking may have on the environment or addressing possible inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment.

Dated: June 29, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–17814 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–72, RM–9265]

Radio Broadcasting Services; Middlebury and Berlin, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dynamite Radio, Inc. seeking the substitution of Channel 265C2 for Channel 265A; the reallotment of Channel 265C2 from Middlebury to Berlin, VT; and the modification of Station WGTK's license to specify Berlin as its community of license. Channel 265C2 can be allotted to Berlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) north of the community. The site restriction imposed on Channel 265C2 at Berlin does not obviate the short-spacings to Station CBF–FM, Channel 265C1, Montreal, Quebec, and to Station CBF10F, Channel 266B, Sherbrook, Quebec, Canada. Therefore, we have sought Canadian concurrence in the allotment of Channel 265C2 at Berlin as a specially negotiated short-spaced limited allotment since Berlin is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 265C2 at Berlin, VT.

DATES: Comments must be filed on or before July 13, 1998, and reply comments on or before July 28, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anthony A. Neri, President, Dynamite Radio, Inc., 74 Exchange Street, Middlebury, Vermont, 05753 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–72, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–17776 Filed 7–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–70, RM–9276]

Radio Broadcasting Services; Clinton and Okarche, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tyler Broadcasting Corporation seeking the substitution of Channel 294C2 for Channel 294C1 at Clinton, OK, the reallotment of Channel 294C2 from Clinton to Okarche, OK, as the community's first local aural service, and the modification of Station KCLI–FM's license to specify Okarche as its

community of license. Channel 294C2 can be allotted to Okarche in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) east, at coordinates 35–43–08 North Latitude; 98–00–09 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before August 24, 1998, and reply comments on or before, September 8, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–70, adopted May 1, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–17777 Filed 7–2–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 128
Monday, July 6, 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 COMMERCE

International Trade Administration

Antidumping, Steel Jacks et al.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders, findings, and/or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Review* covering these same orders and/or suspended investigations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

Parties wanting to participate in the sunset review being conducted by the Department must follow the separate procedural regulations promulgated by the Department (see *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)). [1] In addition, because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication of the notice of initiation of the sunset review in the **Federal Register**. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (see *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)). Finally, for guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews, you may wish to consult the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871(April 16, 1998). We are making information related to sunset proceedings available to the public on the Internet at the following address: ''http://www.ita.doc.gov/import__admin/records/sunset/''. Finally, the procedural rules regarding filing, format, translation, service, and certification of documents can be found at 19 CFR 351.303 (see *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295, 27406 (May 19, 1997)).

Initiation of Reviews

In accordance with 19 CFR 351.218, as amended, we are initiating sunset reviews of the following antidumping and countervailing duty orders, findings, or suspended investigations:

Doc case no.	ITC case no.	Country	Product
A–122–006	AA–49	Canada	Steel Jacks.
A–588–029	AA–85	Japan	Fish Netting of Manmade Fiber.
A–427–030	AA–86	France	Large Power Transformers.
A–475–031	AA–87	Italy	Large Power Transformers.
A–588–032	AA–88	Japan	Large Power Transformers.
A–843–803	AA–51	Kazakstan	Titanium Sponge.
A–821–803	AA–51	Russia	Titanium Sponge.
A–823–803	AA–51	Ukraine	Titanium Sponge.
A–588–020	A–161	Japan	Titanium Sponge.
A–588–038	AA–98	Japan	Bicycle Speedometers.
A–602–039	AA–110	Australia	Canned Bartlett Pears.
A–588–028	AA–111	Japan	Roller Chain.

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (pursuant to 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 29, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–17789 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–602]

Tapered Roller Bearings and Parts Thereof From Romania: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 6, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (''TRBs''), from Romania. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period June 1, 1996, through May 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

We received no comments from interested parties with regard to the Department's preliminary determination to grant Tehnoimportexport, S.A. (''TIE'') a separate rate for this review. Therefore, for the final results of review, we reaffirm our determination that TIE is entitled to a separate rate.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0374 or (202) 482–3818.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

On March 6, 1998, the Department published in the **Federal Register** (63 FR 11217) the preliminary results of its administrative review of the antidumping duty order on TRBs from Romania (''*Preliminary Results*''). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from respondent, TIE, and from Universal Automotive Trading Company Ltd. (''Universal''), an interested party. Comments submitted consisted of respondent's case brief of April 6, 1998 and Universal's rebuttal brief of April 13, 1998.

Scope of Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

The period of review (''POR'') is June 1, 1996, through May 31, 1997.

Analysis of Comment Received

Comment 1: Respondent and Universal assert that the Department erred in its calculation of freight for certain steel supplies imported from Russia. Respondent states that, based on the Department's language in its analysis memorandum, the longest possible distance used in this review to calculate freight for steel supplies should be either the distance from the Romanian steel mill to the Alexandria factory (280 km) or from Constanza, the port, to the Alexandria factory (350 km).

Petitioner did not comment on this issue.

Department's Position: We disagree with respondent and Universal. As stated in the analysis memorandum for the preliminary results, the Department ''added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest port to the manufacturer's factory, or from the actual supplier to the manufacturer's factory.'' *See TIE Analysis Memorandum for the Preliminary Results of Review (''Analysis Memorandum'')* at page 5 (March 2, 1998). The Department established this methodology for accounting for the freight component of surrogate values in *Collated Roofing Nails from the People's Republic of China,* 62 FR 25895 (May 12, 1997) (''*Nails*''). Thus, if the material was domestically produced or imported from a non-market economy (''NME'') supplier, we used the shorter of (a) the distance between the closest Romanian port and the factory, or (b) the distance between the actual supplier and the factory to calculate a freight cost.

As noted on page 5 of the *Analysis Memorandum,* some of the distances between Alexandria and NME suppliers were not reported. For those missing distances, the Department assigned a distance of 3000 km, the longest distance reported in the submission. *See Analysis Memorandum* at page 5. However, despite respondent's assertion, the Department correctly calculated a freight cost for those inputs using 350 km, which is the shorter of the distance between Constanza and Alexandria (350 km) and the distance between Alexandria and the Russian NME supplier (3000 km). Therefore, the Department calculated freight in a manner consistent with the methodology established in *Nails.*

Final Results of Review

As a result of our review, we determine the dumping margin (in percent) for the period June 1, 1996, through May 30, 1997, to be as follows:

Exporter	Margin (percent)
TIE	0.86

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated an importer-specific ad valorem duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. The

Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for TIE will be the rate we determine in the final results of review; (2) for all other Romanian exporters, the cash deposit rate will be the Romania-wide rate made effective by the amended final results of the 1994–95 administrative review (*see Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Amendment of Final Results of Antidumping Duty Administrative Review,* 61 FR 59416 (November 22, 1996)); (3) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–17788 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing procedures and required certifications pursuant to the USEC Privatization Act.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: James Doyle, Karla Whalen, or Letitia Kress, AD/CVD Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0159, (202) 482–1386, or (202) 482–6412, respectively.

Background

On April 25, 1996, Congress passed the United States Enrichment Corporation Privatization Act (The USEC Privatization Act), 42 U.S.C. 2297h *et seq.* The USEC Privatization Act required the U.S. Department of Commerce (the Department) to administer and enforce the limitations set forth in Section 42 U.S.C. 2297h–10(b)(5) of the USEC Privatization Act. On January 7, 1998, the Department issued Procedures for Delivery of HEU Natural Uranium Component in the United States (The HEU Procedures).

On March 20, 1998, the Department issued Annex 1 to the HEU Procedures to clarify certain requirements detailed in the HEU Procedures. This announcement provides public notification of the HEU Procedures and their Annex 1. Annex 1 details required certification language and includes two additional certification requirements in items A and C. Item A is an amendment to the certifications currently required of all importers of uranium, regardless of national origin. Item B is the designated agent's certification referred to Section B of the HEU Procedures. Item C lists all the certifications which must accompany all quarterly reports submitted to the Department in accordance with section C of the HEU Procedures.

The following Attachment 1 provides the Procedures for the Delivery of HEU Natural Uranium Component in the United States and Attachment 2 provides Annex 1 to the HEU Procedures.

Dated: June 25, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III, Import Administration.

Attachment 1—Procedures for Delivery of HEU Natural Uranium Component in the United States

A. Annual Maximum Deliveries

The United States Department of Commerce (''the Department'') designates the Ministry of Atomic Energy of the Russian Federation (''MINATOM''), or its designated agent, to allocate the annual maximum deliveries of HEU natural uranium component among any marketing agent(s) authorized by MINATOM to sell the HEU natural uranium component in the United States. The annual maximum deliveries which may be allocated by MINATOM are set forth in the United States Enrichment Corporation (USEC) Privatization Act, 42 U.S.C. 2297h–10(b)(5) (''Delivery Schedule'').

For each agent receiving a delivery allocation, MINATOM will issue a certificate identifying such agent, the duration of the allocation, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the agent for sale in the United States will be delivered for consumption only. MINATOM will provide a copy of all such certificates to the Department within 10 days of issuance.

The cumulative amount of the deliveries authorized by such certificates each year may not exceed the annual maximum deliveries set forth in the Delivery Schedule. Annual deliveries allocated to any given agent may be re-allocated to any other agent(s) or to MINATOM within the same annual period subject to the annual maximum deliveries under the following conditions:

—The Department is notified of the re-allocation no later than December 1 of the affected annual period;

—MINATOM provides the Department with a copy of the amended and/or terminated certificate(s) from which delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating such deliveries.

New contracts entered into by any agent(s) as a result of re-allocation will be subject to the approval process outlined in paragraph B.

If, in any given annual period, an agent delivers less than the maximum flexibility(ies) under an approved contract(s), such agent may enter into a new contract(s) for the difference between its actual deliveries during that year and the maximum flexibilities under the contract(s) for that same year, provided that the agent's total annual deliveries under all contracts do not exceed the agent's delivery allocation or the annual maximum deliveries and provided that the following conditions are met:

—The Department is notified of the agent's intention to re-direct deliveries by December 1;

—All new contracts entered into by agents resulting from re-direction of deliveries must be approved under paragraph B.

On December 31 of each year, any portion of the annual maximum deliveries not so delivered in that year will be forfeited.

B. Contract Monitoring and Approval

The Department will require all authorized agents to submit for approval all contracts related to the sale of the HEU natural uranium component to end-users for consumption in the United States. Contract approval will be contingent on the following requirements:

—A certificate as provided for in paragraph A confirming that the relevant agent has been allowed sufficient amounts for deliveries by MINATOM to fulfill its obligations under the submitted contract;
—A schedule of deliveries indicating the date, amount, and point of each delivery;
—A statement in the contract that the material to be sold is of Russian origin;
—A statement in the contract that the sale is for consumption only.[1]
—A certification from the relevant agent that the deliveries pursuant to the contract submitted for approval, when combined with deliveries pursuant to other approved contracts entered into by that agent, do not exceed that agent's delivery allocation for any given annual period. In addition, each agent shall certify to the Department that such agent's sales of Russian uranium are solely for consumption and do not circumvent, directly or indirectly, the limitations set forth in Section 3112(b) of the USEC Privatization Act and the procedures set forth in this document.

The Department will officially notify the relevant agent of contract approval/rejection within 10 business days of contract submission. If an approved contract is subsequently terminated as a result of force majeure, the Department will allow the affected agent to replace such contract with a newly executed contract, subject to the approval process outlined above, provided that the agent's delivery allocation and the annual maximum deliveries are not exceeded.

The Department will develop a separate record for actions undertaken pursuant to the USEC Privatization Act and will announce filing procedures consistent with existing antidumping procedures during January 1998.

C. Quarterly Reports/Verification

The Department will require quarterly reports from all authorized agents of HEU natural uranium component detailing all activity relating to the movement of HEU natural uranium component into and out of their respective accounts. In addition, the Department will require similar quarterly reports from the administrator of the account holding the HEU natural uranium component prior to sale, e.g., USEC. These reports will be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31.

The Department reserves the right to verify quarterly reports and to restrict future deliveries from any account in which the reported activity appears to be in violation of these procedures and/or the annual maximum deliveries if such potential violations are not rectified to the satisfaction of the Department and MINATOM.

MINATOM and the Department will hold annual consultations subsequent to the filing of the quarterly report due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU natural uranium component under these procedures.

D. Re-importation

The Department will outline documentary requirements for re-entry of HEU natural uranium component which has been exported from the United States for further processing and re-imported for consumption.

E. Enforcement

If the Department finds that an agent has exceeded its delivery allocation and/or the annual maximum deliveries set forth in the Delivery Schedule, the Department will require USEC or the appropriate entity to withhold any further release of HEU natural uranium component from the agent's account, until the problem has been satisfactorily resolved among the Department, MINATOM, and the agent.

In accordance with Section 3112(b)(9) of the USEC Privatization Act (42 USC 2297h–10(b)(9)), the Department reserves the right to require any other certifications, information, or take any other action necessary to enforce the annual maximum deliveries provided for therein.

F. Review of Procedures

By September 1998, the Department will initiate a review of these procedures to ensure that its statutory obligations are being met. Comments by interested parties regarding necessary/desirable changes to these procedures will be solicited and fully considered. If the department determines that changes are warranted, new procedures will be implemented effective January 1, 1999.

Attachment 2—Procedures for Delivery of HEU Natural Uranium Component in the United States, Annex #1 Required Certifications

On January 7, 1998, the Department of Commerce (the Department) issued the Procedures for Delivery of HEU Natural Uranium Component in the United States (the HEU Procedures), pursuant to the United States Enrichment Corporation Privatization Act (The USEC Privatization Act), 42 U.S.C. 2297h–10(b)(9). In order to further clarify certain requirements of the HEU Procedures, the Department will periodically issue supplemental statements. This annex sets forth certification language required under the HEU Procedures and includes two new certification requirements in items A and C. The certification stated in item A is required of all importers of uranium, regardless of origin. The certifications stated in item C must accompany all quarterly reports submitted to the Department in accordance with paragraph C of the HEU Procedures.

A. Importer Certifications

The importer of record must certify the following to the United States Customs Service (and provide a copy of such certification to the Department):

(Importer name) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the agreements with Kazakhstan, Kyrgyzstan, the Russian Federation and Uzbekistan, as amended, the antidumping duty order on Ukraine, or the delivery limitation set forth in Section 3112(b) of the USEC Privatization Act, 42 U.S.C. 2297h *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States.

B. Contract Approval Certifications

(Designated agent) certifies that the total annual deliveries under the contract between (seller) and (purchaser), contract number (insert #), and executed on (insert date), when added to annual delivery quantities of other contracts approved in accordance with the HEU Procedures for Delivery of HEU Natural Uranium Component in the United States, will not exceed the maximum annual delivery quantity allocated to (designated agent) by (MINATOM) for that given year, or the annual maximum delivery quantity established in Section 3112(b)(5) of the USEC Privatization Act for the year in which deliveries under this contract will be made.

(Designated agent) further certifies that the sale of the HEU Natural Uranium Component is solely for consumption and does not circumvent, directly or indirectly, the limitations set for in Section 3112(b) of the USEC Privatization Act or the Procedures for Delivery of HEU Natural Uranium Component in the United States.

C. Quarterly Report Certifications

(Certifying party) certifies that it holds an HEU Natural Uranium Component account(s) at (state name of entity(ies)), and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (indicated dates) has been transferred in accordance with only the following: (1) an approved matched sale under 3112(b)(6) of the USEC Privatization Act and Section IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, (2) for use in overfeeding in U.S. enrichment facilities pursuant to Section 3112(b)(7) of the USEC Act; (3) for delivery to a United States end-user for consumption, within the delivery limits of the USEC Privatization Act Section 3112(b)(5); (4) for export out of the United States; (5) for further processing on behalf of (name of entity); or (6) to another designated agent.

[1] For consumption means for use as nuclear fuel. Swaps, exchanges or loans of material may be conducted solely for the purpose of facilitating further processing and use as nuclear fuel. All such permitted swaps, exchanges or loans must be documented to the Department prior to each such transaction. The Department considers swaps, exchanges or loans that will result in significant disruptions to the uranium production market and in the depression of market prices to be a circumvention of Section 3112(b) of the USEC Privatization Act. The material may be re-sold as a result of a force majeure.

(Certifying party) further certifies that none of the HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (indicate dates) has been loaned, swapped, exchanged or used in any arrangement which directly or indirectly circumvents the limitations set forth in section 3112(b) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States.

[FR Doc. 98–17787 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Open Meeting

AGENCY: Office of the Administrator, National Oceanic and Atmospheric Administration.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce of Oceans and Atmosphere on long- and short-range strategies for research, educating and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND PLACE: July 23, 1998 from 8:30 AM to 5:00 PM, and July 24 from 8:30 AM to 12:00 PM. The meeting will take place at the Main Commerce Building, Room 4832, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Agenda

1. Receive overview of NOAA science programs and priority science issues from NOAA Line Offices, with subsequent questions and discussion by SAB.
2. Discuss trends in federal science budgets with special emphasis on NOAA programs.
3. Receive and discuss input from key outside constituent groups regarding NOAA science programs.
4. Receive and discuss input from the public regarding NOAA science programs.
5. Discuss and formulate strategy for developing recommendations to the Under Secretary of Commerce for Oceans and Atmosphere regarding long- and short-range NOAA research, education and application of science to resource management.

PUBLIC PARTICIPATION: The meeting will be open to public participation with at least one (1) hour set aside during the meeting on July 24, 1998 for oral comments or questions. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by July 13, 1998 in order to provide sufficient time for SAB review prior to meeting dates. Written comments received by the SAB Executive Director after July 13 will be distributed to the SAB, but may possibly not be received prior to the meeting dates. Approximately twenty (20) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Director, Science Advisory Board, NOAA, HCHB, Rm. 5128, 14th St. & Constitution Ave., NW. Washington, DC 20230 [Phone: 202–482–2977, Fax: 202–501–3068, E-mail: MICHAEL.CROSBY@NOAA.GOV]

Dated: June 29, 1998.

D. James Baker,

Under Secretary for Oceans and Atmosphere, and Administrator for NOAA.

[FR Doc. 98–17775 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062598A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) will hold its 69th meeting of its Scientific and Statistical Committee (SSC) in Honolulu, HI.

DATES: The SSC meeting will be held on July 21–23, 1998, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The 69th SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, July 21, 1998, 8:30 a.m.

A. Pelagics

1. 2nd quarter 1998 report for longline fisheries in Hawaii & American Samoa;
2. Final review of area closure framework measure for American Samoa;
3. Reports on the 3rd Multilateral High-level Conference;
4. Protected species interactions: albatross and turtles;
5. Issues concerning shark finning in the western Pacific region;
6. Report on universal minimum size limit for swordfish in the USA;
7. Pelagic longline and charter interactions in Hawaii;
8. Report on Pelagic Fisheries Research Program studies;
9. Report on Secretariat of Pacific Community meetings;
10. Summary of 1997 annual report; and
11. Public Comment/Hearing.

B. Bottomfish

1. Summary of 1997 annual report, including recommendations;
2. Management of main Hawaiian Islands onaga, ehu and hauupuu; status of Hawaii Institute of Marine Biology genetic research on stock range, NMFS research activities in Hawaii, Guam and CNMI, implementation of Department of Land and Natural Resources' management plan and Federal management alternatives; and
3. Public Comment.

C. Sustainable Fisheries Act (SFA)

Final review of comprehensive SFA amendment for all fishery management plans regarding bycatch, fishing sectors, fishing communities, overfishing and designation of essential fish habitat(EFH), potential fishing and non-fishing threats to EFH, and conservation and enhancement measures to mitigate impacts to EFH; and environmental impact of SFA provisions. Copy of draft amendment is available for public review and comment by contacting the Council office.

1. Plan Team/Advisory Panel recommendations; and
2. Public comment/hearing.

D. Precious Corals

Plan Team recommendations.
Thursday, July 23, 1998, 8:30 a.m.

E. Crustaceans

1. Annual allocation of bank-specific harvest guidelines including 1998 bank-specific guidelines and draft framework regulatory measures for future bank-specific guidelines; and
2. Public comment/hearing.

F. Ecosystems and Habitat

1. Status of Enviromental Impact Statement on Farallon de Mendinilla, Northern Mariana Islands; and
2. Current ecosystem and habitat issues.

G. Other Business

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 29, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17796 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

June 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 8, 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 increased for carryover.

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 67620, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 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 December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on July 8, 1998, you are directed to increase the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve month limit [1]
Group I	
237, 239pt. [2], 331–336, 338, 339, 340–342, 345, 347, 348, 350–352, 359pt. [3], 431, 433–436, 438, 440, 442–448, 459pt. [4], 631, 633–636, 638, 639, 640–647, 648, 649, 650–652, 659pt. [5], 831, 833–836, 838, 840, 842–847, 850–852, 858 and 859pt. [6], as a group.	48,027,335 square meters equivalent.
Sublevels in Group I	
338/339	667,350 dozen.
340/640	320,183 dozen of which not more than 240,136 dozen shall be in Categories 340–Y/640–Y [7].

[1] These limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359pt.: all HTS numbers except 6406.99.1550.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[6] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

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.98–17751 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

June 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: July 2, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, 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.

Upon a request from the Government of the Dominican Republic, the U.S. Government agreed to increase the current guaranteed access levels for Categories 347/348/647/648 and 433.

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 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 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 December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on July 2, 1998, you are directed to increase the guaranteed access levels for the categories listed below for the period January 1, 1998 through December 31, 1998.

Category	Guaranteed Access Levels
347/348/647/648	8,550,000 dozen.
433	81,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–17750 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

June 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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 limit for Category 435 is being increased for carryforward.

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 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 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 December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on July 8, 1998, you are directed to increase the limit for Category 435 to 30,552 dozen [1], as provided for in the agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–17749 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

June 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Tycoon Tutti, Inc. has violated the requirements for participation in the Special Access Program, and has suspended Tycoon Tutti from participation in the Program for the period July 6, 1998 through January 5, 1999.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Tycoon Tutti during the period July 6, 1998 through January 5, 1999, and to prohibit entry by or on behalf of Tycoon Tutti under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 62 FR 49206, published on September 19, 1997; and 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Tycoon Tutti, Inc. from participation in the Special Access Program for the period July 6, 1998 through January 5, 1999. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Tycoon Tutti during the period July 6, 1998 through January 5, 1999. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Tycoon Tutti manufactured from fabric exported from the United States during the period July 6, 1998 through January 5, 1999.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–17748 Filed 7–2–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, July 15, 1998, 2:00 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 2000 Budget Request

The staff will brief the Commission on issues related to the Commission's budget for fiscal year 2000.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: July 1, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–17960 Filed 7–1–98; 1:41 pm]

BILLING CODE 5335–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors Meeting

Pursuant to Section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado, August 20–22, 1998. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Subsections (2), (4), and (6) of Section 552b(c), Title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers involving personal information and opinion, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will include executive sessions involving discussions of personnel issues, financial topics, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Closed sessions may also include proprietary information from sources outside the government. Meeting sessions will be held in various facilities throughout the cadet area.

FOR FURTHER INFORMATION CONTACT: Lt. Col. William E. Rhoden or Ms. Deborah Mercurio, Plans and Current Operations Division, HQ USAFA/XPO, 2304 Cadet Drive, Suite 350, USAF Academy, CO 80840–5002, (719) 333–3933.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–17705 Filed 7–2–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for the Installation of a Consolidated Waste Processing Facility Accessway at the Miamisburg Environmental Management Project

AGENCY: Department of Energy (DOE), Miamisburg Environmental Management Project.

ACTION: Notice of wetlands involvement.

SUMMARY: This is to give notice of DOE's proposal to construct an accessway for a consolidated waste processing facility at the Miamisburg Environmental Management Project (MEMP), located approximately ten (10) miles southwest of Dayton, Ohio. The proposed activity would involve a small, isolated, man-made wetland in Montgomery County, Ohio. In accordance with 10 CFR part 1022, DOE will prepare a Wetlands Assessment and conduct the proposed action in such a manner to avoid or minimize potential harm to or within the surrounding environment.

DATES: Written comments must be received by the DOE at the following address on or before July 21, 1998.

ADDRESSES: For further information on this proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Mr. Robert S. Rothman, Waste Management/Legacy Waste Project Manager, U.S. Department of Energy, Miamisburg Environmental Management Project Office, P.O. Box 66, Miamisburg, OH 45343–0066. Phone: (937) 865–3823. Facsimile: (937) 865–4489.

FOR FURTHER INFORMATION CONTACT: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000

Independence Avenue, SW, Washington, DC 20585. Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed activity would directly support the ongoing environmental remediation program at the Mound Plant. Construction of the accessway to the consolidated waste processing facility would enable the facility to accomplish volume-reduction, metal recovery, and waste packaging goals established for the site. Construction of the accessway would impact approximately 0.06 acres of a man-made, isolated wetland. The wetland is one of several delineated in the OU9 Hydrogeologic Investigation: Wetlands Determination Report, January 1994. The proposed action would result in long-term and direct impacts from the filling of an isolated, man-made wetland of 0.06 acres in size. The affected wetland would be backfilled with gravel during the construction of an accessway which is needed to support a consolidated waste processing facility. Best management practices would be utilized to avoid or minimize potential harm to or within the surrounding environment.

Issued in Miamisburg, Ohio on June 23, 1998.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 98–17780 Filed 7–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[ERA Docket No. 84–15–NG; ERA Docket No. 87–40–NG; FE Docket No. 94–96–NG

Office of Fossil Energy; Pan-Alberta Gas (U.S.) Inc., Successor to Northwest Alaskan Pipeline Company; Order Transferring Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1009–A on June 25, 1998, transferring Northwest Alaskan Pipeline Company's (Northwest Alaskan) import authorization granted by DOE/FE Order No. 1009 (Order 1009), *et al.*, to Pan-Alberta Gas (U.S.) Inc. Order 1009, *et al.*, authorizes the importation of up to 300,000 Mcf of natural gas per day on an average annual daily basis (240,000 Mcf per day on a firm basis and 60,000 Mcf per day on an interruptible basis). The term of the authorization expires October 31, 2003.

This order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 25, 1998.

John W. Glynn,

Manager, Natural Gas Regulation Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy

[FR Doc. 98–17779 Filed 7–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–026 and ER96–1663–027]

California Power Exchange Corporation; Notice of Filing

June 29, 1998.

Take notice that on June 26, 1998, California Power Exchange Corporation (PX), filed a Second Notice and Motion Regarding Change in Start of the Hour-Ahead Market. In order to allow for testing of the software needed to run the Hour-Ahead Market, the PX moves to amend its proposed Tariff Amendment No. 2, originally filed on April 10, 1998 and amended on May 22, 1998, to reflect a new requested effective date. The PX now requests that the effective date for PX Tariff Amendment No. 2, be no later than July 31, 1998, or as early as July 16, 1998, upon 15 days notice provided to the Commission and posted on the PX's Home Page.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 8, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17781 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–620–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 29, 1998.

Take notice that on June 16, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed in Docket No. CP98–620–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate an existing point of delivery to Columbia Gas of Maryland, Inc., (CMD) in Allegany County, Maryland under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia requests certification to provide this service at an existing point of delivery which was originally authorized under Section 311 of the Natural Gas Policy Act (NGPA) for transportation service. Columbia states that the customer is CMD, the maximum daily quantity is 40 Dth and the estimated annual quantity is 14,600 Dth.

Columbia constructed the existing point of delivery to CMD in Allegany County, Maryland, which was placed in service on May 1, 1998. Interconnecting facilities installed by Columbia included a 2-inch tap and valve. The existing point of delivery will be utilized for residential service. The cost of constructing the existing point of delivery was $4,200.

The quantities of natural gas to be provided through the existing point will be within Columbia's authorized level of service. Therefore, there is no impact on Columbia's existing point of delivery for transportation service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17752 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–627–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

June 29, 1998.

Take notice that on June 19, 1998, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–627–000 a request pursuant to Sections 157.205 and 157.212 of Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to modify an existing receipt point as a delivery point in Upton County, Texas and to thereafter operate the new delivery point in jurisdictional service to permit the delivery of natural gas to NuStar Joint Venture (NuStar), under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that NuStar has requested the delivery of pipeline quality natural gas as fuel for new field compression facilities in its gathering system. To facilitate NuStar's request, El Paso will modify a receipt point to a delivery point on El Paso's 20″ O.D. Upton County Line (Line No. 1105) and thereafter transport, under NuStar's interruptible Transportation Service Agreement, volumes of gas to NuStar's new delivery point.

El Paso states that this proposal is not prohibited by its existing tariff and that El Paso has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

El Paso requests authorization to modify and operate the NuStar Joint Venture Delivery Point on its Line No. 1105 in Upton County, Texas. The estimated cost of NuStar Joint Venture Delivery Point is $5,500 and NuStar will reimburse El Paso for the cost related to the construction of this delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allow for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17756 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–629–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

June 29, 1998.

Take notice that on June 22, 1998, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP98–629–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a delivery point, to provide interruptible gas transportation service to Chevron Gas Pipeline Company (Chevron) for emergency fuel use authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install a new delivery point on its system at approximately Mile Post 526A–601+17.65, Side Valve 526A–612 located at Plaquemines Parish, Louisiana, Louisiana State Water, Main Pass Block 80 (MP 80) to provide interruptible gas transportation service of up to 900 dekatherms per day to Chevron for emergency fuel use. At MP 80, Tennessee will inspect Chevron's installation of a two-inch tie-in assembly on an offshore platform owned by Ocean Energy Inc. The volumes to be delivered to MP 80 will be transported from MP 80 over interconnecting pipe owned by Forcenergy Inc. (Forcenergy), to a pipeline platform located at Main Pass Block 69 (MP 69) owned by Forcenergy. Chevron has separately arranged with Forcenergy for transportation services over this interconnecting pipe. Chevron would install its measurement facilities. Tennessee would install, own and operate electronic gas measurement (EGM) equipment and own, operate and maintain the tie-in assembly. Chevron would install, own and maintain the measurement facility. Tennessee reports that Chevron would reimburse Tennessee approximately $24,700 for the cost of the project.

Tennesee reports that deliveries of natural gas to Chevron from the proposed point would be on an interruptible basis, pursuant to a transportation agreement between Tennessee and Chevron under Tennessee's Rate Schedule IT. The addition of this delivery point is not expected to have any significant impact upon Tennessee's peak day or annual deliveries.

Tennessee states that the total quantities to be delivered to Chevron after the delivery point is installed would not exceed previously authorized quantities. Tennessee further states that the proposed modification is not prohibited by its tariff, and that it has sufficient capacity to accomplish deliveries at the delivery point without detriment or disadvantage to Tennessee's other customers.

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 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17755 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application

June 29, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11615–000.

c. *Date Filed:* June 1, 1998.

d. *Applicant:* Massachusetts Water Resources Authority.

e. *Name of Project:* Winsor Dam.

f. *Location:* On the Swift River in the Towns of Belchertown, Hardwick, New Salem, Pelham, Petersham, Shutesbury, and Ware, Hampshire, Franklin, and Worcester Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Brutsch, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129, (617) 241–4604.

i. *FERC Contact:* Charles T. Raabe, (202) 219–2811.

j. *Deadline Date:* August 28, 1998.

k. *Description of Project:* The existing, inoperative project would consist of the following facilities: (1) the 2,900-foot-long Winsor Dam; (2) the 25,216-acre Quabbin reservoir; (3) a water intake; (4) 48-inch-diameter and 68-inch-diameter pipelines, each about 1,000 feet long; (5) a powerhouse containing a 1200 kW generating unit; (6) a tailrace; (7) a new transformer and a proposed 13.8-kV transmission line; and (8) appurtenant facilities.

Applicant estimates that the average annual generation would be 3.0 MWh and that the cost of the studies under the permit would be $85,000. The dam and water rights are owned by the Metropolitan District Commission, 20 Somerset Street, Boston, MA 02108. The equipment is owned by the Applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to the Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17753 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

June 29, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project No:* 8185–034.

c. *Date Filed:* June 11, 1998.

d. *Applicant: Bluestone Energy Design.*

e. *Name of Project:* Clifton No. 3.

f. *Location:* Pacolet River, Spartanburg County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Victoria J. Miller, Bluestone Energy Design, P.O. Box 181, Converse, SC 29329, (864) 579–4640.

i. *FERC Contact:* J.W. Flint, (202) 219–2667.

j. *Comment Date:* August 15, 1998.

k. *Description of Amendment:* Bluestone Energy Design proposes to remove the 4-foot-high flashboards from the dam.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'' OR ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17754 Filed 7–2–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6121–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regional Compliance Assistance Program Evaluation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Agency Generic Information Collection Request: Regional Compliance Assistance Program Evaluation, EPA ICR No. 1860.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1860.01.

SUPPLEMENTARY INFORMATION:

Title: Agency Generic Information Collection Request: Regional Compliance Assistance Program, (EPA ICR No. 1860.01). This is a new collection.

Abstract: Since EPA's Office of Enforcement and Compliance Assurance (OECA) was formed three years ago, there has been an increased focus on the use of compliance assistance as an appropriate tool to assist the regulated community in improving its compliance. In particular, OECA has focussed its compliance assistance on small business and small communities that have not had much exposure to traditional enforcement and therefore may not be fully aware of their compliance obligations. Compliance assistance consists of information and technical assistance provided to the regulated community to help it meet the requirements of environmental law. First and foremost, compliance assistance ensures that the regulated community understands its obligations by providing clear and consistent descriptions of regulatory requirements. The bulk of OECA's compliance assistance activities are undertaken in our regional offices. Regional compliance assistance activities commonly include: hotlines, workshops/seminar/trainings, compliance guides (e.g., plain language explanations of regulations, videos), and on-site visits. Since compliance assistance is a rather new tool for OECA, we are very interested in learning about its effectiveness. In particular, we are interested in learning about the ''outcome'' of compliance assistance on a continuum of potential outcomes. The continuum includes determining the ''reach'' of activity within the intended audience; determining their ''satisfaction'' with the activity; and determining what ''behavioral changes'' they make as a result of the activity. The purpose of this generic ICR is to enable OECA to collect data on the program effectiveness of their compliance assistance program so that we can begin to understand which of our various types of compliance assistance activities are most effective as well as to obtain anecdotal information on the outcomes of these assistance efforts. Moreover, since measuring the impact of compliance assistance is a new activity for OECA, we are also interested in experimenting with different types of measurement methods (e.g., comment cards, mailed surveys, phone surveys) to better direct our program evaluation program. Moreover, we are interested in learning if this data can be obtained using generalizable methods and will be supporting our measurement activities with analysis in this area.

In each instance we will be measuring whether or not the compliance assistance activity is meeting its intended goal. Typical goals for compliance assistance activities include: informing the regulated community of their compliance obligations (e.g., plain-language guides); assisting the regulated community in their understanding of complex federal and/or state requirements (e.g., section 215 of the Small Business Regulatory Enforcement Fairness Act asks EPA to undertake demonstration projects with states to develop compliance assistance tools that integrate state and federal rules); and motivating behavioral change (e.g., pollutants reduced, permits adopted) from on-site visits, and in-depth workshops/trainings. This activity is being undertaken to assist EPA in its implementation of the National Performance Measures Strategy that was finalized on December 22, 1997.

None of the information collected by this action results in or requests

sensitive information of any nature from the states.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it display a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 21, 1998. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .125 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses receiving compliance assistance from EPA.

Estimated Number of Respondents: 465,489.

Frequency of Response: Sporadic.

Estimated Total Annual Hour Burden: 19,470 hours.

Estimated Total Annualized Cost Burden: $218,090.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1860.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 25, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–17811 Filed 7–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6120–8]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Jones Trucklines Superfund Site, St. Louis, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h). This settlement is intended to resolve the liability of Triad Carriers, Inc. for response costs incurred at the Jones Trucklines Superfund Site, 5401 Hall Street, St. Louis, Missouri.

DATES: Written comments must be provided on or before August 5, 1998.

ADDRESSES: Comments should be addressed to Cheryle Micinski, Deputy Regional Counsel, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the Matter of Jones Trucklines Superfund Site*, EPA Docket No. VII–98–F–0010.

The proposed administrative cost recovery settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551–7630.

FOR FURTHER INFORMATION CONTACT: Cheryle Micinski, Deputy Regional Counsel, Office of Regional Counsel, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551–7010.

Dated: June 25, 1998.

Michael J. Sanderson,

Director, Superfund Division, Region VII.

[FR Doc. 98–17809 Filed 7–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6120–9]

Proposed Settlement Agreement; Commonwealth of Pennsylvania; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (EPA) by the Commonwealth of Pennsylvania. The lawsuit concerns EPA's conditional interim approval of the Commonwealth's enhanced vehicle inspection and maintenance (I/M) program under section 182(c)(3) of the Act. The parties have agreed to settle this matter without litigation. The proposed settlement agreement obligates Pennsylvania to make certain additional State Implementation Plan (SIP) submissions, which EPA agrees to propose to approve. The agreement further obligates EPA to work with Pennsylvania to develop an alternative program evaluation methodology that does not require the use of mass emission testing technology, or in the alternative to conditionally approve a subsequent Pennsylvania I/M program evaluation SIP submission if the parties can not develop such a methodology

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to modified settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7606.

Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before August 5, 1998.

Dated: April 16, 1998.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 98–17810 Filed 7–2–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1238; CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Certification

Released: June 26, 1998.

Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once review of those states' applications has been completed. On the basis of the states applications, the Commission has determined that:

(1) The TRS program of the listed states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604;

(2) The TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and,

(3) The TRS programs of the listed states in no way conflict with federal law.

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services (TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 1998, and ending July 25, 2003, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2002, the states may apply for renewal of their TRS program certifications by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605 (a) and (b).

Copies of certification letters are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, NW, Washington, DC, Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, daily, from 9:00 AM to 4:30 PM.

Fifth Notice of States Approved for Certification

File No. TRS–97–03.

Applicant: Alabama Public Service Commission.

State of: Alabama.

FOR FURTHER INFORMATION CONTACT: Al McCloud, (202) 418–2499, amccloud@fcc.gov: Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–17698 Filed 7–2–98; 8:45 am]

BILLING CODE 6712–01–P

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, July 7, 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 and resolution re: Interim Rule to Amend Part 347 of the FDIC's Rules and Regulations.

Memorandum and resolution re: Part 325—Final Rule Revising the Regulatory Capital Treatment of Servicing Assets.

Memorandum and resolution re: Revised Statement of Policy on the National Environmental Policy Act of 1969.

Memorandum and resolution re: Revised Statement of Policy regarding the Assessment of Civil Money Penalties by the Federal Bank Regulatory Agencies.

Memorandum and resolution re: Final Amendments to Part 360—Receivership Rules.

Discussion Agenda

Memorandum and resolution re: Part 330—Proposed Rule on Insurance of Joint Accounts and Payable-on-Death Accounts.

Memorandum and resolution re: Part 303—Final Rule on Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation and related Policy Statements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 30, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–17841 Filed 6–30–98; 4:08 pm]

BILLING CODE 6717–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Retail Credit Classification Policy

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively referred to as the Agencies, requests comment on proposed changes to the Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status (Uniform Retail Credit Classification Policy). The National Credit Union Administration (NCUA), also a member of FFIEC, is reviewing the applicability and appropriateness of the FFIEC proposal for institutions supervised by the NCUA; however, the NCUA does not plan to adopt the proposed policy at this time.

The Uniform Retail Credit Classification Policy is a supervisory policy used by the federal regulatory agencies for the uniform classification of retail credit loans of financial institutions. At the time the initial Uniform Retail Credit Classification Policy was issued in 1980, open-end credit generally consisted of credit card accounts with small credit lines to the most creditworthy borrowers. Today, open-end credit generally includes accounts with much larger lines of credit to diverse borrowers with a variety of risk levels. The change in the nature of those accounts and the inconsistencies in the reporting and charging off of accounts has raised concerns with the FFIEC. This proposed policy statement is intended to help the FFIEC develop a revised classification policy to more accurately reflect the changing nature of risk in today's retail credit environment. The FFIEC is proposing to revise the charge-off policy for closed-end and open-end credit and address other significant issues in retail credit lending by the financial services industry. The FFIEC is requesting comment on the proposed revision and the listed issues.

DATES: Comments must be received by September 4, 1998.

ADDRESSES: Comments should be sent to Keith Todd, Acting Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037, or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT:

FRB: William Coen, Supervisory Financial Analyst, (202) 452–5219, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: James Leitner, Examination Specialist, (202) 898–6790, Division of Supervision. For legal issues, Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OCC: Cathy Young, National Bank Examiner, Credit Risk Division, (202) 874–4474, or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; or Vern McKinley, Attorney, (202) 906–6241, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 1980, the FRB, FDIC, and OCC adopted the FFIEC uniform policy for classification of open-end and closed-end credit (1980 policy). The Federal Home Loan Bank Board, the predecessor of the OTS, adopted the 1980 policy in 1987. The 1980 policy established uniform guidelines for the classification of installment credit based on delinquency status and provided different charge-off time frames for open-end and closed-end credit. The 1980 policy recognized the statistical validity of determining losses based on past due status. At that time, open-end credit generally consisted of credit card accounts with small credit lines to the most creditworthy borrowers. Today, open-end credit generally includes accounts with much larger lines of credit to diverse borrowers with a variety of credit risk levels. The change in the nature of those accounts and the inconsistencies in the reporting and charging off of accounts by financial institutions, has prompted the federal regulatory agencies to propose several revisions to the 1980 policy.

Comments Received

The FFIEC requested comment on September 12, 1997 at 62 FR 48089 (September Notice) on a series of questions designed to help the FFIEC develop a revised classification policy. A total of 61 comments were received representing the views of 22 banks and thrifts, nine bank holding companies, eight regulatory agencies, seven trade groups, and 15 other companies and individuals. The following is a summary of the questions and responses.

1. Charge-off Policy for Open-End and Closed-End Credit

The September Notice requested comment on whether a uniform time frame should be used to charge off both open-end and closed-end accounts, and if a change in policy is made, a reasonable time frame to allow institutions to comply with such a change. Comments were also sought on whether to continue the current regulatory practice of classifying open-end and closed-end credit Substandard when the account is 90 days or more delinquent; whether a standard for the Doubtful classification or guidance for placing loans on a nonaccrual status should be adopted; and whether a specific reserve account should be established.

Charge off policy: Commenters were divided on whether to maintain the current policy of charging off open-end (credit card) loans at 180 days delinquent and closed-end installment loans at 120 days or to change the policy to a uniform time frame for both types of loans. Almost half of the commenters suggested a uniform charge-off time frame for both types of loans. Recommendations for the charge-off time frame varied from 90 days to 180 days; the majority who favored uniformity believed the time frame should be less than 180 days. Of 51 comments to this question, 22 commenters preferred a stricter open-end standard than what is contained in the 1980 policy and remaining respondents supported no change or a less strict open-end standard.

Commenters in favor of a uniform time frame cited three main reasons: (1) inconsistency in the 1980 policy guidelines; (2) recovery data supports a lengthening of the charge-off policy for closed-end installment loans; and (3) the level of credit risk in open-end and closed-end loans has changed since the 1980 policy was adopted.

Commenters supporting a uniform time frame cited the inconsistency between the level of risk associated with credit card loans and closed-end credit and the inconsistency in the 1980 policy for charging-off delinquent accounts. Under the 1980 policy, credit card loans, which generally are unsecured, are charged off when an account is 180 days delinquent. Conversely, closed-end credits generally amortize according to a payment schedule, are better protected via a security interest in collateral, and experience much higher recovery rates after being charged off, but are subject to a more stringent charge-off policy at 120 days delinquency. Over the years, the inconsistency in the time frames has become more apparent as the market for credit cards evolved. Several commenters stated that the risk associated with open-end credit has increased significantly since 1980. This is due to competition in solicitations, less stringent underwriting criteria, lower minimum payment requirements, lack of a security interest, and lower recovery rates after charge-off. Commenters contended that these factors provide support for shortening the current 180 day charge-off time frame for open-end credit.

A uniform time frame would eliminate the inconsistent treatment for closed-end and open-end credit. On a volume basis, the change would actually lengthen the charge-off time frame for more loans than it would shorten. As of year end 1997, institutions supervised by the FRB, FDIC, and OCC had closed-end installment loans of $338 billion and open-end credit card loans of $237 billion. At that time, institutions supervised by the OTS had closed-end installment loans of $29 billion and open-end loans totaling $23 billion. Under a uniform time frame, institutions would have an additional month to work with borrowers before recognizing a loss for lower risk closed-end credit. Credit card issuers would have this same 150-day charge-off time frame, although it would be 30 days less than the current requirement.

The most direct measure of credit risk is the ratio of net losses to loans. In every year since 1984, the credit card loss ratio has been much higher than the closed-end installment loss ratio. During the fourteen-year period, the average net loss for credit cards was 3.2 percent while the average net loss for installment loans was 0.8 percent. The percentage of current recoveries to prior year charge-offs is a ratio that indicates how timely loans are charged-off. A loss classification does not mean that the asset has absolutely no recovery or salvage value; rather, it means that it is not practical or desirable to defer writing off an essentially worthless asset even though partial recovery may occur in the future. A high rate of recoveries may illustrate a conservative charge-off policy, whereas a low rate may indicate an unwarranted delay in the recognition of losses. Since 1985, recoveries for credit card loans have averaged 19 percent, while recoveries for installment loans have averaged 34 percent.

Commenters opposed to any change of the charge-off standards cited four principal reasons: (1) the impact on the industry's earnings and capital; (2) the effect on credit card securitization transactions; (3) the limitation of programming resources because of Year 2000 issues; and (4) impact on consumers.

Some commenters believed that changing the charge-off guidelines for open-end credit may make it more difficult for lenders to collect from borrowers. They stated that a change in the guidelines will result in more expense for institutions, because of the need to revise their existing collection policies and procedures. This can negatively affect an institution's earnings and capital.

Others stated that a change in the charge-off time frames would affect credit card securitization transactions. One commenter mentioned that as of September 1997, $213 billion, or 40.6 percent of outstanding credit card receivables, were securitized. Some commenters believed that any change in the charge-off policy could trigger contractual provisions, such as early amortization or collateral substitution requirements. This would increase costs to credit card issuers and limit their ability to sell securitizations, thus potentially restricting credit card lending. Some commenters indicated that such a change may cause them to exit the securitization market for years.

Some commenters expressed concern about the re-programming efforts needed for a change in the charge-off policy. This comes at a time when computer programmer resources are limited due to Year 2000 efforts.

Finally, some commenters contended that requiring earlier charge offs will have an impact on consumers. The incentives for borrowers to pay and for banks to invest in collection efforts are greatest before the charge off has occurred. One industry association reported that 34 percent of accounts that are 120 days delinquent will be made current before charge off under the 1980 policy. A shorter charge-off time frame reduces the borrower's time to cure a debt. Once charge off occurs, the customer's charged-off account is reported to the credit bureau, further damaging the customer's credit rating and future ability to obtain credit. Commenters stated that the customer loses the incentive to pay, further impacting an institution's recoveries.

Given the division in comments as to the appropriate charge-off policy guidelines, the FFIEC is requesting comment on two alternative charge-off standards (only one of these will be implemented):

- A uniform charge-off time frame for both open-end and closed-end credit at 150 days delinquency with a proposed implementation date of January 1, 2001; or
- Retaining the existing policy of charging off delinquent closed-end loans at 120 days and delinquent open-end loans at 180 days. If this option is selected, any changes affected by the final policy statement would have a January 1, 1999 implementation date.

Substandard classification policy: Thirty-six of 41 commenters supported the practice of classifying open-end and closed-end loans Substandard at 90 days delinquency. The majority of commenters opposed a uniform policy of classifying loans Doubtful, placing them on nonaccrual, or setting up separate reserves in lieu of charging off a loan. The FFIEC has long felt that when an account is 90 days past due, it displays weaknesses warranting classification and proposes to continue the policy of classifying open-end and closed-end loans Substandard at 90 days delinquency. The FFIEC has decided not to add guidance for classifying retail credit Doubtful or placing those loans on nonaccrual.

2. Bankruptcy, Fraud, and Deceased Accounts

The September Notice requested comment on whether there should be separate guidance for determining: (i) when an account should be charged off for bankruptcies under Chapter 7 or 13 of the Federal Bankruptcy Code; (ii) the event in the bankruptcy process that should trigger loss recognition; (iii) the amount of time needed by an institution to charge off an account after the bankruptcy event; and (iv) whether, as an alternative to an immediate charge off, it would be beneficial to set up a specific reserve account. Comments also were sought on the amount of time needed by an institution to charge off losses due to fraud or losses on loans to deceased borrowers.

Bankruptcy: The majority of commenters, 26 of 40, stated that separate guidance should not be developed for bankruptcies under Chapter 7 or Chapter 13. Many

commenters stated that charge-off guidance recognizing bankruptcies arising from defaults on secured loans versus bankruptcies arising from defaults on unsecured is more realistic. The majority indicated that the notification date to the creditor from the bankruptcy court should constitute the event triggering loss recognition. The majority also did not believe it should be necessary to set up a separate allowance reserve at the time of the bankruptcy filing.

The FFIEC proposes to add guidance specifying that unsecured loans for which the borrower declared bankruptcy should be charged off by the end of the month that the creditor receives notification of filing from the bankruptcy court. In addition, secured loans in bankruptcy should be evaluated for repayment potential and classified appropriately, within 30 days of notification of filing from the bankruptcy court, or within the charge-off time frames in the classification policy, whichever is shorter.

The FFIEC is aware that Congress is in the process of addressing bankruptcy reform legislation. If legislation is passed, the FFIEC will review its proposed bankruptcy guidelines for any changes that may be necessary as a result of changes to the bankruptcy code.

Fraud: Commenters were divided equally with respect to the time required to charge off fraudulent loans, either 30 days or 90 days. The FFIEC recognized that a fraud investigation may last more than 30 days. For that reason, the FFIEC is proposing that fraudulent retail credit should be charged off within 90 days of discovery or within the charge-off time frames adopted in this classification policy, whichever is shorter.

Deceased Accounts: The majority of commenters reported that they needed 150 days to work with the trustee of an estate to determine the repayment potential of loans of deceased persons. The FFIEC recognizes that working with the trustee or the deceased family may take months to determine repayment potential. The FFIEC proposes that retail credit loans of deceased persons should be evaluated and charged off when the loss is determined, or within the charge-off time frames adopted in this classification policy, whichever is shorter.

3. Partial Payments

The September notice requested comment on whether borrowers should receive credit for partial payments in determining delinquency by giving credit for any payment received and if this would require significant computer programming changes. Comments were sought on other reasonable alternatives and how payments should be applied. Comments also were requested about the need for guidance on fixed payment programs.

The commenters were divided evenly between supporting the proposal versus keeping the existing policy whereby 90 percent of a payment qualifies as a full payment. Many commented about the significant programming costs that a change to the existing policy would cause. For that reason, the FFIEC is proposing that institutions be permitted to choose one of two methods. The first method retains the current policy of considering a payment equivalent to 90 percent or more of the contractual payment to be a full payment in computing delinquency. The second method would allow an institution to aggregate payments and give credit for any partial payment received; however, the account should be considered delinquent until all contractual payments are received. Whichever method is chosen, the same method should be used consistently within the entire portfolio.

Most commenters did not advocate additional guidance for fixed payment programs. Although no specific language is included in this policy, when an institution grants interest rate or principal concessions under a fixed payment program, and those concessions are material, the institution should follow generally accepted accounting principles (GAAP) guidelines presented in Financial Accounting Standards Board (FASB) 15 (Accounting by Debtors and Creditors for Troubled Debt Restructuring) and FASB 114 (Accounting by Creditors for Impairment of a Loan).

4. Re-aging, Extension, Renewal, Deferral, or Rewrite Policy

The September notice proposed and requested comment on supervisory standards for re-aging accounts.

Re-aging is the practice of bringing a delinquent account current after the borrower has demonstrated a renewed willingness and ability to repay the loan by making some, but not all, past due payments. A liberal re-aging policy on credit card accounts, or an extension, deferral, or rewrite policy on closed-end credit, can cloud the true performance and delinquency status of the accounts. The majority of commenters agreed that the borrower should show a renewed willingness and ability to repay, re-aging should occur after receipt of three months consecutive or equivalent lump sum payments, the account should be opened for a minimum period of time before it can be re-aged, and the account should not be re-aged more than once per year.

The FFIEC concurred with those criteria, but decided that additional guidance on the amount that could be re-aged, and the number of times the account could be re-aged in its lifetime were also needed. The FFIEC proposes to allow re-aging of delinquent loans, when it is based on recent, satisfactory performance by the borrowers and when it is structured in accordance with the institution's prudent internal policies. Institutions that re-age open-end accounts or extend, defer, or rewrite closed-end accounts should establish a written policy, ensure its reasonableness, and adhere to it. An account eligible for re-aging, extension, deferral, or re-write exhibits the following:

- The borrower should show a renewed willingness and ability to repay the loan.
- The borrower should make at least three consecutive contractual payments or the equivalent lump sum payment (funds may not be advanced by the institution for this purpose).
- No more than one re-age, extension, deferral, or rewrite should occur during any 12 month period.
- The account should exist for at least 12 months before a re-aging, extension, deferral, or rewrite is allowed.
- No more than two re-agings, extensions, deferrals, or rewrites should occur in the lifetime of the account.
- The re-aged balance in the account should not exceed the predelinquency credit limit.
- A re-aged, extended, deferred, or rewritten loan should be documented adequately.

5. Residential and Home Equity Loans

The September notice requested comment on whether residential and home equity loans should be classified Substandard at a certain delinquency and whether a collateral evaluation should be required at a certain delinquency.

Twenty-eight of 37 commenters agreed with classifying residential and home equity loans Substandard when they are 90 days delinquent. The proposed policy statement classifies certain residential and home equity loans Substandard at 90 days delinquent. However, the FFIEC recognizes that delinquent, low loan-to-value loans (i.e., those loans less than or equal to 60 percent of the real estate's value based on the most current appraisal or evaluation) possess little likelihood for loss as they are protected

adequately by the real estate. Those loans will be exempted from the proposed classification policy. The FFIEC proposes that, if an institution holds a first-lien residential real estate loan and a home equity loan to the same borrower, and if the combined loan-to-value ratio exceeds 60 percent, the loans should be classified as substandard when both are delinquent more than 90 days. If only the residential real estate loan is delinquent or if only the home equity loan is delinquent, only the delinquent loan is classified substandard. If the institution only holds the home equity loan and does not hold other prior residential mortgages to the same borrower, and the loan is delinquent 90 days or more, it should be classified Substandard.

The majority of commenters supported a collateral evaluation by the time the loan is 180 days delinquent. The proposed policy statement calls for a current evaluation of the collateral to be made by the time a residential or home equity loan is: (1) 150 days past due, if option one under the charge off time frames is selected, or (2) 120 days past due for closed-end credit and 180 days past due for open-end credit, if option 2 is selected. The outstanding balance in the loan in excess of fair value of the collateral, less the cost to sell, should be classified Loss and the balance classified Substandard.

6. Need for Additional Retail Credit Guidance

The September notice requested comment as to whether additional supervisory guidance is needed or would be beneficial. Comments were also sought as to whether additional supervisory guidance is needed on the loan loss reserve for retail credit.

The majority of commenters did not support any other regulatory guidance. Any additional guidance on the allowance for loan and lease loss will be addressed in other policy statements.

Proposed Revision

The FFIEC drafted a revised policy statement in consideration of the comments. The proposed policy statement will:

- Establish a charge-off policy for open-end and closed-end credit based on delinquency under one of two possible time frames;
- Provide guidance for loans affected by bankruptcy, fraudulent activity, and death;
- Establish standards for re-aging, extending, deferring, or rewriting of past due accounts;
- Classify certain delinquent residential mortgage and home equity loans; and
- Broaden the recognition of partial payments that qualify as a full payment.

The FFIEC considered the effect of GAAP on this guidance. GAAP requires that a loss be recognized promptly for assets or portions of assets deemed uncollectible. The FFIEC believes that this guidance requires prompt recognition of losses, and therefore, is consistent with GAAP.

This proposed policy statement, if adopted, will apply to all regulated financial institutions and their operating subsidiaries supervised by the FRB, FDIC, OCC, and OTS.

The proposed text of the statement is as follows:

Uniform Retail Credit Classification Policy [1]

Evidence of the quality of consumer credit soundness is indicated best by the repayment performance demonstrated by the borrower. When loans become seriously delinquent (90 days or more contractually past due), they display weaknesses that, if left uncorrected, may result in a loss. Because retail credit generally is comprised of a large number of relatively small balance loans, evaluating the quality of the retail credit portfolio on a loan-by-loan basis is inefficient and burdensome to the institution being examined and to examiners. Therefore, in general, retail credit should be classified based on the following criteria:

- [Option 1]: Open-end and closed-end retail loans that become past due 150 cumulative days or more from the contractual due date should be charged off. The charge off should be effected by the end of the month in which the requirement is triggered. Open-end and closed-end retail loans that are past due 90 days or more, but less than 150 cumulative days, should be classified Substandard or
- [Option 2]: Closed-end retail loans that become past due 120 cumulative days and open-end retail loans that become past due 180 cumulative days from the contractual due date should be charged off. The charge off should be effected by the end of the month in which the requirement is triggered. Open-end and closed-end retail loans that are past due 90 days or more should be classified Substandard.[2]
- Unsecured loans for which the borrower declared bankruptcy should be charged off by the end of the month in which the creditor receives notification of filing from the bankruptcy court, or within the charge-off time frames adopted in this classification policy, whichever is shorter.
- For secured and partially secured loans in bankruptcy, the collateral and the institution's security position in the bankruptcy court should be evaluated. Any outstanding investment in the loan in excess of the fair value of the collateral, less the cost to sell, should be charged off within 30 days of notification of filing from the bankruptcy court, or within the time frames in this classification policy, whichever is shorter. The remainder of the loan should be classified Substandard until the borrower re-establishes the ability and willingness to repay.
- Fraudulent loans should be charged off within 90 days of discovery, or within the time frames in this classification policy, whichever is shorter.
- Loans of deceased persons should be charged off when the loss is determined, or within the time frames adopted in this classification policy, whichever is shorter.
- One- to four-family residential real estate loans and home equity loans that are delinquent 90 days or more, and with loan-to-value ratios greater than 60%, should be classified Substandard.
- A current evaluation of the loan's collateral should be made by the time a residential or home equity loan is: (1) 150 days past due if option one under the charge off time frames is selected or

[1] The regulatory classifications used for retail credit are Substandard, Doubtful, and Loss. These are defined as follows: Substandard: An asset classified Substandard is protected inadequately by the current net worth and paying capacity of the obligor, or by the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Doubtful: An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. Loss: An asset, or portion thereof, classified Loss is considered uncollectible, and of such little value that its continuance on the books is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value; rather, it is not practical or desirable to defer writing off an essentially worthless asset (or portion thereof), even though partial recovery may occur in the future.

Although the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision do not require institutions to adopt the identical classification definitions, institutions should classify their assets using a system that can be easily reconciled with the regulatory classification system.

[2] The final policy will adopt only one of these options.

(2) 120 days past due for closed-end credit and 180 days past due for open-end credit if option 2 is selected. Any investment in excess of fair value of the collateral, less cost to sell, should be classified Loss and the balance classified Substandard.

Certain residential real estate loans with low loan-to-value ratios are exempt from classification based on delinquency, although these loans may be reviewed and classified individually. Residential real estate loans with a loan-to-value ratio equal to, or less than, 60 percent should not be classified based solely on delinquency status. In addition, home equity loans to the same borrower at the same institution as the senior mortgage loan with a combined loan-to-value ratio equal to, or less than, 60 percent, should not be classified. However, home equity loans where the institution does not hold the senior mortgage that are delinquent 90 days or more should be classified Substandard, even if the loan-to-value ratio is reportedly equal to, or less than, 60 percent.

The use of delinquency to classify retail credit is based on the presumption that delinquent loans display a serious weakness or weaknesses that, if uncorrected, demonstrate the distinct possibility that the institution will suffer a loss of either principal or interest. However, if an institution can clearly document that the delinquent loan is well secured and in the process of collection, such that collection will occur regardless of delinquency status, then the loan need not be classified. A well secured loan is collateralized by a perfected security interest on, or pledges of, real or personal property, including securities, with an estimated fair value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount. In the process of collection means that either collection efforts or legal action is proceeding, and is reasonably expected to result in recovery of the recorded investment in the loan or its restoration to a current status, generally within the next 90 days.

This policy does not preclude an institution from adopting an internal classification policy more conservative than the one detailed above. It also does not preclude a regulatory agency from using the Doubtful classification in certain situations if a rating more severe than Substandard is justified. Nor does it preclude a charge-off sooner when accounts are recognized as Loss.

Partial Payments on Open-End and Closed-End Credit

Institutions should use one of two methods to recognize partial payments. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing delinquency. Alternatively, the institution may aggregate payments and give credit for any partial payment received. However, the account should be considered delinquent until all contractual payments are received. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, the loan would be $900 ($150 shortage times six payments), or three full months delinquent. Whichever method is chosen, the same method should be used consistently within the entire portfolio.

Re-agings, Extensions, Deferrals, or Rewrites

Re-aging is the practice of bringing a delinquent account current after the borrower has demonstrated a renewed willingness and ability to repay the loan by making some, but not all, past due payments. A permissive re-aging policy on credit card accounts, or an extension, deferral, or re-write policy on closed-end credit, can cloud the true performance and delinquency status of the accounts. However, prudent use of the re-aging policy is acceptable when it is based on recent, satisfactory performance and the borrower's other positive credit factors and when it is structured in accordance with the institution's internal policies. Institutions that re-age open-end accounts, or extend, defer, or re-write closed-end accounts, should establish a written policy, ensure its reasonableness, and adhere to it. An account eligible for re-aging, extension, deferral, or rewrite exhibits the following:

- The borrower should show a renewed willingness and ability to repay the loan.
- The borrower should make at least three consecutive contractual payments or the equivalent lump sum payment (funds may not be advanced by the institution for this purpose).
- No loan should be re-aged, extended, deferred, or rewritten more than once within the preceding 12 months.
- The account should exist for at least 12 months before a re-aging, extension, deferral, or re-write is allowed.
- No more than two re-agings, extensions, deferrals, or re-writes should occur in the lifetime of the account.
- The re-aged balance in the account should not exceed the predelinquency credit limit.
- An institution should ensure that a re-aged, extended, deferred, or re-written loan meets the agencies' and institution's standards. The institution should adequately identify, discuss, and document any account that is re-aged, extended, deferred, or re-written.

Examination Considerations

Examiners should ensure that institutions adhere to this policy. Nevertheless, there may be instances that warrant exceptions to the general classification policy. Loans need not be classified if the institution can document clearly that repayment will occur irrespective of delinquency status. Examples might include loans well secured by marketable collateral and in the process of collection, loans for which claims are filed against solvent estates, and loans supported by insurance.

The uniform classification policy does not preclude examiners from reviewing and classifying individual large dollar retail credit loans, which may or may not be delinquent, but exhibit signs of credit weakness.

In addition to loan classification, the examination should focus on the institution's allowance for loan and lease loss and its risk and account management systems, including retail credit lending policy, adherence to stated policy, and operating procedures. Internal controls should be in place to assure that the policy is followed. Institutions lacking sound policies or failing to implement or effectively follow established policies will be subject to criticism.

Request for Comment

The FFIEC is requesting comments on all aspects of the proposed policy statement. In addition, the FFIEC also is asking for comment on a number of issues affecting the charge-off policy and will consider the answers before developing the final policy statement:

1. What would be the costs and benefits of the uniform 150 day charge-off time frame? What would be the costs and benefits of leaving the policy at the current 120/180 day charge-off time frames? The FFIEC welcomes historical statistical evidence showing the dollars and percentages of open-end accounts collected between 120 days delinquency and 150 days delinquency and between 150 days delinquency and 180 days delinquency.

2. What will be the effect of the proposed two time frame charge-off options on institutions? If possible, please quantify, in dollar amounts and percentages (of total operating expenses), the impact of the proposed options in the charge-off policy in the first year of implementation and in subsequent years for open-end and closed-end credits on:

(a) gross and net charge-offs;

(b) recoveries;

(c) earnings; and

(d) securitization transactions.

3. What are the expected dollar costs of reprogramming to implement the first option (uniform charge-off policy at 150 days past due) and what percentage of total operating expenses do those programming dollars represent? Also, can the programming changes be completed by the proposed January 1, 2001 implementation date?

4. Please provide any other information that the FFIEC should consider in determining the final policy statement including the optimal implementation date for the proposed changes.

Dated: June 30, 1998.

Keith J. Todd,

Acting Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–17782 Filed 7–2–98; 8:45 am]

BILLING CODE 6210–01–P, 25% 6714–01–P, 25% 6720–01–P, 25% 4810–33–P 25%

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Keith Ray Loeffler, Allendale, Illinois; to acquire additional voting shares of Allendale Bancorp, Inc., Allendale, Illinois, and thereby indirectly acquire First National Bank of Allendale, Allendale, Illinois.

Board of Governors of the Federal Reserve System, June 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17742 Filed 7-2-98; 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 July 28, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FNB Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc.; to merge with Citizens Holding Corporation, Clearwater, Florida, and thereby indirectly acquire Citizens Bank and Trust Company, Clearwater, Florida.

Board of Governors of the Federal Reserve System, June 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17741 Filed 7-2-98; 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 July 20, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. UST Corp., Boston, Massachusetts; to acquire through Cambridge Trade Finance Corp., Boston, Massachusetts certain assets of Cambridge Trading Services Corporation, Boston, Massachusetts, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1).

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank AG, Frankfurt, Main, Federal Republic of Germany; to acquire Bouclier Vert Limite' L.L.C. d/b/a/ Green Shield Limited, L.L.C., Woodbury, New Jersey, and thereby engage in residential mortgage

warehouse lending activities in the United States, pursuant to § 225.28(b)(1).

Board of Governors of the Federal Reserve System, June 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17743 Filed 7-2-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background. Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: Survey of Small Business Finances

Agency form number: FR 3044

OMB Control number: 7100-0262

Frequency: one-time

Reporters: small businesses

Annual reporting hours: 6,100

Estimated average hours per response: 1

Number of respondents: 6,100

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 252, 1817(j), 1828(c), and 1841 et seq.). Individual respondent data are provided in a public-use file. However, any information that could identify respondent firms, or the financial institutions that they use, will be excluded from the public data set pursuant to the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: The FR 3044 will be similar to the 1987 and 1993 National Surveys of Small Business Finances (OMB Nos. 7100-0234 and 7100-0262, respectively). In part, this survey is being conducted to collect information needed to satisfy the requirements of Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. This law requires the Board to conduct a study and submit a report to the Congress every five years ''...detailing the extent of small business lending by all creditors....''

The FR 3044 would gather data from small businesses on their financial relationships, credit experiences, lending terms and conditions, income and balance sheet information, the location and types of financial institutions used, and other firm characteristics. In conjunction with Board staff, a private survey firm would conduct small focus groups to investigate emerging issues in small business finance and update the 1993 questionnaire. The survey firm would then conduct two pretests with a minimum of fifty small business firms in each pretest. Following revisions to the questionnaire, the survey would be conducted by means of computer-assisted telephone interviews with approximately 6,000 randomly selected small business firms. Interviewing would likely commence in early 1999.

Board of Governors of the Federal Reserve System, June 29, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98-17744 Filed 7-2-98; 8:45AM]

Billing Code 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)((2)((A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. A National Assessment of Linguistically and Culturally Appropriate Services in Managed Care Organizations Serving Racially and Ethnically Diverse Populations—NEW—The Office of Minority Health proposes to conduct a mixed telephone and mail survey with a national random sample of managed care organizations serving racially and ethnically diverse communities. The survey will provide data on the prevalence of policies and practices that promote the delivery of linguistically and culturally appropriate services by managed care organizations, and the factors that facilitate and detract from the implementation of such policies and practices. The data collected will inform the Office of Minority Health about the current nature and extent of such services and identify ways in which such efforts can be extended. Respondents: Business or other for-profit; Non-profit organizations; Number of Respondents: 320; Response per Respondent: 3; Average Burden per Response: 30 minutes; Total Burden: 480 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: June 25, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–17786 Filed 7–2–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics, Subcommittee on Populations.

Times and Dates: 9:00 a.m.–5:00 p.m., July 14, 1998; 9:00 a.m.–5:00 p.m., July 15, 1998.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Populations will hold a two-day public meeting to assess the health data needs in the Pacific insular areas, Puerto Rico, and the Virgin Islands. The Subcommittee will examine the relations between these areas and the Federal government with regard to the current status of health data collection, analysis, and utilization, including the adequacy of available health data and statistics, as well as health information systems for assessing population health needs and health service requirements, examining the results of Federal public health spending, and documenting Healthy People objectives. The Subcommittee intends to examine impediments to improving health data collection and use in Pacific insular areas, Puerto Rico, and the Virgin Islands; learn about any special considerations involving privacy and confidentiality; identify the most critical areas where health data gathering capabilities are undeveloped but essential; and develop recommendations for improving health information systems. Participants are expected to include representatives from the Pacific insular areas, Puerto Rico and the Virgin Islands, as well as representatives from HHS agencies which administer programs in these areas, and other invited federal officials.

For Further Information Contact: Substantive information about the Committee as well as a roster of Committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, telephone 301/436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs

Dated: June 26, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–17785 Filed 7–2–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–17–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Project Intensive Care Antimicrobial Resistance Epidemiology (ICARE), Phase 3—Reinstatement—The Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention, is proposing a study to investigate the relationship between use of antimicrobial agents and the incidence of antimicrobial resistance at 40 U.S. hospitals. The proposed Phase 3 study of Project ICARE will be very similar to Phase 2 ICARE with minor revisions. We hope to enroll 40 hospitals and address many confounding factors of antimicrobial resistance. In addition, these hospitals will serve as a sentinel surveillance system for different antimicrobial resistant pathogens, such as vancomycin resistant staphylococci. About half of the hospitals have participated in Phase 2 of Project ICARE. Participating hospitals will all be active participants of the CDC's National Nosocomial Infections Surveillance (NNIS) system. Phase 3 of Project ICARE is a refinement of the Phase 2 study and will allow interhospital comparison of data (i.e., sending interim reports back to study hospitals) facilitated by incorporating differences in culturing frequency, case-mix by ICU type and speciality wards (i.e., internal organization), barrier precautions, and prescribing practice policies. Phase 3 will also allow for valid comparison of attempts at reducing antimicrobial resistance in study hospitals (i.e., publish results of interventions to reduce antimicrobials resistance at study hospitals). Also, key parameters of antimicrobial use could be correlated with antimicrobial resistance levels and tracked through the hospital's quality improvement indicator process, pharmacy and therapeutics committee, or medical staff. Unnecessary use of antimicrobials may be reduced by these efforts if the information can be provided to hospitals. The total annual burden hours are 6,160.

Form name	Number of respondents	No. responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Primary contact	40	12	1	480
Pharmacy	40	48 (median)	2.0	3,840
Microbiology	40	60 (median)	0.5	1,200
Isolates	40	80 (maximum)	0.20	640

2. 1999 and 2001 National School-Based Youth Risk Behavior Surveys—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)—Reinstatement—The purpose of this request is to renew OMB clearance for a biennial, national, youth risk behavior survey. This ongoing biennial survey is administered to students attending regular public, private, and Catholic schools in grades 9–12. The survey addresses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. Previous OMB clearance for these surveys expired in October of 1997 (OMB No. 1920–0258, expiration 10/97). OMB clearance for a similar survey conducted among alternative school students will expire in December of 1998 (OMB No. 0920–0416, expiration 12/31/98). Data on the health risk

behaviors of adolescents is the focus of at least 26 national health objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions.* This survey will provide end-of-decade data to help measure these objectives, as well as baseline data to measure many new national health objectives proposed for 2010. No other national source of data exists for most of the proposed 2010 objectives that address behaviors of adolescents. The data also will have significant implications for policy and program development for school health programs nationwide. The total annual burden hours are 9,173.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Alternative school students	12,000	1	0.75	9,000
Educating officials	345	1	0.50	173

Dated: June 26, 1998.

Charles Gollmar,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17766 Filed 7–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Community Affairs of the Advisory Committee for Energy-Related Epidemiologic Research: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Subcommittee for Community Affairs of the Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 8:30 a.m.–4:45 p.m., July 23, 1998; 8:15 a.m.–12 noon, July 24, 1998.

Place: The Grove Hotel, 245 South Capitol Boulevard, Boise, Idaho 83702, telephone 208/333–8000, FAX 208/333–8800.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee will advise the Advisory Committee for Energy-Related Epidemiologic Research (ACERER) on matters related to community needs and will report back to the agency through ACERER.

Matters to be Discussed: Agenda items include: discussions on the status of current federal health agencies' responses to the National Cancer Institute (NCI) I–131 fallout study and the feasibility of additional responses that include, but not limited to, notification, education, screening, medical monitoring, additional dose assessment (other radionuclides), and epidemiology; and the history and progress of the Idaho National Engineering and Environmental Laboratory (INEEL) dose reconstruction project with a focus on the process of discovering, accessing, and assembling documentation on the emissions of radionuclides and chemicals from INEEL facilities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Steven Adams, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: June 29, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17764 Filed 7–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee; Notice of Meeting

Name: National Vaccine Advisory Committee (NVAC) Immunization Registries Workgroup on Privacy and Confidentiality.

Time and Date: 8:30 a.m.–12:30 p.m., July 16, 1998.

Name: NVAC Immunization Registries Workgroup on Technical and Operational Challenges.

Time and Date: 1:30 p.m.–5:30 p.m., July 16, 1998.

Name: NVAC Immunization Registries Workgroup on Ensuring Provider Participation.

Time and Date: 8:30 a.m.–12:30 p.m., July 17, 1998.

Name: NVAC Immunization Registries Workgroup on Resource Issues.

Time and Date: 1:30 p.m.–5:30 p.m., July 17, 1998.

Place: Marriott Marquis, 265 Peachtree Center, Atlanta, Georgia, telephone (404) 521–0000.

Status: Open to the public, limited only by space availability. The meeting room accommodates approximately 200 people.

Purpose: During a White House Ceremony on July 23, 1997, the President directed the Secretary of Health and Human Services (HHS) to work with the States on integrated immunization registries. As a result, NVAC has formed a Workgroup, staffed by the National Immunization Program (NIP), that will gather information for development of a National Immunization Registry Plan of Action.

To assist in the formulation of a work plan, a series of public meetings relating to (1) privacy and confidentiality; (2) resource issues; (3) technical and operational challenges; and (4) ensuring provider participation, will be held throughout the Nation. These meetings will provide an opportunity for input from all partners which include state and local public health agencies, professional organizations of private health agencies, managed care organizations (MCOs), employer-funded health care plans, vaccine manufacturers and developers, vendors and developers of medical information systems, information standards development organizations, parents, social welfare agencies, legislators, privacy and consumer interest groups, and other representatives of the public at large.

For each meeting, the Workgroup is inviting experts to address the four specific issues outlined above. Expert speakers are being asked to respond to the questions outlined below in writing, make brief oral presentations, and to respond to additional questions from the Workgroup.

Members of the public who wish to provide comments may do so in the form of written statements, to be received by the completion of the last meeting, addressed as follows: NIP/CDC, Data Management Division, 1600 Clifton Road, NE, M/S E–62, Atlanta, Georgia 30333.

There will be a period of time during the agenda for members of the public to make oral statements, not exceeding 3

minutes in length, on the issues being considered by the Workgroup. Members of the public who wish to speak are asked to place their names on a list at the registration table on the day of the meeting. The number of speakers will be limited by the time available and speakers will be heard once in the order in which they place their names on the list. Written comments are encouraged; please provide 20 copies.

Based on the outcome of these meetings, a National Immunization Registry Plan of Action will be developed and proposed to NVAC for their deliberation and approval. This plan will identify registry barriers and solutions, strategies to build a registry network, resource requirements and commitments, and a target date for network completion.

Matters to be Discussed: Agenda items will include an overview of the Initiative on Immunization Registries and current immunization registry efforts and testimonies by organizational representatives on the following issues relevant to immunization registries: privacy and confidentiality, resources issues, technical and operational challenges, and ensuring provider participation.

Agenda items are subject to change as priorities dictate.

Resource Issues Questions to be Considered:

1. What approaches have been successful in securing funding to support registries?
2. What approaches to secure funding have been tried but failed?
3. What cost-sharing arrangements would your organization view as reasonable and fair to ensure long-term sustainability of a registry?
4. Would you be willing to share costs through a fee-for-service arrangement and how much would you be willing to pay?
5. Would you be willing to support a vaccine surcharge and at what rate?
6. What types of resources and/or in-kind support do you receive and from whom?
7. What types of resources and/or in-kind support do you provide?
8. What types of resources are you willing and able to provide over the short-term and/or long-term to ensure registry sustainability?
9. Are you willing to provide resources or in-kind support toward linking your existing registries with state and local registries?
10. What are the costs of implementing/operating an immunization registry?
11. What are the costs of not having an immunization registry (e.g., looking up immunization histories, generating school immunization records, etc.)?
12. How should immunization registries be integrated with larger patient information systems and how should their component costs be ascertained?
13. Do you feel there is a need for the Federal Government to provide leadership in developing state and community-based immunization registries? What should the role of the Federal Government be in this effort?

Technical and Operational Questions to be Considered:

1. How can universal, interactive, real-time, secure immunization record exchange between immunization providers be implemented?
2. How does your system implement record exchange?

A. Can a provider get an up-to-date immunization history for a patient sitting in his or her office?

B. How is this function implemented?

3. How can it be assured that the most complete and up-to-date copy of an immunization record is always retrieved by a requesting provider?
4. How does your system identify the definitive record?
5. How can existing practice management systems achieve connectivity with immunization registries efficiently, without dual systems, redundant processes, and multiple interfaces?
6. What software systems can your system interface with?
7. How are connections between your system and existing systems implemented?
8. How can registries be used to measure immunization rates, accurately and routinely, at county, state, and national levels, without counting any individual more than once?
9. How can the functionality of immunization registries be standardized without compromising registries' ability to customize and extend that functionality?
10. What immunization registry functions should be standardized?
11. Who should provide leadership in such a standardization effort?
12. How will/should standards be implemented in immunization registries?
13. How can the cost of operating immunization registries be reduced to a level at which immunization providers themselves would be willing to support them? [crossover with cost issue]
14. What sorts of inter-organizational arrangements and legal structures need to be in place to provide an environment in which immunization registry data can flow as needed? [crossover with privacy & confidentiality issue]
15. Do you feel that there is a need for the Federal Government to provide leadership in developing state and community-based immunization registries? What should the role of the Federal Government be in this effort?
16. How can duplication of records be minimized?
17. How can existing billing/encounter information systems be modified to provide appropriate immunization registry functions?
18. How can immunization registries be broadened to provide other important functions in patient monitoring (e.g., well-child assessments, metabolic/hearing screening, etc.)?
19. What mechanisms are needed to detect and prevent unauthorized access to registry data?
20. What data capture technology (e.g., bar codes, voice recognition, etc.) can minimize the negative impact on workflow?
21. What techniques (e.g., standard knowledge representation such as Arden Syntax) can be used to disseminate vaccination guidelines to individual registries quickly and with a minimum of new programming required to update automated reminder/recall and forecasting based on the guidelines?

Privacy and Confidentiality Questions to be Considered: Terminology: Privacy—The right of an individual to limit access by others to some aspect of the person. Confidentiality—The treatment of information that an individual has disclosed in a relationship of trust and with the expectation that it will not be divulged to others in ways that are inconsistent with the understanding of the original disclosure. Individually identifiable information—Information that can reasonably be used to identify an individual (by name or by inference).

1. Should immunization data have different privacy requirements than the rest of the medical record?
2. How can the disclosure and re-disclosure of immunization information be controlled through policies, procedures, and legislation?
3. Should consent to participate be implied or required? In what form?
4. Should different levels of disclosure be possible? What levels should be available to what groups?
5. Who should have access to immunization registry data?
6. What information should be disclosed to an immunization registry?
7. What other uses can immunization registry data have?
8. Would ability to produce a legal record be a desirable function for the registry?

9. What fair information practices should be implemented (e.g., ability to correct the record, notice of being put in registry to parent)?

10. How long should information be kept in a registry?

11. How will privacy issues affect the following groups: parents, immigrants, religious groups, HIV-positive and other immunocompromised health conditions, law enforcement, victims of domestic violence, and custodial parents?

12. How should registries ensure that privacy policies are followed?

13. Do you have any comment or recommendation for NVAC/CDC/HHS related to the implementation of the network of state and community-based registries and do you have any concerns?

14. Do you feel there is a need for the Federal Government to provide leadership in developing state and community-based immunization registries? What should the role of the Federal Government be in this effort?

15. Given the mandate of Health Insurance Portability and Accountability Act to create a unique health identifier, how should that goal be achieved while minimizing the probability of inappropriate use of the identifier?

16. What steps can be taken to prevent unauthorized re-disclosure of information already provided to an organization or person?

17. What legal barriers exist which prevent data sharing by MCOs and how can they be obviated?

18. What mechanism should be available to allow parents to opt out of the registry?

19. What agency/organization should be responsible for maintaining registry information?

20. How should consent for inclusion in an immunization registry be obtained? Should it be implicit or explicit?

21. What information should be included in an immunization registry?

22. Should registries include (and release) information on contraindications, adverse events, etc.?

23. Who should have access to immunization registry data and how can restricted access be assured?

24. What information should be available to persons other than the client/patient and the direct health care provider (e.g., schools)?

25. What is the best way to protect privacy and ensure confidentiality within a registry?

26. How should individuals/parents have access to registry information on themselves/their children?

27. Should data maintained in a state and community-based immunization registry be considered public information?

28. Would national privacy and confidentiality standards help ensure that data maintained in an immunization registry is protected?

Ensuring Provider Participation Questions to be Considered:

1. What type of resources (e.g., hardware, staff, etc.) are needed for you (provider/organization) to participate in a computerized registry?

2. What are the cost-related barriers that keep you (provider/organization) from participating in an immunization registry?

3. What cost should providers be responsible for, pertaining to participation in immunization registry systems?

4. What are the cost savings you would anticipate as a result of participating in a computerized registry (e.g., increased return visit form reminders, less personnel paperwork for preschool exams, etc.)?

5. How much time would you be willing to invest per patient visit (e.g., additional 1, 5, 7, 10 minutes) in the overall success of an immunization registry?

6. What type of user support would be needed in order for you (provider/organization) to participate in an immunization registry?

7. How would you (provider/organization) encourage providers and consumers in your community to participate in an immunization registry?

8. What community support would be necessary for you to participate in the immunization registry?

9. What benefits/value (e.g., immunization reminders, quick access to immunization histories, etc.) would a registry provide that would encourage your (provider/organization) participation?

10. What incentives should be offered to providers/organizations to participate in an immunization registry?

11. What barriers have you (provider/organization) encountered that have prevented you from participating in an immunization registry?

12. Is provider liability (e.g, disclosure of sensitive patient information) a barrier to participating in an immunization registry? Why?

13. How would an immunization registry impact your practice/organization?

14. Do you currently share immunization data with other providers electronically? For what purpose (e.g., billing, share group data, etc.)?

15. How (e.g., electronic record, paper record) is medical information maintained in your practice/organization?

16. Who should retain ownership of immunization records as they are distributed throughout an immunization registry?

17. How would you (provider/organization) use the data maintained in an immunization registry?

18. What type of quality control process would you (provider/organization) perform to ensure the accuracy and completeness of the immunization data entered into an immunization registry?

19. What type of security policies and procedures need to be in place for you to be confident that data are secure?

20. What functions should a registry perform in your office in order for you (provider/organization) to participate?

21. Do you have any advice or recommendations for NVAC/CDC/HHS related to the implementation of the network of state and community-based registries and do you have any concerns?

22. Do you feel that there is a need for the Federal Government to provide leadership in developing state and community-based immunization registries? What should the role of the Federal Government be in this effort?

23. Have you received training on the use and maintenance of computerized medical information? Do you feel this training is needed to fully support the development and maintenance of immunization registries?

Contact Person for More Information: Robb Linkins, M.P.H., Ph.D., Chief, Systems Development Branch, Data Management Division, NIP, CDC, 1600 Clifton Road, NE, M/S E–62, Atlanta, Georgia 30333, telephone (404) 639–8728, e-mail rxl3@cdc.gov.

Dated: June 29, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Quarterly List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing the first quarterly update of all guidance documents issued and withdrawn since the compilation of the comprehensive list. FDA committed to publishing quarterly updates in its February 1997 ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued since the comprehensive list was compiled. This list also includes some guidance documents that were inadvertently not included on the comprehensive list mentioned previously.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Information on where to obtain single copies of listed guidance documents is provided for each agency center individually in the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its ''Good Guidance Practices'' (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including ''Level 2'' guidance documents. The following list of guidance documents represents all guidances issued by FDA since the compilation of the February 26, 1998 (63 FR 9795) list and guidance documents inadvertently not included in the comprehensive list. The guidance documents are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guidance for Industry: Industry-Supported Scientific and Educational Activities	November 1997	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within the United States) or 301–827–3844 (outside of the United States and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Draft Guidance for Industry: Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMS)	December 1997	Do	Do
Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products	January 1998	Do	Do
Draft Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	January 1998	Do	Do
Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	January 1998	Do	Do
Draft Guidance for Industry: Clinical Development of Programs for Drugs, Devices and Biological Products Intended for Treatment of Osteoarthritis (OA)	February 1998	Do	Do
Draft Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	November 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guidance for Industry: Implementation of Section 126, Elimination of Certain Labeling Requirements of the Food and Drug Administration Modernization Act of 1997	February 1998	Do	Do
Guidance for Industry: Clinical Development Programs for Drugs, Devices and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	March 1998	Do	Do
Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)	March 1998	Do	Do
Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy	March 1998	Do	Do
Compliance Program Guidance Manual (Drugs and Biologics) (Publication No. 94–920699)	1994	FDA Personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–605–6050

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Medical Device Tracking (Docket #98D–0132)	February 19, 1998	OC	Division of Small Manufacturers Assistance, 1–800–638–2041 or 301–827–0111 or (Fax) Facts-on-Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Guidance on Lead Wires and Patient Cables	March 9, 1998	OC	Do
Draft Guidance to Industry and CDRH for PMA's and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review	March 20, 1998	ODE	Do
PMA/510(k) Expedited Review—Guidance for Industry and CDRH Staff	March 20, 1998	ODE	Do
Guidance on Amended Procedures for Advisory Panel Meetings	March 20, 1998	ODE	Do
Guidance on IDE Policies and Procedures	January 20, 1998	ODE	Do
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff, Final Document (Docket #98D–0078) (FOD #310)	February 19, 1998	ODE	Do
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—for Use by CDRH and Industry (Docket #98D–0079) (FOD #322)	February 19, 1998	ODE	Do
Determination of Intended Use for 510(k) Devices: Final Document (Docket #98D–0081) (FOD #857)	February 19, 1998	ODE	Do
30-Day Notices and 135-day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH (Docket #98D–0080) (FOD #795)	February 19, 1998	ODE	Do
New section 513(f)(2)—Evaluation of Automatic Class III Designation: Guidance for Industry and CDRH Staff (Docket #98D–0082) (FOD #199)	February 19, 1998	ODE	Do
Procedures for Class II Device Exemptions from Premarket Notification Guidance for Industry and CDRH Staff (Docket #98D–0083) (FOD #159)	February 25, 1998	ODE	Do
Electrocardiograph (ECG) Surface Electrode Tester—Version 1.0	February 11, 1997	ODE/DCRND	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters	January 1, 1997	ODE/DCRND	Do
Guidance Document for Testing Bone Anchor Devices (FOD #915)	April 20, 1996	ODE/DGRD	Do
ORDB 510(k) Sterility Review Guidance (FOD #659)	July 3, 1997	ODE/DGRD	
Guidance for Testing MR Interaction With Aneurysm Clips (FOD #958)	May 22, 1996	ODE/DGRD	Do
Electroencephalograph Device Draft Guidance for 510(k) Content (FOD #767)	June 25, 1997	ODE/DGRD	Do
Ophthalmic Device Triage List	July 25, 1997	ODE/DOD	Do
Contact Lenses: The Better the Care the Safer the Wear (FDA Publication No. 91–4220)	April 1, 1991	ODE/DOD	Do
An FDA Survey of U.S. Contact Lens Wearers (Carol L. Herman) Reprinted from Contact Lens Spectrum	July 1, 1987	ODE/DOD	Do
Facts for Consumers from the Federal Trade Commission—Eyeglasses	April 1, 1986	ODE/DOD	Do
Important Information About Rophae Intraocular Lenses	August 20, 1992	ODE/DOD	Do
Intraocular Lens (IOL) Guidance Document	October 10, 1997	ODE/DOD	Do
FDA Guidance for Multifocal Intraocular Lens IDE Studies and PMA's	May 1996	ODE/DOD	Do
Premarket Notification[510(k)] Guidance Document on Class II Daily Wear Contact Lenses	May 12, 1994	ODE/DOD	Do
Electrocardiograph (ECG) Electrode—Version 1.0	February 11, 1997	ODE/DRAERD	Do
Electrocardiograph (ECG) Lead Switching Adapter—Version 1.0	February 11, 1997	ODE/DRAERD	Do
Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification	January 14, 1998	ODE/DRAERD	Do
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents	February 5, 1998	ODE/DRAERD	Do
FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability	February 6, 1998	OHIP/Regs	Do
Policy Notebook in a Q/A Format (Update to existing document)	January 23, 1998	OHIP/DMQRP	Do
The Small Entity Compliance Guide	January 1998	OHIP/DMQRP	Do
Medical Device Appeals and Complaints: A Guidance on Dispute Resolution	February 19, 1998	OHIP/DSMA	Do
Medical Device Quality Systems Manual: A Small Entity Compliance Guide	December 1, 1996	OHIP/DSMA	Do
SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance (FOD #318)	February 19, 1998	OSB/DPS	Do
Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies (FOD #316)	February 19, 1998	OSB/DPS	Do
Guidance on Procedures for Review of Postmarket Surveillance Submissions (FOD #317)	February 19, 1998	OSB/DPS	Do
MDR/Policy/Guidance for Endosseus Implant Devices	December 1992	OSB/DSS	Do
MDR Guidance #4—External Defibrillators	September 1994	OSB/DSS	Do
MDR Guidance—Blood Loss Policy	December 1995	OSB/DSS	Do
Summary Reporting Approval for Adverse Events	July 1997	OSB/DSS	Do
Common Problems: Baseline Reports and MedWatch Form 3500A (letter to manufacturers updated)		OSB/DSS	Do
Guidance on the Recognition and Use of Consensus Standards	February 19, 1998	OST	Do
Withdrawn			

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
''Draft Guidance for the Content of Preliminary Investigational Device Exemptions (Pre-IDE) Presentations: Teleconferences, Meetings and Written Submissions''	August 22, 1995	ODE/DCRND	Do
Preliminary Guidance for Ambulatory Electrocardiograph for Data to be Submitted to FDA in Support of Premarket Notification Applications	September 1, 1994	ODE/DCRND	Do
Preliminary Guidance for Data to be Submitted in Support of Premarket Notifications for Analyzing ECG's/Interpretive ECG's	December 1, 1994	ODE/DCRND	Do
Preliminary Guidance for Data to be Submitted to the FDA in Support of Premarket Notification Applications for External Cardioverters and Defibrillators	April 25, 1994	ODE/DCRND	Do
Reviewer Checklist for Monitors: EMC, Battery and Software	January 24, 1996	ODE/DCRND	Do
Medical Device Tracking: Questions and Answers Based on the Final Rule	August 26, 1993	OC/DOEI	Do
510(k) Diagnostic Ultrasound Guidance 4/91 Use of Medical Index in Place of Peak Intensity in Determining Substantial Equivalency for Diagnostic Ultrasound Equip/Access/Rel. Meas. Dev.	February 1993	ODE/DRAERD	Do
Review of ''YAG'' Lasers for Neurosurgery	N/A	ODE/DGRD	Do
FDA Public Health Advisory: Retinal Photic Injuries from Operating Microscopes During Cataract Surgery	October 16, 1995	ODE/DOD	Do
Sterilization: Questions and Answers from FDA, from Medical Device Diagnostic Industry for January, 1985, page 132	January 1985	OC/DOEII	Do
Corrections			
Rechargeable Battery Preliminary Guidance for Data to be Submitted to FDA in Support of Premarket Notification Applications (FOD #873)	January 1, 1994	ODE/DCRND	Do
Review Guidance for Anesthesia Conduction Catheter (FOD #783)	May 15, 1991	ODE/DCRND	Do
Guidance for Peak Flow Meters for Over-the-Counter Sale	June 1, 1993	ODE/DCRND	Do
Review Guidance for Oxygen Generators and Oxygen Equipment	Undated	ODE/DCRND	Do
Guidance for the Preparation and Content of Applications to the Food and Drug Administration for Ventricular Assist Devices and Total Artificial Hearts (draft)	December 4, 1987	ODE/DCRND	Do
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	ODE/DGRD	Do
Draft Version—Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	ODE/DGRD	Do
Draft Version 1—Biofeedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	ODE/DGRD	Do
Draft Version Cranial Perforator Guidance	July 13, 1994	ODE/DGRD	Do
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	ODE/DGRD	Do
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	ODE/DGRD	Do
Draft Version Neuro Endoscope Guidance	July 7, 1994	ODE/DGRD	Do
Galvanic Skin Response Measurement Devices—Draft Guidance for 510(k) Content	August 23, 1994	ODE/DGRD	Do
Guidance for Studies for Pain Therapy Devices—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	ODE/DGRD	Do
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	ODE/DGRD	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guide for TENS 510(k) Content (Draft)	August 1, 1994	ODE/DGRD	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	N/A	ODE/DGRD	Do
Protocol for Dermal Toxicity Testing for Devices in Contact With Skin (Draft)	N/A	ODE/DGRD	Do
Premarket Notification 510(k) Guidance for Contact Lens Care Products	May 1, 1997	ODE/DOD	Do
Amendment 1: Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	June 28, 1994	ODE/DOD	Do
Premarket Approval (PMA) Manual (FDA 97–4214)	July 1, 1997	OHIP/DSMA	Do
Required Postmarket Surveillance Section 522(a) Initial Device Categories Revised	September 30, 1997	OSB/DPS	Do
Guidance to Manufacturers on the Development of Required Postmarket Surveillance Study Protocols Under Section 522(a)(1) of the Federal Food, Drug, and Cosmetic Act	July 16, 1996	OSB/DPS	Do
Variance from Manufacturer Report Number Format	August 12, 1996	OSB/DSS	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail, or Internet)
Level 1 Guidances			
Environmental Assessment of Human Drugs and Biologics Applications	February 12, 1998	Chemistry	Office of Training and Communications, Drug Information Branch, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573 or Internet at http://www.fda.gov/cder/guidance/index.htm
PAC-ALTS: Postapproval Changes—Analytical Laboratory Testing Sites	April 28, 1998	Do	Do
SUPAC IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum	April 28, 1998	Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	March 18, 1998	Clinical	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	February 18, 1998	Do	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	April 17, 1998	Compliance	Do
S1B Testing for Carcinogenicity in Pharmaceuticals	February 23, 1998	International Conference on Harmonization	Do
Implementation of Section 126, Elimination of Certain Labeling Requirements, of the FDA Modernization Act of 1997	February 18, 1998	FDA Modernization Act	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	May 5, 1998	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	February 5, 1998	Do	Do
Level 2 Guidances			
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro	April 7, 1997	Clinical	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail, or Internet)
Organization of an Abbreviated New Drug Application and an Abbreviated Antibiotic Application	April 7, 1997	Generic Drug	Do
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling	January 12, 1998	Advertising	Do
Withdrawn			
Biopharmaceutic Considerations in Designing and Evaluating Novel Drug Delivery Systems	November 1, 1983	Biopharmaceutic	
Clinical Evaluation of Drugs to Prevent Dental Caries	November 2, 1978	Clinical	
Clinical Evaluation of Drugs to Prevent, Control and/or Treat Periodontal Disease	November 1, 1978	Do	
Conjugated Estrogens (Tables) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 21, 1991	Biopharmaceutic	
Current Good Manufacturing Practices for Positron Emission Tomographic (PET) Drug Products	April 22, 1997	Compliance	
Diphenhydramine Hydrochloride Capsules/Elixir	June 1, 1986	Labeling	
Ergotamine Tartrate and Caffeine Tablets and Suppositories	December 1, 1981	Do	
Glyburide Tablets	April 1, 1993	Do	
Haloperidol Tablets/Oral Solution (Concentrate)	February 1, 1990	Do	
Regulatory Aspects Pertinent to the Development of Transdermal Drug Delivery Systems	February 2, 1985	Biopharmaceutic	
Supplements to New Applications, Abbreviated Antibiotic Applications for Nonsterile Drug Products	December 12, 1994	Compliance	
Terfenadine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 11, 1995	Biopharmaceutic	
Positron Emission Tomography Questions and Answers 1	October 24, 1996	Generic Drug	
Positron Emission Tomography Questions and Answers 2	April 18, 1997	Do	
Submission of an Environmental Assessment in Human Drug Applications and Supplements	November 13, 1995	Chemistry	
Submission of an Environmental Assessment in Human Drug Applications and Supplements	November 13, 1995	Do	
Acetohexamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 1, 1988	Biopharmaceutic	
Allopurinol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 15, 1985	Do	
Amiloride Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 29, 1985	Do	
Aminophylline (suppositories) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	
Amitriptyline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	
Amoxicillin (capsules, tablets and suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 10, 1988	Do	
Baclofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 5, 1988	Do	
Cefadroxil (capsules, tablets and suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 7, 1988	Do	
Cephalexin (tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 19, 1987	Do	

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail, or Internet)
Cephradine (Capsule and Suspension) In-Vivo Bioequivalence Studies	September 10, 1986	Do	
Chlordiazepoxide and Chlordiazepoxide HCl Bioavailability and Dissolution Studies	July 5, 1983	Do	
Chlorpropamide In-Vivo Bioavailability Studies	July 5, 1983	Do	
Chlorthalidone (Tablets)	July 5, 1983	Do	
Clinical Evaluation of Drugs for the Treatment of Peripheral Vascular Disease		Do	
Clofibrate In Vivo Bioavailability Studies	April 7, 1986	Do	
Clonidine Hydrochloride Drug Products In Vivo Bioequivalence Study and In Vitro Dissolution Testing	December 5, 1984	Do	
Clorazepate In Vivo Bioequivalence Study and In Vitro Dissolution Testing	February 17, 1987	Do	
Cyclobenzaprine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 25, 1988	Do	
Desipramine Hydrochloride (Tablets) In Vivo Bioequivalence Studies	September 22, 1987	Do	
Dicyclomine Hydrochloride Drug Products In Vivo Bioequivalence	August 10, 1984	Do	
Dissolution Testing (General)	April 1, 1978	Do	
Estropipate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing (I)	August 26, 1992	Do	
Flurazepam Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 15, 1985	Do	
Hydrochlorothiazide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 28, 1987	Do	
Hydroxyzine Hydrochloride (tablets) (dissolution only)	March 4, 1986	Do	
Indomethacin (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 27, 1988	Do	
Isopropamide Iodide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 12, 1982	Do	
Loxapine Succinate (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 10, 1987	Do	
Maprotiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	
Meclofenamate Sodium (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 12, 1986	Do	
Metaproterenol Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 18, 1986	Do	
Metoclopramide Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 27, 1984	Do	
Nalidixic Acid In Vivo Bioequivalence and In Vitro Dissolution Testing	August 19, 1987	Do	
Nitrofurantion Macrocrystalline (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 10, 1986	Do	
Nitroglycerin Ointment In Vivo Bioequivalence Studies	December 17, 1986	Do	
Perphenazine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	
Perphenazine/Amitriptyline (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	
Phenylbutazone Oxyphenbutazone (capsules and tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 28, 1987	Do	

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail, or Internet)
Prazepam (capsules and tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 26, 1988	Do	
Prednisone (tablets) (dissolution only)	July 10, 1985	Do	
Probenecid Drug Products Bioavailability Study	July 26, 1983	Do	
Propoxyphene Napsylate With Acetaminphen (Tablets)	March 26, 1980	Do	
Propranolol Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 1, 1984	Do	
Propylthiouracil (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 13, 1986	Do	
Quinidine Gluconate (tablets, controlled release) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 22, 1987	Do	
Ritodrine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	
Sulfinpyrazone (Capsules and Tablets)	September 25, 1987	Do	
Sulfones (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 7, 1986	Do	
Temazepam In Vivo Bioequivalence Studies and In Vitro Dissolution Testing	August 8, 1985	Do	
Tolazamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 30, 1986	Do	
Tolbutamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 1, 1983	Do	
Trimipramine Maleate (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 18, 1987	Do	
Verapamil Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 18, 1985	Do	

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Level I Guidance Documents Not Included in the February 1998 Comprehensive List			
Draft Working Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetable	1998	Farmers and Food Packers	Lou Carson, Food Safety Initiative (HFS–3), FDA–CFSAN, 200 C St. SW., Washington, DC 20204 or jsaltsman@bangate.fda.gov
Iron-containing Supplements and Drugs: Label Warning and Unit Dose Packaging; Small Entity Compliance Guide	1997	Dietary Supplement Manufacturers; Small Entities	Office of Special Nutritionals (HFS–450), FDA–CFSAN, 200 C St. SW., Washington, DC 20204
Level 2 Guidance Documents			
Partial List of Enzyme Preparations That Are Used in Foods	1998	FDA Regulated Industry	Office of Premarket Approval (HFS–200), FDA–CFSAN, 200 C St. SW., Washington, DC 20204
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998	Do	Do
Fish and Fishery Products Hazards and Controls Guide, 2nd Ed.	January 1998	Do	Office of Seafood (HFS–400), FDA–CFSAN, 200 C St. SW., Washington, DC 20204
HACCP Regulations for Fish and Fishery Products: Questions and Answers	1997	Do	Do

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Validation of Analytical Procedures; Definition and Terminology; Draft	December 1997	Regulated Industry	Center for Veterinary Medicine (HFV–12), Communications Staff, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755.
Validation of Analytical Procedures; Methodology; Draft	December 1997	Do	Do
Industry-Supported Scientific and Educational Activities	November 1997	Do	Do
Professional Flexible Labeling of Antimicrobial Drugs; Draft	January 1998	Do	Do
Small Entities Compliance Guide for Renderers	February 1998	Do	Do
Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors	February 1998	Do	Do
Small Entities Compliance Guide for Feeders of Ruminant Animals With On-Farm Feed Mixing Operations	February 1998	Do	Do
Small Entities Compliance Guide for Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations	February 1998	Do	Do
CVM Program Policy and Procedures Manual; Index (Guide No. 1240.0000)	March 19, 1998	Do	Do
CVM Guidance on Media Inquiries (Guide No. 1240.2325)	December 17, 1997	Do	Do
Requirements for Importation of Investigational New Animal Drugs (Guide No. 1240.3032)	March 27, 1992	Do	Do
Animal Drug Applications Expedited Review (Guide No. 1240.3135)	December 3, 1997	Do	Do
CVM Research Activities (Guide No. 1240.3700)	January 6, 1998	Do	Do
Initiation and Approval of Research Projects (Guide No. 1240.3710)	January 6, 1998	Do	Do
Ownership Transfer or Corporate Identity Change of an Application (Guide No. 1240.4150)	March 19, 1998	Do	Do
CVM Makes the Analysis of Comments on the Fluoroquinolone and Glycopeptide Prohibition Available to the Public	January 15, 1998	Do	Do
Withdrawn			
CVM Program Policy and Procedures Manual; Index (Guide No. 1240.0000)	October 29, 1997		
CVM Guidance on Media Inquiries (Guide No. 1240.2325)	July 1, 1997		
CVM Research Activities (Guide No. 1240.3700)	November 3, 1993		
Initiation and Approval of Research Projects (Guide No. 1240.3710)	November 3, 1993		
Criteria for the Approval of Euthanasia Products (Guide No. 1240.4112)	February 13, 1990		
Sterility of Ophthalmic Products (Guide No. 1240.4120)	December 7, 1993		
Sterility and Pyrogen Requirements for Injectable Drug Products (Guide No. 1240.4122)	November 27, 1989		
Overformulation in Animal Drug Products (Guide No. 1240.4130)	January 2, 1992		
Continuous Use Production Drugs and Short-Term Therapeutic Treatments in Feeds (Guide No. 1240.4145)	April 16, 1990		
Policy on Sterilization of New Animal Drug Products and Containers by Irradiation (Guide No. 1240.4160)	September 10, 1997		
CVM Medically Necessary Veterinary Drug Product Shortage Management (Guide No. 1240.4170)	June 30, 1994		

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Small Entities Compliance Guide on Animal Proteins Prohibited from Animal Feed	June 1997		

VII. Guidance Documents Issued by the Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Investigations Operations Manual (PB98–913399)	January 1998	FDA Staff Personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, or via Internet at www.fda.gov/ora/ inspect—ref/iom/iomtc.html
Mammography Quality Standards Act (MQSA) Auditors Guide (PB98–127178)	January 1998	Do	NTIS or via Internet at www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Electromagnetic Compatibility Aspects of Medical Device Quality Systems (PB98–127152)	December 1997	Do	Do
Guide to Inspections of Grain Product Manufacturers	March 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857
Guide to Bioresearch Monitoring Inspections of In Vitro Devices	February 1998	Do	Do
Guide to Inspections of Viral Clearance Processes for Plasma Derivatives	March 1998	Do	Do
Guide to Inspections of Computerized Systems in the Food Processing Industry	March 1998	Do	Do
Regulatory Procedures Manual; Update/New Subchapter; Application Integrity Policy	March 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet at www.fda.gov/ora/compliance__ref/rpm/rpmtc.html
Regulatory Procedures Manual; Update Subchapter; Warning Letters	March 1998	Do	Do
Regulatory Procedures Manual: Update/Revised Subchapter; Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: Updated/Revised Subchapter; Priority Enforcement Strategy for Problem Importers	April 1998	Do	Do
Regulatory Procedures Manual: Updated/Revised Subchapter; Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: Updated/Revised Subchapter; Notice of Sampling	April 1998	Do	Do
Regulatory Procedures Manual: Updated/Revised Subchapter; Supervisory Charges	April 1998	Do	Do
Regulatory Procedures Manual: Update/New Subchapter; Granting and Denying Transportation and Exportation (T&E) Entries	May 1998	Do	Do
Import Alerts	Continuously	Do	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or via Internet at www.fda.gov/ora/fiars/ora__imports__alerts.html
Guidance Documents Not Included in the February 1998 Comprehensive List			
Guideline for the Monitoring of Clinical Investigations	January 1998	Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet at www.fda.gov/ora/compliance__ref/rpm/rpmtc.html
Computerized Systems Used in Clinical Trials	June 18, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Compliance Program 7348.808; Bioresearch Monitoring; Good Laboratory Practices (GLP) (Nonclinical)	August 8, 1994	FDA Staff Personnel	Do
Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A: EPA Data Audit Inspections	October 1, 1991	Do	Do
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors	August 18, 1994	Do	Do
Compliance Program 7348.809: Bioresearch Monitoring; Institutional Review Board	August 18, 1994	Do	Do
Compliance Program 7348.811: Bioresearch Monitoring; Clinical Investigations	August 18, 1994	Do	Do

VIII. International Conference on Harmonization Guidances (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
E2B Data Elements for Transmission of Individual Case Safety Reports	January 15, 1998	Regulated Industry	Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573 or Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within the United States)or 301–827–3844 (outside of the United States and local to Rockville, MD). Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm
E8 General Considerations for Clinical Trials	December 17, 1997	Do	Do
M3 Timing of Nonclinical Studies for the Conduct of Human Clinical Trials of Pharmaceuticals	November 25, 1997	Do	Do
QC3 Impurities; Residual Solvents	December 24, 1997	Do	Do
S1B Testing for Carcinogenicity of Pharmaceuticals	February 23, 1998	Do	Do
S1C(R) Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do

Dated: June 25, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–17702 Filed 7–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted

from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. The above address is now the correct one to use for all regular mail and correspondence. For all overnight mail service use the following: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876/403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400 (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave. Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory.
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640/704–943–3437
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788/254–771–8379
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999-LABS
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories. 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program on July 31, 1998: TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories, certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS'' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian

laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 Federal Register, 9 June 1994). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–17846 Filed 7–2–98; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

National Recreation Lakes Study

AGENCY: National Recreation Lakes Study.

ACTION: Notice of First Commission Meeting, National Recreation Lakes Study.

SUMMARY: The Omnibus Parks and Public Land Management Act of 1996 authorizes a presidential commission to review the demand for recreation at Federal lakes, and to develop alternatives for enhanced recreation uses, primarily through innovative public/private partnerships. This will be the first meeting of the Commissioner-designees and Staff.

DATES: July 20–21, 1998, starting at 8 a.m.

ADDRESSES: The briefing will be held at the National Association Public Administration Conference Room, First Floor, 800 North Capitol Street, NW, Washington, D.C. 20001. Please have photo identification available for admission into the building. The agenda will consist of the following: Swearing-In Ceremony for Appointed Commissioners; Election of a Vice Chairman; Overview of the Status of Recreation at Federal Lakes; Discussion of Proposed Goals; Study Process/Action Plan; Presentation of Findings Reports; Subgroups & Topic Experts; Communications Plan; Study Duration & Report Due Date; Public Comment Period; Necessary Decisions on Above Agenda Topics; Future Meetings; Time and Place of Next Meeting; and the Adjournment.

FOR FURTHER INFORMATION CONTACT: Jeanne Whittington, 202–219–7104.

Dated: June 30, 1998.

Jana Prewitt,

Executive Director, National Recreation Lakes Study.

[FR Doc. 98–17961 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Swayze Lake National Wildlife Refuge, St. Landry Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Swayze Lake National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a new national wildlife refuge in the Swayze Lake area in St. Landry Parish, Louisiana. The purpose of the proposed refuge is to protect, enhance, and manage a diversity of fish and wildlife habitats in the Swayze Lake area for the benefit of the area's fishery, resident and migratory waterfowl, shorebirds, wading birds, neotropical migratory birds, the federally listed Louisiana black bear, and other native wildlife. A Draft Environmental Assessment and Land Protection Plan for the establishment of the proposed refuge has been developed by Service biologists in coordination with the Louisiana Department of Wildlife and Fisheries, the Natural Resources Conservation Service, parish officials, and other local entities. The assessment considers the biological, environmental, and socioeconomic effects of establishing the proposed refuge and evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address given below.

DATES: Land acquisition planning for the project is currently underway. The draft environmental assessment and land protection plan will be available to the public for review and comment on July 15, 1998. Written comments must be received no later than August 14, 1998, in order to be considered for the preparation of the final environmental assessment.

ADDRESSES: Comments and requests for copies of the draft environmental assessment and for further information on the project should be addressed to Mr. Charles R. Danner, Team Leader, Planning and Support Team, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345, or by telephone at 800/419–9582.

SUPPLEMENTARY INFORMATION: The proposed refuge area consists primarily of bottomland hardwoods, wooded/shrub swamps, and other wetlands. It covers a total of approximately 20,000 acres and is located within the Atchafalya River Basin, about 5 miles northwest of Krotz Springs in St. Landry Parish, Louisiana. The Service proposes to establish the refuge by purchasing about 9,000 acres in fee title from willing sellers. The remaining 11,000 acres would be sought through conservation easements, cooperative agreements, or fee title purchases, depending on landowner willingness.

The Swayze Lake area is nationally significant because it provides wintering habitat for migratory waterfowl, breeding habitat for wood ducks, migration habitat for shorebirds and neotropical migratory birds, and year-round habitat for wading birds. It is also a feeding area for bald eagles. The bottomland hardwoods also provide important habitat for the federally listed Louisiana black bear. Other resident wildlife include the American alligator, white-tailed deer, swamp rabbit, and furbearers such as raccoon, mink, muskrat, and otter.

The area's freshwater fishery is excellent. Numerous bayous and backwater lakes are interspersed throughout the area and provide outstanding sportfishing opportunities. Freshwater game species are abundant and include largemouth bass, black and white crappie, bluegill, and several species of catfish. Crawfishing is also extremely popular.

Dated: June 22, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–17724 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to the Bering Straits Native Corporation for approximately 14,169 acres. The lands involved are in the vicinity of Iron Creek, Alaska, and are within T. 6 S., R. 30 W., Kateel River Meridian, Alaska.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Nome Nuggett.* Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until August 5, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of 962 Adjudication.

[FR Doc. 98–17762 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–98–003]

Notice of Closure to Off Highway Vehicles

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is given that public lands west of Deer Run Road along the Carson River in Carson City, Nevada are closed to motorized vehicle use except on the designated access road and trailhead parking area.

EFFECTIVE DATES: This closure goes into effect on August 15, 1998.

FOR FURTHER INFORMATION OR TO COMMENT CONTACT: Arthur Callan, Outdoor Recreation Planner, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (702) 885–6141.

SUPPLEMENTARY INFORMATION: The lands included in this closure are those public lands west of Deer Run Road within Mt. Diablo Meridian, Sections 11 and 14, T. 15 N., R. 20 E. This closure does not apply to the existing mining occupancy in south portion of Section 14, or legitimate operations conducted under the mining laws. The closure does not apply to emergency, law enforcement, or agency vehicles on official business. This order is consistent with the Bureau of Land Management October, 1996 Carson City Urban Interface Plan Amendment, and the Carson City 1996 Carson River Master Plan to enhance nonmotorized uses and protect the river environment. The authorities for this closure are 43 CFR 8342.1 and 8364.1. Any person failing to comply with the closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: June 25, 1998.

John O. Singlaub,

Carson City Field Manager.

[FR Doc. 98–17817 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

U.S. Fish and Wildlife Service

[OR–015–98–1610–00: GP8–0236]

Hart Mountain National Antelope Refuge, OR; Jurisdictional Land Exchange

AGENCY: Lakeview District, Bureau of Land Management (BLM) and Hart Mountain National Antelope Refuge, U.S. Fish and Wildlife Service (USFWS), DOI.

ACTION: Notice of Availability, Environmental Assessment (EA#OR–010–97–05) and Draft Warner Lakes Management Framework Plan Amendment—Proposed Jurisdictional Land Exchange Between the Hart Mountain National Antelope Refuge and the Lakeview District, BLM.

SUMMARY: The USFWS and BLM have jointly prepared this document in accordance with the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969. The USFWS is the lead agency. The transfer has been proposed to improve the management efficiency of federal lands and to improve management of upland and riparian wildlife habitats. The document analyzes the potential environmental impacts of transferring management jurisdiction of about 12,880 acres of BLM-managed lands to the USFWS and about 7,870 acres of USFWS-managed lands to the BLM. In addition, a change of management direction would occur on about 11,020 acres of BLM-managed lands.

This notice announces that the document is, or soon will be available for a 45-day public comment period. It is very important that you participate during this review opportunity, so that any substantive comments are provided at a time when we can meaningfully consider them. If you require additional information concerning this analysis, or desire a copy of the document, please contact Paul Whitman at (541) 947–6110 (e-mail address: pwhitman@or.blm.gov) or Tori Roberts at (541) 947–3315.

DATES: You are encouraged to provide written comments to the address below, by August 19, 1998.

ADDRESSES: Mr. Michael Nunn, U.S. Fish and Wildlife Service, Sheldon/Hart Mountain Refuges, Post Office Building, Lakeview, OR 97630.

Dated: June 22, 1998.

Michael L. Nunn,

Project Leader, Sheldon/Hart Mountain Refuges.

Scott R. Florence,

Area Manager, Lakeview Resource Area.

[FR Doc. 98–17745 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–98–1020–24–1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. The agenda includes: Minutes of previous meeting, discussion of the Black Rock Desert Management Plan, setting criteria for acquisition of conservation easements in the Carson Valley, a tour of Carson Valley to view agricultural lands being considered for protection under the ''Rural Lands Initiative'' and public comment period.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for public comments. The public comment period for the council meeting is listed below. Individuals who plan to attend the tour are welcome but need to provide their own transportation.

For further information about the meeting or anyone that needs special assistance such as sign language

interpretation or other reasonable accommodations, should contact Joan Sweetland at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, (702) 885–6000.

DATES: The council will meet on Thursday, July 30, 1998 at 9:00 a.m., at the Carson Valley Inn, 1627 US Highway 395 N, Minden, NV. The meeting will be called to order and then council members will depart on a tour of Carson Valley to look at the agricultural lands in the Carson Valley being considered for protection under the ''Rural Lands Initiative''. The Council will break for lunch and return to the business meeting at the Carson Valley Inn at approximately 1:30. The public comment period will be at 1:45 p.m. with adjournment at 5:00 p.m. Friday, July 31, the RAC will meet from 8:00 a.m. until noon. They will break for lunch and reconvene at 1:00. The public comment period will be at 1:00 and adjournment at 4:00.

FOR FURTHER INFORMATION CONTACT: Joan Sweetland, Public Affairs Specialist, Carson City Field Office, telephone (702) 885–6000.

Dated: June 24, 1998.

John O. Singlaub,

Field Manager.

[FR Doc. 98–17704 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–98–1430–01; AZA 30675]

Arizona: Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of Public Land for Recreation and Public Purposes Lease and Conveyance, Mohave County, Arizona.

SUMMARY: The following described public land in Mohave County, Arizona, has been examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 17 N, R. 21 W.,
Sec. 5, lots 3 and 4.
Containing 79.04 acres, more or less.

SUPPLEMENTARY INFORMATION: The Big Sandy Natural Resource Conservation District proposes to use the land for a park, botanical gardens, and experimental agricultural projects and exhibits for educational purposes. The land is not required for any Federal purposes. The lease and conveyance of the land for recreational or public purposes is consistent with current Bureau planning for this area and would be in the public interest.

The lease and conveyance, when issued, will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States.

2. All minerals reserved to Santa Fe Minerals, with the right to prospect for, mine, and remove materials.

And will be subject to:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

Upon publication of this Notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, except for lease and conveyance under the Recreation and Public Purposes Act. The mineral estate is in private ownership and is not subject to Bureau of Land Management administration.

DATES: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The land will not be offered for lease and conveyance until after the classification becomes effective.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park, botanical gardens, and experimental agricultural projects and exhibits for educational purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park, botanical gardens, experimental agricultural projects and exhibits for educational purposes.

FOR FURTHER INFORMATION CONTACT: Land Law Examiner Janice Easley, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 or telephone (52) 505–1239.

Dated: June 29, 1998.

Jaime T. Provencio,

Field Manager.

[FR Doc. 98–17768 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–62765, N–55975]

Notice of Proposed Withdrawal and Amended Notice of Exchange Proposal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Nellis Air Force Base has filed an application (N–62765) to withdraw approximately 1,755 acres of public lands adjacent to the base from surface entry and mining in order to provide safety buffers between potentially hazardous areas on the base and public use or populated areas. There are also approximately 745 acres of non-Federal lands proposed to be acquired in the Carl Volkmar exchange that would become a part of this application and subsequent withdrawal. This notice closes the lands for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws.

Additionally, 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 proposed by Carl Volkmar, N–55975, was initiated under a Notice of Exchange Proposal published in the Las Vegas Review-Journal on July 22, 1994.

DATES: Comments on the withdrawal and/or land exchange proposals should be received on or before October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, Las Vegas Field Office, 702–647–5062 for the exchange. Dennis Samuelson, Nevada State Office, 702–861–6532 for the withdrawal.

SUPPLEMENTARY INFORMATION: On June 25, 1998, Nellis Air Force Base filed an

application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 25, NE¼ south of Las Vegas Boulevard.
T.19 S., R. 63 E.,
Sec. 27, NE¼SE¼, W½SE¼;
Sec. 34, NE¼.
T. 20 S., R. 62 E.,
Sec. 1, lots 9, 10, and lots 13 to 20, inclusive;
Sec. 11, lots 1 to 8, inclusive;
Sec. 12, lots 2 to 7, inclusive, and lots 12 and 13.
T. 20 S., R 63 E.,
Sec. 3, SE¼.

The areas described aggregate approximately 1,755 acres in Clark County.

The following described non-Federal lands, if acquired by the United States in the Volkmar land exchange, would become a part of this application and subsequent withdrawal:

T. 19 S., R. 62 E.,
Sec. 35, A portion of the NW¼SE¼, and a portion of the S½SW¼.
T. 20 S., R. 62 E.,
Sec. 2, SE¼NE¼, a portion of the NE¼SW¼, SE¼SW¼, SE¼;
Sec. 10, E½SE¼;
Sec. 11, E½NW¼, SW¼;
Sec. 15, NW¼NE¼, W½SW¼NE¼.

The areas described aggregate 745 acres in Clark County.

The above described lands have been identified for acquisition by the Air Force for public safety and to comply with Department of Defense regulation 6055.9 regarding ammunition and explosion safety standards. Recently, an explosives site plan was completed for the Live Ordnance Loading Area (LOLA) of Nellis Air Force Base. This site plan expanded the Quantity Distance (QD) arcs for the live ordnance loading area and the evacuation zone outside of the current Nellis Air Force Base boundaries. These QD arcs are established in order to provide safety buffers between potentially hazardous areas and populated areas. The purpose of the proposed withdrawal is to set aside land that serves as the safety buffers.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits. The temporary segregation of the land in connection with a withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Nellis Air Force Base.

In the amended land exchange proposal, Carl Volkmar has added offered lands including portions of the following lands in the vicinity of Nellis Air Force Base in Clark County, Nevada, and Lake Tahoe in Douglas and Washoe Counties, Nevada. The Nellis lands are adjacent to the Nellis Air Force Base and are located within the facility's Live Ordnance Loading Area safety zones.

Nellis Lands: Approximately 745 acres within:

T. 19 S., R. 62 E.,
Sec. 35, a portion of the NW¼SE¼, and a portion of the S½NW¼.
T. 20 S., R. 62 E.,
Sec. 2, SE¼NE¼, a portion of the NE¼SW¼, SE¼SW¼, SE¼;
Sec. 10, E½SE¼;
Sec. 11, E½NW¼, SW¼;
Sec. 15, NW¼NE¼, W½SW¼NE¼.

These lands would be withdrawn upon Federal acquisition to the United States Air Force. The Nellis lands are private land adjacent to Nellis Air Force Base located within the facility's Live Ordnance Loading Area safety zones as described above.

Tahoe lands: Approximately 93 acres within:

T. 14 N., R. 18 E.,
Sec. 3, a portion of the SW¼;
Sec. 4, Lot 3;
Sec. 15, a portion of Lot 3, and a portion of Lot 4;
Sec. 27, a portion of the NW¼.
T. 16 N., R. 18 E.,
Sec. 11, a portion of the W½.

These private lands in Douglas and Washoe counties if Federally acquired would be managed by the United State Forest Service.

The Notice of Exchange Proposal is also amended to include the following selected lands in Clark County: Approximately 1,614 acres within:

T. 19 S., R. 60 E.,
Sec. 5, Lots 5, 8–19;
Sec. 6, Lots 1–5, 12–18, S½NE¼, SE¼NW¼, SE¼;
Sec. 7, Lots 5, 6, 8–12, 14–16, 18–21
T. 22 S., R. 60 E.,
Sec. 12, SW¼SE¼NE¼NE¼,
S½SW¼NW¼NE¼,
SE¼SE¼NW¼NE¼,
NE¼NE¼SW¼NE¼,
S½NE¼SW¼NE¼,
E½NW¼SW¼NE¼,
S½SW¼SW¼NE¼,
W½SE¼SW¼NE¼,
SE¼SW¼NW¼NW¼,
SW¼SE¼NW¼NW¼,
SE¼NE¼SE¼NW¼,
E½SE¼SE¼NW¼,
NE¼NE¼NE¼SW¼,
SW¼NE¼NE¼SW¼,
N½NW¼NE¼SW¼,
SW¼SW¼NE¼SW¼,
N½SE¼NE¼SW¼,
SW¼SE¼NE¼SW¼,
NW¼NE¼NW¼SE¼, NW¼NW¼SE¼,
SW¼NW¼SE¼.
Sec. 13, W½SW¼NE¼NW¼,
SE¼NE¼SW¼NW¼,
S½SE¼SW¼NW¼,
W½NW¼SE¼NW¼,
NE¼NE¼NW¼SW¼,
SE¼SW¼NW¼SW¼,
NW¼SE¼NW¼SW¼,
S½NW¼SW¼SW¼,
NW¼SW¼SW¼SW¼.
Sec. 36, NE¼NE¼NE¼NW¼,
S½NE¼NE¼NW¼, W½NE¼NW¼,
SE¼NE¼NW¼, NE¼NE¼NW¼NW¼,
SW¼NE¼NW¼NW¼,
SE¼SW¼NW¼NW¼,
NE¼SE¼NW¼NW¼,
SW¼SE¼NW¼NW¼,
SW¼NE¼SW¼NW¼,
SE¼NW¼SW¼NW¼,
N½SW¼SW¼NW¼,
SW¼SW¼SW¼NW¼,
SE¼SW¼NW¼, NW¼NE¼SE¼NW¼,
NE¼NW¼SE¼NW¼,
W½SW¼SE¼NW¼,
W½W½NE¼SW¼,
E½NE¼NW¼SW¼, W½NW¼SW¼,
SE¼NW¼SW¼, N½SW¼SW¼,
W½SW¼SW¼SW¼,
W½SE¼SW¼SW¼, W½E½SE¼SW¼,
SW¼SE¼SW¼, W½SE¼SW¼SE¼.
T. 23 S., R. 61 E.,
Sec. 5, S½N½SW¼SE¼,
N½SE¼SW¼SE¼, SW¼SE¼SE¼,
N½SE¼SE¼SE¼.
Sec. 6, Lots 5, 6, N½SW¼SE¼NW¼.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal or land exchange may present their views by writing to Michael F. Dwyer, Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. Any party who desires a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Las Vegas Field Office Manager within 90 days from the date of publication of this notice.

Dated: June 29, 1998.

William K. Stowers,

Lands Team Lead.

[FR Doc. 98–17760 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Seismic Survey; Union Oil of California, et al.

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Union Oil of California, for Three-Dimensional Seismic Survey within Big Thicket National Preserve, Hardin, Jefferson and Orange Counties, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: June 25, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–17805 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Fort Stanwix National Monument, Oneida County, New York; Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(c)), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Fort Stanwix National Monument, located in Rome, Oneida County, New York. The purpose of the EIS is to assess the impacts of alternative management strategies which will be described in the General Management Plan (GMP) for Fort Stanwix National Monument. A range of alternatives will be formulated for cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold a series of three (3) public meetings between July 15 and July 31, 1998 which will provide an opportunity for public input into the scoping for the GMP/EIS. The date, time, and location of these meetings will be announced through local media as they will be held at various places in the Rome area. The purpose of these meetings is to obtain both written and verbal comments concerning the future of Fort Stanwix National Monument. Those persons who wish to comment verbally or in writing should contact Joanne Arany, Planning Project Manager, Upstate New York Project Office, National Park Service, C/O SUNY–ESF, Room 331 Marshall Hall, One Forestry Drive, Syracuse, New York 13210, (315) 470–6995.

The draft GMP/EIS is expected to be completed and available for public review in late 1999. After public and interagency review of the draft document comments will be considered and a final EIS followed by a Record of Decision will be prepared.

The responsible official is Gary Warshefski, Superintendent, Fort Stanwix National Monument, 112 E. Park Street, Rome, New York 13440.

Dated: June 26, 1998.

Gary Warshefski,

Superintendent, Fort Stanwix.

[FR Doc. 98–17807 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Cancellation

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Wednesday, July 8, 1998 (62 FR 67091, December 23, 1997) in San Francisco will be canceled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R.H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane
Ms. Amy Meyer, Vice Chair
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams

Dated: June 22, 1998.

Len McKenzie,

Deputy Superintendent, Golden Gate National Recreation Area.

[FR Doc. 98–17806 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: discussion of CALFED document on ''Selecting a Preferred Alternative''; presentation and discussion of the findings of the CALFED Scientific Panel on the effects of Delta diversions on Delta Fisheries; CALFED outreach to the California business community; and a panel on the health of the San Francisco Bay. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9 a.m. to 5:30 p.m. on Thursday, July 16, 1998, and Friday, July 17, 1998 from 8 a.m. to 11:30 a.m.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Hilton Oakland Airport, 1 Hagenberger Road, Oakland, CA 94621 (510) 635–5000.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In

recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight of the process. One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 26, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–17759 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: status of the May 1998 Proposal Solicitation Package, the development of the other programs for FY 98 funding, revised planning process, funding coordination, Comprehensive Monitoring, Assessment, and Research Program, a case study on habitat restoration in the Delta, tracking system and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC Ecosystem Roundtable meeting will be held from 9:30 a.m. to 1:00 p.m. on Friday, July 17, 1998.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 26, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–17761 Filed 7–2–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–98 (Review)]

Bicycle Speedometers From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on bicycle speedometers from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on bicycle

speedometers from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1972, the Department of the Treasury issued an antidumping duty order on imports of bicycle speedometers from Japan (37 F.R. 24826). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as bicycle speedometers.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of bicycle speedometers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is November 22, 1972.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the

explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in Japan that currently export or have exported *Subject Merchandise* to the United States or other countries since 1971.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from Japan accounted for by your firm's(s'') imports; and

(b) the quantity and value of U.S. commercial shipments of *Subject Merchandise* imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and bicycle speedometers from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 29, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17790 Filed 7–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–110 (Review)]

Canned Bartlett Pears from Australia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on canned Bartlett pears from Australia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on canned Bartlett pears from Australia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of this review and rules of

general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of the Treasury issued an antidumping duty order on imports of canned Bartlett pears from Australia (38 F.R. 7566). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Australia.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as canned Bartlett pears.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as enterprises, proprietary and grower-owned cooperatives, engaged in the production of canned Bartlett pears.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is March 23, 1973.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in Australia that currently export or have exported *Subject Merchandise* to the United States or other countries since 1971.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from Australia, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from Australia accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of *Subject Merchandise* imported from Australia.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in Australia, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in Australia accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from Australia accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and canned Bartlett pears from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17795 Filed 7–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–85 (Review)]

Fish Netting of Manmade Fiber From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fish netting of manmade fiber from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fish netting of manmade fiber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be

downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On June 9, 1972, the Department of the Treasury issued an antidumping duty order on imports of fish netting of manmade fiber from Japan (37 F.R. 11560). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as fish netting of manmade fiber. In a subsequent review determination, the Commission determined that salmon gill fish netting was a separate like product from other types of fish netting of manmade fiber. (Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751–TA–11, USITC Pub. 1921 (Dec. 1986)). As a result of this review, the antidumping duty order was revoked with respect to salmon gill fish netting. Consequently, for purposes of this notice, the Domestic Like Product is fish netting of manmade fiber, other than salmon gill fish netting.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of fish netting of manmade fiber. In light of the Commission's like product determination in its review proceeding, for purposes of this notice the Domestic Industry is producers of fish netting of manmade fiber, other than salmon gill fish netting.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 9, 1972.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List.

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service list

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse

inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan that currently export or have exported Subject Merchandise to the United States or other countries since 1970.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of *Subject Merchandise* imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and fish netting of manmade fiber from other countries.

(11)(OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17794 Filed 7–2–98; 8:45 am]

BILLING CODE 7021–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. AA1921–86–88 (Review)

Large Power Transformers From France, Italy, and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on large power transformers from France, Italy, and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on large power transformers from France, Italy, and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of these reviews and rules

of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1972, the Department of the Treasury issued antidumping duty orders on imports of large power transformers from France, Italy, and Japan (37 F.R. 11772). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are France, Italy, and Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as producers of all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is June 14, 1972.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct expedited reviews. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide

equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.*

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in France, Italy, and Japan that currently export or have exported *Subject Merchandise* to the United States or other countries since 1971.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from France, Italy, and/or Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from France, Italy, and Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of *Subject Merchandise* imported from France, Italy, and Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in France, Italy, and/or Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in France, Italy, and Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from France, Italy, and Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and large power transformers from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Issued: June 29, 1998

[FR Doc. 98–17792 Filed 7–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–111 (Review)]

Roller Chain From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on roller chain from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on roller chain from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, the Department of the Treasury issued an antidumping duty order on imports of roller chain from Japan (38 F.R. 9226). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as roller chain, other than bicycle.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of roller chain, other than bicycle.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is April 12, 1973.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in

the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in Japan that currently export or have exported *Subject Merchandise* to the United States or other countries since 1971.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from Japan accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of *Subject Merchandise* imported from Japan.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in Japan, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in Japan accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from Japan accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and roller chain, other than bicycle, from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17791 Filed 7–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–49 (Review)]

Steel Jacks From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on steel jacks from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on steel jacks from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of

the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is August 25, 1998. Comments on the adequacy of responses may be filed with the Commission by September 21, 1998.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1966, the Department of the Treasury issued an antidumping duty order on imports of steel jacks from Canada (31 F.R. 11974). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as steel jacks.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of steel jacks.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is September 13, 1966.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 25, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning whether the Commission should conduct an expedited review. The deadline for filing such comments is September 21, 1998. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Canada that currently export or have exported Subject Merchandise to the United States or other countries since 1965.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in number of steel jacks and value data in thousands of U.S. dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in number of steel jacks and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from Canada accounted for by your firm's(s') imports; and

(b) the quantity and value of U.S. commercial shipments of Subject Merchandise imported from Canada.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in Canada, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in number of steel jacks and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in Canada accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from Canada accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for 0other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and steel jacks from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–17793 Filed 7–2–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice United States Parole Commission.

TIME AND DATE: 2:00 p.m., Thursday, July 9, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Consideration of Proposed Interim Regulations and Guidelines for District of Columbia prisoners to take effect August 5, 1998.

2. Budget Proposal for the Fiscal Year 2000.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 1, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–17968 Filed 7–1–98; 2:19 pm]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Tuesday, June 30, 1998, at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one appeal from the National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., and John R. Simpson.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 30, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–17969 Filed 7–1–98; 2:19 pm]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 30, 1998.

The Department of Labor (DOL) submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen (202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Titles: Benefits Rights Experience.

OMB Number: 1205–0177 (extension).

Form Numbers: ETA 218.

Frequency: Quarterly.

Frequency: Quarterly.

Form	Affected public	Respondents	Frequency	Average time per respondent
53	Regular States	53	Quarterly	30 minutes.
2	Extended Benefit States	2	Quarterly	30 minutes.

Total Burden Hours: 108 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The data in the ETA 218, provides information on the solvency studies, in budgeting projections and for evaluation of adequacy of benefit formulas, as administered under the State unemployment insurance program.

Agency: Employment and Training Administration.

Title: Planning and Reporting Requirements for Job Training Partnership Act (JTPA) Title IV–A, Section 402 Migrant and Seasonal Farmworker Grantees.

OMB Number: 1205–0215 (reinstatement with change).

Form Numbers: ETA 8595; ETA 8596; ETA 8597; ETA 8598.

Affected Public: State, Local, or Tribal govt.

Form No.	Respondents	Frequency	Average time per response
Planning Agreement	53	One-time	3 minutes.
Planning Narrative	53	One-time	22 hours.
ETA 8595	53	Annual	15 hours.
ETA 8596	53	Annual	16 hours.
ETA 8597	53	Twice	7 hours.
ETA 8598	53	Annual	7 hours.
Recordkeeping	34	Annual	1 hour 45 minutes.

Total Burden Hours: 65,590.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This request is for approval of a reinstatement of the planning and reporting forms previously approved and in use for the JTPA section 402 program which provides employment and training services for migrant and seasonal farmworkers. These forms are used to manage the national program under section 402, and are the principal source of program plans and performance data. They form the basis for the award of funds, Federal oversight and reports to Congress.

Agency: Mine Safety and Health Administration.

Title: Hazardous Conditions Complaints (30 CFR 43.2, 43.4, 43.7, and 43.8).

OMB Number: 1219–0014 (revision).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 637.

Estimated Time per Response: 12 minutes.

Total Burden Hours: 127 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $8.00.

Description: A representative of miners or, if there is no representative of miners, an individual miner acting voluntarily may submit or give a written notification to MSHA of an alleged violation of the Mine Act or mandatory standard or of an imminent danger. Such notification requires MSHA to make an immediate inspection.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–17801 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 14, 1998, 10:00 a.m., U.S. Department of Labor, S–4215 B/C, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, DC this 25th day of June 1998.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 98–17798 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–28–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 supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date 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, NW., Room S–3014, Washington, DC 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

Connecticut
CT980001 (Feb. 13, 1998)
CT980003 (Feb. 13, 1998)
CT980004 (Feb. 13, 1998)
Maine
ME980006 (Feb. 13, 1998)
ME980007 (Feb. 13, 1998)
ME980008 (Feb. 13, 1998)
ME980010 (Feb. 13, 1998)
ME980022 (Feb. 13, 1998)
ME980026 (Feb. 13, 1998)
New Jersey
NJ980002 (Feb. 13, 1998)
NJ980003 (Feb. 13, 1998)
NJ980004 (Feb. 13, 1998)
NJ980007 (Feb. 13, 1998)
New York
NY980002 (Feb. 13, 1998)
NY980003 (Feb. 13, 1998)
NY980004 (Feb. 13, 1998)
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NY980006 (Feb. 13, 1998)
NY980007 (Feb. 13, 1998)
NY980008 (Feb. 13, 1998)
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NY980025 (Feb. 13, 1998)
NY980031 (Feb. 13, 1998)
NY980032 (Feb. 13, 1998)
NY980033 (Feb. 13, 1998)
NY980034 (Feb. 13, 1998)
NY980036 (Feb. 13, 1998)
NY980037 (Feb. 13, 1998)
NY980038 (Feb. 13, 1998)
NY980039 (Feb. 13, 1998)
NY980040 (Feb. 13, 1998)
NY980041 (Feb. 13, 1998)
NY980042 (Feb. 13, 1998)
NY980043 (Feb. 13, 1998)
NY980044 (Feb. 13, 1998)
NY980045 (Feb. 13, 1998)
NY980046 (Feb. 13, 1998)
NY980047 (Feb. 13, 1998)
NY980048 (Feb. 13, 1998)
NY980049 (Feb. 13, 1998)
NY980050 (Feb. 13, 1998)
NY980051 (Feb. 13, 1998)
NY980060 (Feb. 13, 1998)
NY980072 (Feb. 13, 1998)
NY980073 (Feb. 13, 1998)
NY980074 (Feb. 13, 1998)
NY980075 (Feb. 13, 1998)
NY980076 (Feb. 13, 1998)
NY980077 (Feb. 13, 1998)
Vermont
VT980012 (Feb. 13, 1998)

Volume II

District of Columbia
DC980001 (Feb. 13, 1998)
DC980003 (Feb. 13, 1998)
Maryland
MD980034 (Feb. 13, 1998)
MD980036 (Feb. 13, 1998)
MD980048 (Feb. 13, 1998)
MD980056 (Feb. 13, 1998)
MD980057 (Feb. 13, 1998)
MD980059 (Feb. 13, 1998)
Pennsylvania
PA980001 (Feb. 13, 1998)
PA980002 (Feb. 13, 1998)
PA980003 (Feb. 13, 1998)
PA980004 (Feb. 13, 1998)
PA980032 (Feb. 13, 1998)
PA980033 (Feb. 13, 1998)
PA980038 (Feb. 13, 1998)
PA980042 (Feb. 13, 1998)
PA980062 (Feb. 13, 1998)
Virginia
VA980005 (Feb. 13, 1998)
VA980013 (Feb. 13, 1998)
VA980022 (Feb. 13, 1998)
VA980023 (Feb. 13, 1998)
VA980025 (Feb. 13, 1998)
VA980031 (Feb. 13, 1998)
VA980033 (Feb. 13, 1998)
VA980036 (Feb. 13, 1998)
VA980052 (Feb. 13, 1998)
VA980065 (Feb. 13, 1998)
VA980067 (Feb. 13, 1998)
VA980078 (Feb. 13, 1998)
VA980079 (Feb. 13, 1998)
VA980085 (Feb. 13, 1998)
VA980087 (Feb. 13, 1998)
VA980088 (Feb. 13, 1998)
VA980104 (Feb. 13, 1998)
VA980105 (Feb. 13, 1998)

Volume III

Alabama
AL980003 (Feb. 13, 1998)
AL980008 (Feb. 13, 1998)
AL980034 (Feb. 13, 1998)
Florida
FL980001 (Feb. 13, 1998)
FL980009 (Feb. 13, 1998)
FL980015 (Feb. 13, 1998)
FL980017 (Feb. 13, 1998)
FL980032 (Feb. 13, 1998)
FL980049 (Feb. 13, 1998)
FL980053 (Feb. 13, 1998)
FL980055 (Feb. 13, 1998)
Kentucky
KY980001 (Feb. 13, 1998)
KY980002 (Feb. 13, 1998)
KY980003 (Feb. 13, 1998)
KY980004 (Feb. 13, 1998)
KY980007 (Feb. 13, 1998)
KY980025 (Feb. 13, 1998)
KY980027 (Feb. 13, 1998)
KY980028 (Feb. 13, 1998)
KY980029 (Feb. 13, 1998)
KY980035 (Feb. 13, 1998)

Volume IV

Illinois
IL980001 (Feb. 13, 1998)
IL980002 (Feb. 13, 1998)
IL980003 (Feb. 13, 1998)
IL980004 (Feb. 13, 1998)
IL980005 (Feb. 13, 1998)
IL980006 (Feb. 13, 1998)
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IL980024 (Feb. 13, 1998)
IL980027 (Feb. 13, 1998)
IL980028 (Feb. 13, 1998)
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IL980030 (Feb. 13, 1998)
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IL980062 (Feb. 13, 1998)
IL980064 (Feb. 13, 1998)
IL980065 (Feb. 13, 1998)
IL980066 (Feb. 13, 1998)
IL980067 (Feb. 13, 1998)
IL980068 (Feb. 13, 1998)
IL980069 (Feb. 13, 1998)
IL980070 (Feb. 13, 1998)
Indiana
IN980001 (Feb. 13, 1998)
IN980002 (Feb. 13, 1998)
IN980003 (Feb. 13, 1998)
IN980004 (Feb. 13, 1998)
IN980005 (Feb. 13, 1998)
IN980006 (Feb. 13, 1998)
IN980016 (Feb. 13, 1998)
IN980017 (Feb. 13, 1998)
IN980018 (Feb. 13, 1998)
IN980020 (Feb. 13, 1998)
IN980021 (Feb. 13, 1998)
IN980059 (Feb. 13, 1998)
Minnesota
MN980058 (Feb. 13, 1998)
Ohio
OH980001 (Feb. 13, 1998)
OH980002 (Feb. 13, 1998)
OH980003 (Feb. 13, 1998)
OH980018 (Feb. 13, 1998)
OH980026 (Feb. 13, 1998)
OH980028 (Feb. 13, 1998)
OH980029 (Feb. 13, 1998)
OH980034 (Feb. 13, 1998)
OH980035 (Feb. 13, 1998)
Wisconsin
WI980012 (Feb. 13, 1998)

WI980024 (Feb. 13, 1998)
WI980026 (Feb. 13, 1998)
WI980030 (Feb. 13, 1998)

Volume V

Iowa
IA980005 (Feb. 13, 1998)
IA980012 (Feb. 13, 1998)
Kansas
KS980006 (Feb. 13, 1998)
KS980007 (Feb. 13, 1998)
KS980008 (Feb. 13, 1998)
KS980009 (Feb. 13, 1998)
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KS980021 (Feb. 13, 1998)
KS980022 (Feb. 13, 1998)
KS980023 (Feb. 13, 1998)
KS980026 (Feb. 13, 1998)
KS980029 (Feb. 13, 1998)
KS980035 (Feb. 13, 1998)
Texas
TX980001 (Feb. 13, 1998)
TX980002 (Feb. 13, 1998)
TX980003 (Feb. 13, 1998)
TX980005 (Feb. 13, 1998)
TX980010 (Feb. 13, 1998)
TX980014 (Feb. 13, 1998)
TX980018 (Feb. 13, 1998)
TX980055 (Feb. 13, 1998)
TX980081 (Feb. 13, 1998)
TX980085 (Feb. 13, 1998)

Volume VI

North Dakota
ND980001 (Feb. 13, 1998)
ND980002 (Feb. 13, 1998)
ND980004 (Feb. 13, 1998)
ND980005 (Feb. 13, 1998)
ND980019 (Feb. 13, 1998)
ND980024 (Feb. 13, 1998)
ND980027 (Feb. 13, 1998)

Volume VII

Arizona
AZ980002 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wages determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 26th day of June 1998.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–17480 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''BLS Occupational Safety and Health Statistics Federal/State Cooperative Agreement (Application Package).''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 4, 1998. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, D.C. 20212. Ms. Kurz can be reached on (202) 606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has delegated to the BLS the authority to collect, compile and analyze statistical data on work-related injuries and illnesses. The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The BLS requires financial reporting that will produce the information that is needed to monitor the financial activities of the BLS Occupational Safety and Health Statistics grantees.

II. Current Actions

Continued collection of grantee financial information is necessary to maintain an effective program of collection, compilation and analysis of occupational safety and health statistics, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The burden estimates are based on actual experience of grantees competing the forms. Public comments on the accuracy of the burden estimates, as well as suggestions for reducing the burden, are encouraged.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: BLS Occupational Safety and Health Statistics Federal/State

Cooperative Agreement (Application Package).

OMB Number: 1220–0149.

Frequency: Annually and Quarterly.

Affected Public: State governments.

Number of Respondents: 57

Estimated Time Per Respondent: 6 Hours.

Total Burden Hours: 342 Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 29th day of June 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–17799 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Contingent Work Supplement to the Current Population Survey.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 4, 1998. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Current Population Survey (CPS) has been the principal source of the official Government Statistics on employment and unemployment for over 50 years. Labor force data are collected through the CPS under authority of Title 29, United States Code, Sections 1 and 2. Since the mid-1980's, there has been a growing belief among labor market researchers that employers require greater flexibility in their use of labor. As a result, many workers find themselves in ''contingent jobs'' that are structured to last for only a limited duration or in alternative employment arrangements such as independent contracting, on-call work, and working through temporary help agencies or contract companies. It is feared that workers with such employment may have little job security, low pay, and no fringe benefits. This CPS supplement would provide objective information about ''contingent work.''

II. Current Actions

The contingent work supplement provides information on the number and characteristics of workers in contingent jobs, that is, jobs which are structured to last only a limited period of time. The survey also provides information about workers in several alternative employment arrangements, including those working as independent contractors and on-call workers, as well as those working through temporary help agencies or contract companies.

Type of Review: Reinstatement, with change, of previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the Current Population Survey.

OMB Number: 1220–0153.

Affected Public: Individuals or households.

Total Respondents: 48,000.

Frequency: One-time only.

Total Responses: 48,000.

Average Time Per Response: 8 minutes.

Estimated Total Burden Hours: 6,400 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 29th day of June 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–17800 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet July 22–23, 1998, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. This meeting is open to the public.

DATES: This ACCSH meeting will be held on July 22 and 23, 1998, as described further in the body of this document.

SUPPLEMENTARY INFORMATION: For further information contact Theresa

Berry, Office of Public Affairs, Room N–3647, Telephone (202) 219–8615, Ext. 106, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894. All ACCSH meetings and those of its workgroups are open to the public. Individuals with disabilities requiring reasonable accommodations should contact Theresa Berry no later than July 17 at the address above.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

ACCSH will meet from 9 a.m. to 4:30 p.m. on Wednesday, July 22, and from 9 a.m. to 1:15 p.m. on Thursday, July 23, in Rooms N–3437 A, B and C.

The following items will be discussed at the meeting on July 22:

- A proposed standard regarding employer responsibility to pay for Personal Protective Equipment.
- Status of Data Collection on OSHA's 170 form.
- OSHA Reinvention.
- OSHA's Strategic Plan for Construction.
- Multi-Employer Citation Policy.
- A proposed standard on steel erection (Subpart R) developed by the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC).
- Fall Protection (Subpart M).
- OSHA's Electronic Information Systems.

Also on July 22, ACCSH Work Groups on Sanitation and on Confined Space will present reports.

The following items will be discussed at the meeting on July 23:

- Hexavalent Chromium Rulemaking.
- Crystalline Silica Standard Development.
- The Directorate of Construction update report.
- Powered Industrial Trucks—Final Standard Regarding Training Requirements for Powered Industrial Trucks.
- A Report by the Bureau of Labor Statistics on Highway Construction Injuries and Fatalities.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Those submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC, this 29th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–17797 Filed 7–2–98; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–088]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Stop MM–E, at (407) 867–6225.

NASA Case No. KSC–11940: Conducting Composition of Matter;

NASA Case No. SSC–00049: Plant Chlorophyll Content Imager;

NASA Case No. SSC–00050: Plant Chlorophyll Content Meter.

Dated: June 25, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17732 Filed 7–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–086]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Office of the Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR 15564–1–SB: Method of Controlling Laser Wavelength(s);

NASA Case No. LAR 15562–1: Method and Apparatus to Assess Optimum Strength During Processing of Precipitation Strengthened Alloys;

NASA Case No. LAR 15666–1: An Airplane Design Concept Having an In Board-Wing Bounded by Fuselages Mounted at Each Wing Tip;

NASA Case No. LAR 15745–1: Prepreg and Composites Made from Polyimide ''Salt-Lake'' Solution;

NASA Case No. LAR 15040–2: Method and Apparatus for Histological Human Tissue Characterization Using Ultrasound;

NASA Case No. LAR 15534–3: Method of Preparing Polymers With Low Melt Viscosity (DIV. of–1).

Dated: June 26, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17733 Filed 7–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–090]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Lewis Research Center, Mail Stop 500–118, Cleveland, Ohio 44135–3191; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16,489–1: Nozzle Partial Circumference Flow Modifier;

NASA Case No. LEW–16,231–2–CIP: Resilient of Braided Rope Seal;

NASA Case No. LEW–16,398–1: High Resolution Scanning Reflectarray Antenna;

NASA Case No. LEW–16,519–1: Method of Stabilization of Sic-Based Gas Sensor Using an Alloy Deposited on the C-face of SiC;

Dated: June 29, 1998.

Edward A. Frankle.

General Counsel.

[FR Doc. 98–17821 Filed 7–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–089]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104, fax (650) 604–1592.

NASA Case No. ARC–14057–3GE: Photonic Switching Devices Using Light Bullets;

NASA Case No. ARC–14151–1SB: Microvolume Ionization Detector;

NASA Case No. ARC–14236–1GE: System for Objective Measurement of Visual Quality of Digital Video;

NASA Case No. ARC–15007–1LE: MARS VE The Virtual Exploration Mission CD–ROM;

NASA Case No. ARC–14240–1GE: Vibration Characterization Algorithm;

NASA Case No. ARC–14268–1SB: Automated Traffic Management System and Method;

NASA Case No. ARC–14246–1SB: Doping Method of Semiconducting Atomic Chains.

Dated: June 30, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–17822 Filed 7–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request approval for a collection of information to help management to make decisions regarding the location of, and services provided by, regional records services facilities. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 4, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Locations for NARA Regional Research Services.

OMB number: None.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals and households, business and other for-profit organizations, nonprofit organizations and institutions, state, local, and Federal government agencies, Federally acknowledged or state-recognized Native American tribes or groups, who engage in research at a NARA regional records service facility.

Estimated number of respondents: 5,000.

Estimated time per response: 10 minutes.

Frequency of response: One time.

Estimated total annual burden hours: 835 hours.

Abstract: A goal in NARA's Strategic Plan is to spend less for the space we occupy so the money can be used to support services for our customers. We are looking at the buildings we occupy and the services we provide at those locations to decide what kind of facilities we need and where they should be located to best serve all of our customers.

Dated: June 25, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–17816 Filed 7–2–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Tuesday, July 7, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–17865 Filed 6–30–98; 5:01 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATIONS SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 14, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L' Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: OPEN.

MATTERS TO BE CONSIDERED:

6912A—Railroad Accident Report—Derailment of Amtrak Train 4, on the Burlington Northern Santa Fe Railway, Kingman, Arizona, August 9, 1997.

6667A—Marine Accident Report—Fire aboard the Tug *Scandia* and the Subsequent Grounding of the Tug and Tank Barge *North Cape*, Moonstone, Beach, South Kingston, Rhode Island, January 19, 1996.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–17930 Filed 7–1–98; 12:19 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

In the Matter of Illinois Power and Clinton Power Station; Confirmatory Order Modifying License Effective Immediately

I

Illinois Power (IP or the Licensee) is the holder of Facility Operating License No. NPF–62, which authorizes operation of Clinton Power Station located in DeWitt County, Illinois.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, ''Thermo-Lag 330–1 Fire Barriers,'' and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

IP was one of the licensees with which the NRC staff held meetings. At these meetings, the NRC staff reviewed with IP the schedule of Thermo-Lag corrective actions described in the IP submittals to the NRC. Based on the information submitted by IP, and provided during the meetings, the NRC staff has concluded that the schedules presented by IP are reasonable. This conclusion is based on the (1) amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant, but unrelated issues that IP is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by IP must be completed in accordance with current IP schedules. By letter dated May 3, 1998, the NRC staff notified IP of its plan to incorporate IP's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated May 22, 1998, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of May 22, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its May 22, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered*, effective immediately, that:

Illinois Power (IP) complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Clinton Power Station as described in the June 19, 1997, and March 30, 1998, submittals to the NRC, in addition to the repair of the butt joint described in the March 28, 1995, submittal to the NRC, by December 31, 1998.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Docketing and Services Section, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall

be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 26th day of June 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17773 Filed 7–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation (CBS Corporation) Westinghouse Test Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility License No. TR–2, now held by the CBS Corporation, formerly named the Westinghouse Electric Corporation. The license authorizes possession only of the Westinghouse Test Reactor (WTR), located in Westmoreland County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend Facility License No. TR–2 for the WTR to reflect the change in the legal name of the licensee from Westinghouse Electric Corporation to CBS Corporation, which occurred on December 1, 1997.

The proposed action is in accordance with the licensee's application for amendment dated December 22, 1997, as supplemented on June 15, 1998.

Need for the Proposed Action

The proposed action is needed to accurately reflect the legal name of the licensee.

Environmental Impacts of the Proposed Action

The proposed action does not modify the WTR facility configuration, procedures or requirements, or affect licensed activities. The employees responsible for the licensed WTR facility will still be responsible notwithstanding the new name of the licensee. The proposed action will not affect the financial qualifications of the licensee to possess and decommission the facility.

In light of the foregoing, the Commission concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there will be no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action is administrative in nature and does not involve any physical features of the plant. Thus, it does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

No alternatives appear that will have different or lesser effect on the use of available resources.

Agencies and Persons Contacted

In accordance with its stated policy, on June 23, 1998, the NRC staff consulted with the Pennsylvania State Official, Ray Woods, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's submittals dated December 22, 1997 and June 15, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC.

Dated at Rockville, Maryland, this 26th day of June 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17774 Filed 7–2–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–23287; 812–10696]

Cash Management Portfolio, et al.; Notice of Application

June 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit redemption in-kind of shares of certain registered investment companies by certain shareholders who are affiliated persons of the investment companies.

APPLICANTS: Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, NY Tax Free Money Portfolio, International Equity Portfolio, Utility Portfolio, Equity 500 Index Portfolio, Short/Intermediate U.S. Government Securities Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios (each a ''Portfolio''), BT Investment Funds, BT Institutional Funds, BT Pyramid Mutual Funds, BT Advisor Funds (each a ''Fund''), and Bankers Trust Company (the ''Investment Advisor''). Applicants also request relief for each subsequently created series of the Funds and the Portfolios and any other registered open-end investment company advised by, or substantially all of whose assets are invested in a Portfolio advised by, the Investment Advisor or any entity controlling, controlled by or under common control with the Investment Advisor.[1]

[1] All investment companies that currently intend to rely on the order have been named as applicants,

Continued

FILING DATES: The application was filed on June 6, 1997, and amended on March 17, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons any request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 21, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 130 Liberty Street, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Funds and the Portfolios is registered as an open-end management investment company under the Act. The Investment Advisor, a New York banking corporation and a wholly-owned subsidiary of Bankers Trust New York Corporation, is exempt from registration under the Investment Advisers Act of 1940. The Investment Advisor serves an investment adviser to each of the Portfolios and certain of the Funds. Certain other Funds are feeder funds (''Feeder Funds'') in a master-feeder structure and seek to achieve their investment objectives by investing all of their assets in a Portfolio with an identical investment objective.

2. Shares of the BT PreservationPlus Fund (the ''PreservationPlus Fund''), a Feeder Fund that is a series of the BT Pyramid Mutual Funds, are offered solely to participant-directed employee benefit plans meeting specific criteria (''Plans''). The PreservationPlus Fund invests all of its assets in the PreservationPlus Portfolio. The PreservationPlus Portfolio's investment objective is a high level of current income while seeking to maintain a stable value per share.

3. Each of the Portfolios, including the PreservationPlus Portfolio, is authorized to sell its shares to investors other than Feeder Funds. The PreservationPlus Fund, however, is the sole shareholder of the PreservationPlus Portfolio.

4. The PreservationPlus Portfolio enters into contracts (''Wrapper Agreements'') with financial institutions, such as insurance companies and banks (''Wrapper Providers''), that are intended by the PreservationPlus Portfolio to stabilize the value per share of the PreservationPlus Portfolio and the PreservationPlus Fund by offsetting fluctuations in the value of the portfolio securities under certain conditions. Each Wrapper Agreement obligates the Wrapper Provider to maintain the book value of a portion of the PreservationPlus Portfolio's assets (''Covered Assets'') up to a specified maximum dollar amount, upon the occurrence of certain events.

5. Applicants request relief to permit in-kind redemptions of shares of the Portfolios and/or the Funds by (a) any shareholder of a Fund that owns five percent or more of the outstanding voting securities of the Fund; (b) any shareholder of a Feeder Fund that owns five percent or more of the outstanding voting securities of a Portfolio; and (c) any shareholder of a Portfolio, other than a Feeder Fund, that owns five percent or more of the outstanding voting securities of the Portfolio (collectively, ''Affiliated Shareholders'').[2] With respect to the PreservationPlus Fund, the requested relief would extend only to non-participant directed redemptions by Plans, and only to redemptions that exceed $500,000 or 1% of the net asset value of the PreservationPlus Fund.

6. Under the requested relief, the PreservationPlus Fund would make a redemption in-kind in portfolio securities and in Wrapper Agreements. The PreservationPlus Fund would assign to the redeeming Plan one or more Wrapper Agreements (the ''Cloned Wrapper Agreements'') issued by the Wrapper Providers covering the portfolio securities distributed in-kind. The Cloned Wrapper Agreements would represent the redeeming Plan's proportional interest in Wrapper Agreements covering the PreservationPlus Fund's assets covered by Wrapper Agreements. The terms and conditions of the Cloned Wrapper Agreements provided to a redeeming Plan will be the same or substantially similar to the terms and conditions of the Wrapper Agreements held by the PreservationPlus Portfolio.[3] The distribution of portfolio securities and Cloned Wrapper Agreements to a redeeming Plan will be proportionate to each other in order to achieve the PreservationPlus Funds' investment objective of maintaining a stable value per share for both the redeeming Plan and the PreservationPlus Fund's remaining shareholders.

7. The PreservationPlus Portfolio intends to make in-kind distributions of mortgage-backed securities in its portfolio based upon groups or ''baskets'' of such securities, all of which share common characteristics, rather than a pro-rata basis of each individual pool of mortgages. Consequently, rather than receiving a pro-rata distribution of every individual mortgage pool, a redeeming Plan will receive a pro-rata distribution of securities from each different type of mortgage pool (each a ''Basket''), proportionate to the PreservationPlus Portfolio's holdings. The Baskets would be determined by application of the Lehman Brothers Mortgage-Backed Securities Index. A redeeming shareholder would receive a pro-rata share of each Basket of securities held by the PreservationPlus Portfolio.

Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly ''purchase'' from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines *affiliated person* to include any person owning 5% or more of the outstanding voting securities of such other person.

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the transaction is

and any other existing or future investment company that subsequently may rely on the order will comply with its terms and conditions.

[2] Each of the Funds, other than the PreservationPlus Fund, has elected to be governed by rule 18f–1 under the Act. Any redemption in-kind by the Fund, therefore, will comply with the requirements of that rule.

[3] The PreservationPlus Fund may incur costs in obtaining Cloned Wrapper Agreements from Wrapper Providers. These costs will be payable from, and are not expected to exceed, any applicable redemption fee.

consistent with the policy of the investment company, as recited in its registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt classes of persons or transactions from the Act, where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Affiliated Shareholders to redeem their shares in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of a Fund or Portfolio within the meaning of sections 2(a)(3) (B) through (F) of the Act.

5. Applicants submit that the proposed transactions meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants believe that the use of proposed objective standards for the selection and valuation of securities to be distributed in an in-kind redemption to an Affiliated Shareholder will ensure that the proposed transactions will be on terms that are reasonable and fair to the Portfolios, the Affiliated Shareholders, and non-Affiliated Shareholders, and will not involve overreaching on the part of any person.

6. Applicants submit that the proposed transactions are consistent with the investment policy of each Fund and Portfolio. Applicants further submit that the proposed transactions are consistent with the general purposes of the Act because no Affiliated Shareholder would receive any advantage over any other shareholder if the proposed transactions are effected. Affiliated Shareholders who wish to redeem shares would receive the same in-kind distribution of securities, and in the case of the PreservationPlus Fund, Cloned Wrapper Agreements, and cash on the same basis as other shareholders wishing to redeem their shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities distributed to Affiliated Shareholders and non-Affiliated Shareholders pursuant to a redemption in-kind (the ''In-Kind Portfolio Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Portfolio Securities will be distributed to Affiliated Shareholders on a pro rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Portfolios. Cash will be paid for that portion of the Portfolio's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, cash will be distributed in lieu of portfolio securities not amounting to round lots or fractional shares.

3. The terms and conditions of the Cloned Wrapper Agreements will be substantially similar to those Wrapper Agreements held by the PreservationPlus Portfolio.

4. The board of trustees of a Fund or Portfolio (''Board''), including a majority of the disinterested trustees, will determine no less frequently than annually: (a) whether the In-Kind Portfolio Securities and Cloned Wrapper Agreements have been distributed in accordance with conditions 1, 2 and 3; and (b) whether the distribution of any such In-Kind Portfolio Securities and Cloned Wrapper Agreements is consistent with the policies of the relevant Fund or Portfolio as reflected in the prospectus of the Fund or the Portfolio. In addition, each Board shall make and approve such changes as the Board deems necessary in its procedures for monitoring compliance by applicants with the terms and conditions of the application.

5. The relevant Fund or Portfolio will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any redemption in-kind to an Affiliated Shareholder occurred, the first two years in an easily accessible place, a written record of each such redemption setting forth a description of each security distributed, the identity of the Affiliated Shareholder, the terms of the distribution, and the information or materials upon which the valuation was made.

6. In-Kind Portfolio Securities and Cloned Wrapper Agreements distributed to Affiliated Shareholders and non-Affiliated Shareholders will be valued in the same manner as they would be valued for computing a Fund's or a Portfolio's net asset value per share.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17712 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Releases No. IC–23289, 812–11120]

The Evergreen Equity Trust, et al.; Notice of Application

June 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of registered open-end management investment companies to acquire all of the assets and certain stated liabilities of certain series of another registered open-end management investment company.

APPLICANTS: Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen Money Market Trust, Evergreen Select Money Market Trust (together with their series, the ''Evergreen Funds''), CoreFunds, Inc. (with its series, the ''CoreFunds'' and together with the Evergreen Funds, the ''Funds''), and First Union National Bank (''FUND'').

FILING DATES: The application was filed on April 23, 1998 and amended on June 24, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING ON NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 21, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants: FUNB, 201 S. College Street, Charlotte, North Carolina 20288; CoreFunds, Inc., 530 East Swedesford Road, Wayne, Pennsylvania 19087; The Evergreen Funds, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Edward P. Macdonald, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The CoreFunds is a Maryland corporation registered under the Act as an open-end management investment company. CoreFunds consist of twenty-one separate series, nineteen of which are the selling funds (''Selling Funds'')[1] CoreStates Investment Advisers, Inc. (''CSIA'') is registered under the Investment Advisers Act 1940 (''Advisers Act'') and is the investment adviser for the CoreFunds.

2. The Evergreen Funds are Delaware business trusts and each is registered under the Act as an open-end management investment company. Nineteen of the Evergreen Funds' series are the acquiring funds (''Acquiring Funds''). FUNB, a subsidiary of First Union Corporation (''First Union'') , is a national banking association. FUNB is not required to register under the Advisers Act. The Capital Management Group, a division of FUNB and two of FUNB's subsidiaries, Evergreen Asset Management Corp. and Keystone Investment Management Company as well as Meridian Investment Company, an indirect wholly-owned subsidiary of First Union are the investment advisers to the Evergreen Funds. Evergreen Asset Management Corp. and Keystone Investment Management Company are each registered under the Advisers Act. FUNB, as a fiduciary for its customers, owns of record 5% (in some cases 25%) or more of the outstanding voting securities of each of the Selling Funds or their respective Acquiring Funds.

3. On April 30, 1998, CoreStates Financial merged with and into a wholly-owned subsidiary of First Union (the ''Merger''). CSIA was a wholly-owned, indirect subsidiary of CoreStates Financial. As a result of the Merger, CSIA became a wholly-owned subsidiary of FUNB. .

4. On February 6 and 11, 1998 respectively, the board of CoreFunds and each Evergreen Fund (the ''Boards''), including a majority of the directors/trustees who are not ''interested persons'' under section 2(a)(19) of the Act (the ''Independent Directors''), approved plans of reorganization under which the Acquiring Funds will acquire corresponding Selling Funds with similar investment objectives (the ''Plans''). Pursuant to the Plans, each Selling Fund has agreed to sell all of its assets and certain stated liabilities to the corresponding Acquiring Fund in exchange for shares of the Acquiring Fund (the ''Reorganizations.'')[2] As a result of the Reorganizations, each Selling Fund shareholder will receive Acquiring Fund shares having an aggregate net asset value equal to the aggregate net asset value of the corresponding Selling Fund's shares held by that shareholder calculated as of the close of business immediately prior to the date on which the Reorganizations will occur. Applicants expect that the Reorganizations will occur on or about July 27, 1998 (the ''Closing Date'').

5. The Selling Funds, except for the money market funds, offer four classes of shares: Classes A Individual, B Individual, C Individual, and Y (Institutional) Shares. Certain of the Acquiring Funds offer one or more of six classes of shares, which are Classes A, B, C, Y, Institutional, and Institutional Service Shares.

6. Under the Plans, holders of Class A and Class B Shares of CoreFunds Balanced Fund, CoreFunds Intermediate Municipal Bond Fund, CoreFunds New Jersey Municipal Bond Fund, CoreFunds Pennsylvania Municipal Bond Fund, CoreFunds Cash Reserve Fund, CoreFunds Tax-Free Reserve Fund, CoreFunds Treasury Reserve Fund, CoreFunds International Growth Fund, CoreFunds Government Income Fund, and CoreFunds Core Equity Fund will receive Class A or B Shares of the corresponding Acquiring Fund. Holders of Class A and B Shares of the remaining Selling Funds will receive Institutional Service Shares of the corresponding Acquiring Fund. Holders of Class C Shares of the CoreFunds Cash Reserve Fund, CoreFunds Tax-Free Reserve Fund and CoreFunds Treasury Reserve Fund will receive Class A Shares of the corresponding Acquiring Fund. Holders of Class C Shares of the remaining Selling Funds will receive Institutional Service Shares of the corresponding Acquiring Fund. Holders of Class Y Shares of the CoreFunds Balanced Fund, CoreFunds Intermediate Municipal Bond Fund, CoreFunds New Jersey Municipal Bond Fund, CoreFunds Pennsylvania Municipal Bond Fund, CoreFunds Cash Reserve Fund, CoreFunds Tax-Free Reserve Fund, CoreFunds Treasury Reserve Fund, CoreFunds International Growth Fund, CoreFunds Government Income Fund, and CoreFunds Core Equity Fund will receive Class Y Shares of the corresponding Acquiring Fund. Holders of Class Y Shares of the remaining Selling Funds will receive Institutional Shares of the corresponding Acquiring Fund.

7. Class Y (Institutional) Shares of the Selling Fund and Class Y and Institutional Shares of the Acquiring Funds are not subject to any asset-based distribution or administrative service fees. Class C Shares of the Selling Funds and Institutional Service Shares of the Acquiring Funds are subject to an asset-based distribution fee. Class A Individual and Class A Shares are subject to varying front-end sales charges and asset-based distribution fees. Class B Individual and Class B Shares are subject to varying contingent deferred sales charges and asset-based distribution fees. No initial sales charge will be imposed in connection with Class A Shares and no contingent

[1] The CoreFunds Elite Government Reserve Fund has not commenced operations as the date of the filing of the application and is not being acquired by the Evergreen Funds. The CoreFunds Treasury Reserve Fund will reorganize into the Evergreen Treasury Money Market Fund and will rely on rule 17a–8. Accordingly, these three series are not parties to this application.

[2] The Selling Funds and the corresponding Acquiring Funds are: CoreFunds Balanced Fund and Evergreen Foundation Fund; CoreFunds Growth Equity Fund and Evergreen Select Strategic Growth Fund; CoreFunds International Growth Fund and Evergreen International Growth Fund; CoreFunds Government Income Fund and Evergreen U.S. Government Fund; CoreFunds Bond Fund and Evergreen Select Income Plus Fund; CoreFunds Short-Intermediate Bond Fund and Evergreen Select Fixed Income Fund; CoreFunds Short-Term Income Fund and Evergreen Select Limited Duration Fund; CoreFunds Intermediate Municipal Bond Fund and Evergreen High Grade Tax Free Fund; CoreFunds New Jersey Municipal Bond Fund and Evergreen New Jersey Tax-Free Income Fund; CoreFunds Pennsylvania Municipal Bond Fund and Evergreen Pennsylvania Tax-Free Fund; CoreFunds Cash Reserve Fund and Evergreen Money Market Fund; CoreFunds Tax-Free Reserve Fund and Evergreen Municipal Money Market Fund; CoreFunds Elite Cash Reserve Fund and Evergreen Select Money Market Fund; CoreFunds Elite Tax-Free Reserve Fund and Evergreen Select Municipal Money Market Fund; CoreFunds Elite Treasury Reserve Fund and Evergreen Select Treasury Money Market Fund; CoreFunds Global Bond Fund and Evergreen Select International Bond Fund; CoreFunds Core Equity Fund and Evergreen Stock Selector Fund; CoreFunds Equity Index Fund and Evergreen Select Equity Index Fund; CoreFunds Special Equity Fund and Evergreen Select Special Equity Fund.

deferred sales charge will be imposed with respect to Class B Institutional Service Shares.

8. The investment objectives of each Selling Fund and its corresponding Acquiring Fund are substantially similar. The investment restrictions and limitations of each Selling Fund and its corresponding Acquiring Fund also are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds.

9. The Boards, including a majority of Independent Directors, approved the Reorganizations in the best interests of existing shareholders of the Funds and determined that the interests of existing shareholders will not be diluted. The Boards considered a number of factors in authorizing the Reorganizations, including: (a) The terms and conditions of the Reorganizations; (b) whether the Reorganizations would result in the dilution of shareholders' interests; (c) expense ratios of the Funds, fees and expenses of the Reorganizations; (d) the comparative performance records of the Funds; (e) compatibility of the Funds' investment objectives and policies; (f) the investment experience, expertise and resources of the Funds' advisers; (g) service features available to shareholders of the respective Acquiring Fund and Selling Fund; (h) the fact that FUNB will bear the expenses incurred by the Funds in connection with the Reorganizations; (i) the fact that the Acquiring Funds will assume the identified liabilities of the Selling Funds; and (j) the expected federal income tax consequences of the Reorganizations. FUNB will pay the expenses of the Reorganizations other than the Acquiring Funds' federal and state registration fees.

10. The Plans may be terminated by either the Selling or Acquiring Fund at or prior to the Closing Date if the other party breaches any provision of a Plan that was to be performed and the breach is not cured within 30 days or a condition precedent to the terminating party's obligations has not been met and it appears that the condition precedent will not or cannot be met.

11. Registration statements on Form N–14 containing preliminary combined prospectus/proxy statements for each Fund Reorganization, were filed with the SEC between April 10, 1998 and June 10, 1998. A final prospectus/proxy was mailed to shareholders of the Selling Funds on June 10, 1998, except for the CoreFunds Global Bond Fund the prospectus/proxy for which will be mailed on or about July 10, 1998. A special meeting of the Selling Funds' shareholders will be held on or about July 17, 1998 for all Selling Funds except for the CoreFunds Global Bond Fund the meeting of whose shareholders will be held on or about August 17, 1998.

12. The consummation of each Reorganization under the Plans is subject to a number of conditions precedent, including: (a) The Plans have been approved by the Boards and each of the Funds' shareholders in the manner required by applicable law; (b) management of each Selling Fund solicits proxies from its shareholders seeking approval of the Reorganizations; (c) the Funds have received opinions of counsel stating, among other things, that each Reorganization will not result in federal income taxes for the Fund or its shareholders; and (d) the Funds have received from the SEC an order exempting the Reorganizations from the provisions of section 17(a) of the Act. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, knowingly from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines the term *affiliated person* of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (d) if the other person is an investment company, any investment adviser of the person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they cannot rely on rule 17a–8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. The Selling Funds may be affiliated persons of FUNB because FUNB, as fiduciary for its customers, owns of record 5% or more of the outstanding securities of the Selling Funds. FUNB, in turn, is an affiliated person of the Acquiring Funds because FUNB, or one of its affiliates, serves as adviser to the Acquiring Funds. In addition, the Acquiring Funds may be affiliated persons of FUNB because FUNB, as fiduciary for its customers, owns of record 5% or more of the outstanding securities of the Acquiring Funds.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the provisions of section 17(b) of the Act. Applicants state that the Board of each of the Funds has determined that the transactions are in the best interests of the shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of the Selling Funds' shares for shares of the Acquiring Funds will be based on the relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17783 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23288; File No. 812–11004]

Phoenix Home Life Mutual Insurance Company, et al.; Notice of Application

June 26, 1998.

AGENCY: Securities and Exchange Commission (''Commission''

ACTION: Notice of application (''Application'') for order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (the ''Act'' or the ''1940 Act'').

Summary of Application: Applicants seek an order approving the proposed substitution of shares of the Phoenix Money Market Series of the Phoenix Edge Series Fund (the ''Substitute Fund'') for shares of the Templeton Money Market Series of the Templeton Variable Products Series Fund (the ''Current Fund'')(the ''Substitution''). Applicants also seek an order pursuant to Section 17(b) of the Act granting exemptions from Section 17(a) to permit Applicants to: (1) effect the Substitution by redeeming shares of the Current Fund in-kind and using the proceeds to purchase shares of the Substitute Fund; and (2) merge two investment divisions of Phoenix Home Life Variable Accumulation Account (the ''Account'') which will be holding shares of the same Substitute Fund as a result of the Substitution.

Applicants: Phoenix Home Life Mutual Insurance Company (''Phoenix'') and the Account.

Filing Date: The application was filed on February 12, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission no later than 5:30 p.m. on July 21, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Phoenix Home Life Mutual Insurance Company, One American Row, P.O. Box 5056, Hartford, Connecticut 06102–5056.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: the following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission (tel. (202) 942–8090).

Applicants' Representations

1. Phoenix is a mutual insurance company existing under New York law and is licensed to do business in all states, as well as in the District of Columbia and Puerto Rico. Phoenix offers individual and group variable immediate and deferred annuity contracts and single premium and flexible premium variable life insurance policies.

2. Phoenix established the Account on June 21, 1982, pursuant to the provisions of the insurance laws of the state of Connecticut. The Account is a segregated investment account registered with the Commission as a unit investment trust pursuant to the provisions of the 1940 Act. The Account is divided into subaccounts (''Subaccounts'') that correspond to the portfolios of the Phoenix Edge Series Fund (the ''Phoenix Trust'') and the Templeton Variable Products Series Fund (the ''Templeton Trust''), including the Phoenix Money Market Series (the ''Phoenix Fund'') and the Templeton Money Market Series (the ''Templeton Fund''). The Account serves as the funding medium for certain variable annuity contracts issued and administered by Phoenix. WS Griffith & Co., Inc. serves as principal underwriter for the flexible premium variable annuity contract (the ''Contract'') involved in the Substitution.

3. The deferred variable annuity Contract offered by the Account currently provides for investment in five Subaccounts, each of which invests solely in shares of a different portfolio of the Templeton Trust.

4. On April 18, 1986, the Phoenix Trust filed its initial registration statement with the Commission on Form N–1A under the Securities Act of 1933 (''1933 Act'') and the 1940 Act. The Phoenix Trust is a series type investment company, organized as a Massachusetts business trust on February 18, 1986, that currently has ten separate investment portfolios (referred to individually as a ''Fund'') that have differing investment objectives, policies and restrictions. Each Fund is managed in compliance with diversification requirements under the Internal Revenue Code of 1986, as amended, (the ''Code''). Shares of the Funds of the Phoenix Trust are currently sold only to separate accounts of Phoenix and its affiliates to fund variable life insurance policies or variable annuity contracts. Phoenix Investment Counsel, Inc. (the ''Phoenix Adviser'') serves as investment adviser to the Phoenix Fund.

5. On February 25, 1988, the Templeton Trust filed its initial registration statement with the Commission on Form N–1A under the 1993 Act and the 1940 Act. The Templeton trust is a series type investment company, organized as a Massachusetts business trust on February 25, 1998, that currently has nine separate investment portfolios (referred to individually as a ''Fund'') that have differing investment objectives, policies and restrictions. Each Fund is managed in compliance with diversification requirements under the Code. Shares of the Funds of the Templeton Trust are sold only to insurance company separate accounts to fund variable life insurance policies or variable annuity contracts. Templeton Investment Counsel, Inc. (the ''Templeton Adviser'') services as investment adviser to the Templeton Fund.

6. The Templeton Fund as an individual investment alternative has not generated substantial interest of holders of Contracts (''Owners'') in recent years. On December 31, 1997, the Templeton Fund had $15.77 million in assets, compared to $14.09 million at the end of 1996, $20.72 million at the end of 1995 and $33.09 million at the end of 1994, an aggregate decrease of 52% from 1994 to 1997 and 57.4% from 1994 to 1996.

7. Applicants believe the Phoenix Fund, with assets of $126.48 million on December 31, 1997, offer Owners a larger fund with similar investment policies, providing a potential for economies of scale. The Applicants believe that they can better serve the interests of Owners by using the Phoenix Fund rather than the Templeton Fund as a funding vehicle for the Contracts.

8. Phoenix proposes to effect a substitution of shares of the Phoenix Fund for all shares of the Templeton Fund attributable to the Contract. Phoenix will pay all expenses and transaction costs associated with the Substitution, including any applicable brokerage commissions. Applicants state that concurrent with the filing of the Application with the Commission, Phoenix will have filed with the Commission and mailed to Owners a supplement to the prospectus of the Account to provide Owners and prospective investors with information concerning the proposed Substitution.

9. Phoenix will schedule the Substitution to occur as soon as practicable following the issuance of the requested order so as to maximize the benefits to be realized from the Substitution.

10. Within five days after the Substitution, Phoenix will send to Owners written notice of the Substitution (the ''Notice'') that identifies the shares of the Templeton Fund that have been eliminated and the shares of the Phoenix Fund that have been substituted. Owners will be advised in the Notice that for a period of 30 days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Subaccount, without limitation and without charge. Moreover, any owner-initiated transfers of all available assets from the Subaccount investing in the Phoenix Fund to a Subaccount investing in certain other portfolios of Templeton Variable Products Series Fund, from the date of the Notice to 30 days thereafter, will not be counted as transfer requests under any contractual provisions of the Contracts that limit the number of allowable transfers. The period from the date of the Notice to 30 days thereafter is referred to herein as the ''Free Transfer Period.''

11. Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have. Any applicable contingent deferred sales loads will be imposed.

12. Immediately following the Substitution, Phoenix will combine the Subaccount invested in the Templeton Fund with the Subaccount invested in the Phoenix Fund. Phoenix will reflect this treatment in disclosure documents for the Account, the Financial Statements of the Account and the Form N–SAR annual reports filed by the Account.

13. Phoenix will redeem all shares of the Templeton Fund it currently holds on behalf of the Account at the close of business on the effective date of the Substitution. In connection with the redemption of all shares of the Templeton Fund held by Phoenix, it is expected that the Templeton Fund will incur brokerage fees and expenses in connection with such redemption. To reduce the impact of such fees and expenses on the Templeton Fund, the redemption of shares will be effected partly for cash and partly for portfolio securities redeemed ''in-kind.'' By this procedures, at the effective date of the Substitution, the Templeton Fund will transfer to the Account cash proceeds and/or portfolio securities held by the Templeton Fund and the Account will use such cash proceeds and/or portfolio securities to purchase shares of the Substitute Fund. The Templeton Trust will effect the redemption-in-kind and the transfers of portfolio securities in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to the Substitute Fund. Phoenix will take appropriate steps to assure that the portfolio securities selected by the Templeton Adviser for redemptions-in-kind are suitable investments for the Substitute Fund. In effecting the redemption-in-king and transfers, the Templeton Trust will comply with the conditions of Rule 18f–1 under the 1940 Act.

14. The portfolio securities redeemed in-king will be used together with the cash proceeds to purchase the shares of the Substitute Fund. The Applicants have determined that partially effecting the redemption of shares of the Templeton Fund in-kind is appropriate, based on the current similarity of certain of the portfolio investments of the Templeton Fund to those of the Substitute Fund. The valuation of any ''in-kind'' redemptions will be made on a basis consistent with the normal valuation procedures of the Templeton Fund and the normal valuation procedures of the Substitute Fund.

15. In all cases, Phoenix, on behalf of the Account, will simultaneously place redemption requests with the Templeton Fund and purchase orders with the Substitute Fund so that purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Owners whose funds are currently invested in the Templeton Fund will remain fully invested.

16. The full net asset value of the redeemed shares held by the Account will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution. Phoenix hereby undertakes to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of the Templeton Fund, so that the full net asset value of the redeemed shares of the Templeton Fund held by the Account will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution.

17. The Templeton Adviser and the Phoenix Adviser have been fully advised of the terms of the Substitution. Phoenix anticipates that the Templeton Adviser and the Phoenix Adviser, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by the Account.

Applicant's Legal Analysis

1. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contractowner forced to redeem is very likely to suffer adverse tax consequences. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares of another issuer, unless the Commission approves that substitution.

3. The Substitution involves: (a) Funds with substantially identical investment objectives, policies and restrictions; (b) Funds with comparable investment strategies and levels of risk exposure; (c) a Substitute Fund exhibiting equivalent or better prior investment performance than the Current Fund; and (d) a Substitute Fund with a substantially larger size than the Current Fund, which should promote greater economies of scale that may help to lower expense ratios and further improve investment performance. Applicants therefore believe that their request for an order of approval satisfies the standards for relief of Section 26(b).

4. The Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The Substitution involves interests that have objectives, policies and restrictions the same as or substantially similar to the objectives, policies and restrictions of the Fund being replaced so as to continue fulfilling

contractowners' objectives and expectations.

(b) The costs of the Substitution will be borne by the Applicants and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

(c) The Substitution will, in all cases, be at net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's account value.

(d) The proposed Substitution will not cause fees and charges under the Contracts currently being paid by contractowners to be greater after the proposed Substitution than before the proposed Substitution.

(e) The contractowners have been given notice of the Substitution and will have an opportunity to reallocate contract values among other available Funds without the imposition of any transfer charge or limitation, nor will any such transfers from the date of the initial notice through a date 30 days following the Substitution count against the number of free transfers permitted in a year.

(f) Within five days after the Substitution, Phoenix will send to contractowners written Notice that the Substitution has occurred, identifying the Fund that was substituted and disclosing the Substitute Fund.

(g) The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of Phoenix.

(h) The Substitution will in no way alter the tax benefits to contractowners. Counsel for Phoenix has advised that the Substitution will not give rise to any tax consequences to the contractowners.

5. Section 17(a)(1) of the Act prohibits any affiliated person, or an affiliate of an affiliated person, of a registered investment company from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

6. Applicants anticipate that the Substitution will be effected by redeeming shares of the Current Fund in-kind and then using those assets to purchase shares of the Substitute Fund. This redemption and purchase in-kind involves the purchase of property from the Current Fund by the separate account, an affiliated person of that Fund, and the sale of property to the Substitute Fund by the separate account, which may be considered an affiliate of the Substitute Fund.

7. Similarly, where two investment divisions holding shares of the same Substitute Fund are combined into a single investment division, the transfer of assets could be said to involve purchase and sale transactions between the investment divisions by an affiliated person.

8. Applicants request an order pursuant to Section 17(b) of the Act exempting the in-kind redemption and purchase and the merger of certain investment divisions from the provisions of Section 17(a). Section 17(b) of the Act provides that the Commission shall grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company; and (c) the proposed transaction is consistent with the general purposes of the Act.

9. Applicants represent that the terms of the in-kind redemption and purchase are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interests of contractowners will not be diluted. The in-kind redemption and purchase will be done at values consistent with the objectives and policies of both the Current and Substitute Funds. The asset transfers will be reviewed to assure that the assets meet the objectives and policies of the Substitute Fund and that they are valued under the appropriate valuation procedures of the Current and Substitute Funds. In-kind redemption and purchase will reduce the brokerage costs that would otherwise be incurred in connection with the Substitution.

10. Applicants represent that the merger of the investment divisions is intended to reduce administrative costs and thereby benefit contractowners with assets in those investment divisions. The purchase and sale transactions will be effected based on the net asset value of the shares held in the investment divisions and the value of the units of the investment division involved. Therefore, there will be no change in value to any contractowner.

Conclusion

For the reasons summarized above, Applicants assert that the requested orders meet the standards set forth in Sections 26(b) and 17(b), respectively, and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17715 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26891]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 26, 1998.

Notice is hereby given that the following filling(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 transactions(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 July 21, 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 July 21, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70–9167)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

By order dated March 25, 1998 (HCAR No. 26849) (''March Order''), the Commission authorized NEES to issue, no later than December 31, 2002, up to one million shares of its common stock to be used to acquire the stock or assets

of one or more ''energy-related companies,'' as defined in rule 58 under the Act. The March Order authorized NEES to make the acquisitions directly or indirectly through a nonutility subsidiary of NEES.

NEES now proposes to increase its authorization under the March Order to issue an additional one million shares of its common stock, no later than December 31, 2002, totalling two million shares of its common stock available to be used to acquire the stock or assets of one or more ''energy-related companies,'' as defined in rule 58 under the Act.

Central and South West Corporation, et al. (70–9119)

Central and South West Corporation (''CSW''), a registered holding company, and Central and South West Services, Inc., a service company subsidiary of CSW (''Services'' and, together with CSW, ''Applicants''), both at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75266, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11 and 12(b) of the Act, and rules 45 and 54 under the Act.

The Applicants request authority through December 31, 2003 to permit: (a) Services to engage in the business of marketing, selling, leasing and renting to consumers certain electric bicycles, electric tricycles, electric skateboards and electric scooters (''Electric Vehicles'' or ''EVs''), as well as retrofit kits to convert traditional bicycles to electric bicycles (collectively, ''EV Sales & Leasing''); (b) Services to provide financing to, or guarantee borrowings by, creditworthy commercial and non-commercial customers other than individuals in connection with their purchase or lease of EVs (''EV Customer Financing'') utilizing funds available to Services through its participation in the CSW money pool; and (c) Services to use borrowings from the CSW money pool to fund the management, operation and administrative costs of the EV Business and to finance the EV Business by making loans and providing guarantees and other credit support to commercial and institutional customers, and CSW to provide guarantees and other credit support on behalf of Services, up to an aggregate amount outstanding at any time of $25 million (''EV Business Financing'', and together with EV Sales & Leasing and EV Customer Financing, ''EV Business'').

Services proposes to provide EV Sales & Leasing activities to sporting equipment stores, bicycle shops, non-commercial entities including universities and government organizations and, on a smaller scale, to individuals via the Internet. In connection with EV Sales & Leasing, Services proposes to provide the EV Customer Financing to support the purchase of Electric Vehicles and to encourage public utilization of Electric Vehicles for transportation. The Applicants will obtain funds to finance the EV Business through the CSW money pool, as authorized by the Commission under prior orders. EV Business Financing would be conducted through use of the CSW money pool, as authorized by Commission orders dated March 31, 1993, September 28, 1993, March 18, 1994, June 15, 1994, February 1, 1995, March 21, 1995, March 28, 1997 and April 3, 1998 (HCAR Nos. 25777, 25897, 26007, 26066, 26226, 26254, 26697 and 26854, respectively).

EV Customer Financing provided by Services may take the form of guarantees, capital leases, operating leases or promissory notes with terms of one to five years, with pricing to be competitive with that readily available in the market for similar financial instruments. Loans made by Services directly or, with respect to which Services, or CSW on behalf of Services, is providing a guarantee, will have an average annual interest rate not to exceed prime plus 7%. These loans may be unsecured or secured by a lien or other security interest in the Electric Vehicle or other real or personal property other than utility assets. Services will obtain funding through its participation in the CSW money pool system. In some instances, the Applicants expect that Services may place the EV Customer Financing with third party lenders and leasing companies.

By increasing the availability of Electric Vehicles through sales and financing efforts, the Applicants hope to advance new electro-technologies and the use of electricity as an alternative source of fuel for vehicles. The Applicants also anticipate that the marketing and sale of new technologies associated with the Electric Vehicles will increase customer awareness of other potential uses of electricity, resulting in an increase in overall demand for electric service, both within the states in CSW's service areas and in surrounding regions. CSW has four operating company subsidiaries—Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities and Central Power & Light Company (''Operating Companies'')—which service portions of Texas, Oklahoma, Louisiana and Arkansas (''Service Areas''). The Applicants expect that promotion of a new market for Electric Vehicles will spur demand for electricity and help the Operating Companies make a successful transition from a regulated industry to a competitive one. EV Sales & Leasing activities are also expected to enhance CSW's name recognition and customer loyalty.

The Applicants propose to engage in the EV Business both within the Service Areas of the CSW Operating Companies and in all other areas of the United States. During the twelve-month period beginning on the first day of January in the year following the date the Applicants commence the EV Business under approval of the Commission, and for each subsequent calendar year, total revenues of Services derived from the EV Business in the states comprising the Service Areas will exceed total revenues of Services derived from the EV Business in all other states.

The Applicants will treat its EV Business as a separate cost an revenue center for accounting purposes. CSW proposes to provide EV Business Financing to Services in an aggregate amount outstanding at any time of up to $25 million. These funds would be designated for specific use by Services in support of the EV Business. CSW further proposes to guarantee or to act as surety on bonds, indebtedness and performance and other obligations undertaken by Services in connection with its EV Business. Guarantees or arrangements may be made from time to time through December 31, 2002, and will expire or terminate no later than December 31, 2003. The total amount of all loans and guarantees for which authorization is sought will not exceed $25 million at any time outstanding.

The Applicants state that Services currently has an insufficient staff to engage in the EV Business and will hire outside individuals or firms to conduct the EV Business activities. Hiring will be done on a contract basis, and the additional personnel will be deemed independent contractors of Services. These independent contractors will be paid by Applicants through commissions only and will receive no salary or employee benefits from Applicants. Through the date of the filing of the application-declaration, Applicants have executed one agreement with a manufacturer or certain Electric Vehicles which gives Applicants the right to market, sell, lease and rent these vehicles in several states.

Indiana Michigan Power Company (70–9315)

Indiana Michigan Power Company (''I&M''), One Summit Square, P.O. Box

60, Fort Wayne, Indiana 46801, an electric public utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 and rule 54 under the Act.

I&M proposes to guarantee loan payments, including principal, interest and penalties, on a promissory note (''Note'') from one of its industrial customers, Iron Dynamics, Inc. (''IDI''), an Indiana corporation, which is constructing a main mill substation, power distribution facilities from main mill to coal preparation facilities, coal reparation facilities and submerged arc furnace transformers and vaults (''Equipment'') to be installed on IDI's property in DeKalb, Indiana, which is in I&M's service territory. The Note will evidence a loan by GE Capital Corporation (''GE Capital'') or a similar lender (''Lender'') to IDI in an amount up to $6.5 million to acquire the Equipment. I&M will supply electric service to IDI's facility.

The loan will be made under a loan agreement (''Loan Agreement'') which provides, among other things, that the interest rate on the Note may be variable or fixed. The variable interest rate will be equal to an index rate (''Index Rate'') plus 1.75%. On the date the initial loan is made, the index Rate will be the interest rate equal to the per annum interest rate for commercial paper issued by GE Capital for the period of time closest to 90-days on such date (''CPR''), and the Index Rate will be adjusted every 90 days and be equal to the CPR in effect on the tenth day preceding the end of each 90 day period during the term of the loan. If, for any reason, GE Capital does not issue the commercial paper on the applicable date, the CPR will be equal to the rate listed for ''3 Month'' commercial paper under the column indicating an average rate as stated in the Federal Reserve Statistical Release H. 15 (519) for the calendar month preceding the calendar month in which the 90-day period ends. If, for any reason, the Federal Reserve Statistical Release H.15 (519) is no longer published, the CPR will be equal to the latest commercial paper rate for high grade unsecured notes of 90-day maturity sold through dealers by major corporations in multiples of $1,000, as indicated in the ''Money Rates'' column of the Wall Street Journal, Eastern Edition, published on the tenth day prior to the end of each 90-day period or the first business day thereafter.

Under the terms of the Loan Agreement, IDI may elect to convert the interest rate on the Note to a fixed rate. The fixed rate will be equal to 1.75% over the average of one, three and five-year U.S. Treasuries as published in the Wall Street Journal on the date of IDI's election to convert to a fixed rate. IDI is responsible to the Lender for any costs incurred as a result of converting to a fixed rate.

The Notes will mature in not more than 96 months and be secured by a first lien on the Equipment. There will be no consideration paid by IDI for the guarantee.

In an alternative to I&M's loan guarantee, I&M requests authority to make a direct loan to IDI and to acquire the Note on substantially the same terms as the loan from GE Capital or Lender to IDI.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17716 Filed 7–2–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40137; File No. SR–NASD–98–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Deadline for Presently Registered Representatives to Apply for the Equity Trader, Series 55 Examination

June 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASDR'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDR. The NASDR has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDR is proposing to amend NASD Membership and Registration Rule 1032 to change the date by which registered representatives who currently trade equity securities in the Nasdaq Stock Market (Nasdaq) and/or over-the-counter must apply for Equity Trader registration. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 1032. Categories of Representative Registration

* * * * *

(f) Limited Representative—Equity Trader

* * * * *

Before registration as a Limited Representative—Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

* * * * *

(B) pass an appropriate Qualification Examination for Limited Representative-Equity Trader. Any person *who was performing any of the activities described in paragraph (f)(1) above on or prior to May 1, 1998 and* who has filed an application to take this examination by [(date thirty (30) days after the effective date of this rule)] *August 31, 1998* must pass the examination by [(24 months after effective date above)] *May 1, 2000.* Any person who is eligible for this extended qualification period and who fails this examination during [such] the twenty-four (24) month time period *commencing on May 1, 1998 and ending on May 1, 2000* must wait *thirty* (30) days from the date of failure to take the examination again. Any person, *other than a person who is eligible for the extended qualification period,* who files an application to take this qualification examination after [(date thirty (30) days after the effective date of this rule)] *May 1, 1998* must pass this examination before conducting such activities as described in paragraph (f)(1) above. In no event may a person who is eligible for the extended qualification period function as an Equity Trader beyond the 24-month period without having successfully passed the appropriate qualification examination.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 2, 1998, the Commission approved the NASD's proposal to amend NASD Rule 1032 to add an additional category of representative registration.[4] Specifically, Rule 1032(f) requires each registered representative who engages in proprietary or agency trades of equities, preferred securities or convertible debt securities otherwise than on a securities exchange, or who directly supervises such activities (*i.e.*, functioning as an ''Equity Trader''), to register as a Limited Representative-Equity Trader. In order to register as a Limited Representatives-Equity Trader, the representative must be registered as a General Securities Representative or as a Limited Representative-Corporate Securities, and must pass the Series 55 examination.[5] The rule contains an exemption for representatives whose principal trading activities involve executing orders on behalf of an affiliated investment company that is registered with SEC under the Investment Company Act of 1940.

The rule provides that presently registered representatives who file an application to take the Series 55 examination within 30 days of the effective date of the rule must pass the Series 55 examination within 2 years of the effective date of the rule. The effective date of the rule was April 1, 1998, which was announced in Notice to Members 98–17. Accordingly, a presently registered representative had *until* May 1, 1998 to file an application to take the Series 55 examination and *until* May 1, 2000 to receive a passing score on the exam. The rule also provides that any person, including a presently registered representative, who files an application to take the Series 55 examination *after* May 1, 1998 must pass the Series 55 examination *before* functioning as an Equity Trader.

It has come to the NASDR's attention that many presently registered representatives who would have been eligible for the two year grace period to pass the Series 55 examination failed to file applications by May 1, 1998. Thus, such registered representatives must immediately cease functioning as Equity Traders until they pass the Series 55 examination. As discussed above, the original proposal provided presently registered representatives 30 days from the effective date of the rule to file applications to take the Series 55 examination. The NASDR believed this would provide such representatives sufficient time to file the requisite applications. Unfortunately, this has not been the case. If the deadline is not extended, those registered representatives who failed to file applications by the deadline will be forced to cease certain activities, which could cause disruptions at NASD member firms and could cause harm to customers. The NASDR does not believe the markets or customers will be served by a strict application of this administrative deadline. Consequently, the NASDR is proposing to extend the deadline for filing an application from May 1, 1998 until August 31, 1998. This will allow a registered representative who had been eligible for the two year grace period but failed to file an application by May 1, 1998 to file an application by August 31, 1998 and continue to function as an Equity Trader until he/she receives a passing score on the Series 55 examination. However, such registered representative cannot continue functioning as an Equity Trader after May 1, 2000 unless he/she receives a passing score on the Series 55 examination before May 1, 2000. Any person not functioning as an Equity trader on or before May 1, 1998 must pass the Series 55 examination before functioning as such.

2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASDR believes the proposal is consistent with the Act because it continues to require presently registered representatives to receive a passing score on the Series 55 examination before May 1, 2000 and to cease conducting certain specified activities if a passing score is not received by that date. The proposed change only allows certain registered representatives additional time to file applications to take the Series 55 examination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Association and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule

[4] *See* Securities Exchange Act Release No. 39516, 63 FR 1520 (January 9, 1998) (order approving File No. SR–NASD–97–21).

[5] Registered representatives who have been ''grandfathered'' from taking the Series 7 or the Series 62 examinations will not be required to take either examination in order to take the Series 55 examination.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(e).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–43 and should be submitted by July 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17710 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40140; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Partial Approval to Amendment No. 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. to Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

June 26, 1998.

I. Introduction

On March 19, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (a) implement, on a pilot basis, new Primary Nasdaq Market Maker (''PMM'') standards for all Nasdaq National Market (''NNM'') securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.[3]

On April 30, 1998, Nasdaq filed Amendment No. 3 to the proposal,[4] proposing to: (a) extend the comment period by 30 days to May 27, 1998; (b) continue to suspend the current PMM standards until July 1, 1998; (c) extend the NASD's Short Sale Rule pilot until January 4, 1999; (d) change the dates during which the PMM pilot would run to July 1, 1998, through January 4, 1999; and (e) amend subparagraph (g) of NASD Rule 4612 to change the method for determining how market makers that are not managers or co-managers in an underwriting syndicate of a secondary offering may qualify as PMMs. Also on April 30, 1998, the Commission issued notice of Amendment No. 3 and approved, on an accelerated basis, Nasdaq's request to continue to suspend the current PMM standards until July 1, 1998.[5] The Commission also extended the comment period for the proposed rule change.

On June 24, 1998, Nasdaq filed Amendment No. 4 to the proposal,[6] proposing to: (a) extend the comment period to July 27, 1998; (b) continue to suspend the current PMM standards until October 1, 1998; and (c) change the dates during which the PMM pilot would run to October 1, 1998, until April 1, 1999.

Background

Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of the SEC Order Handling Rules[7] and what some perceive as a concurrent move toward a more order-driven, rather than a quote-driven, market raised questions about the continued relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.[8] Currently, all market makers are designated as PMMs.

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in what may be an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the NASD's Short Sale Rule. The NASD now proposes to extend the current suspension of the existing PMM standards and to implement new standards on a pilot basis from October 1, 1998, until April 1, 1999. The NASD intends the new standards to better evaluate whether a market maker provides meaningful liquidity to the market. To determine whether a particular market maker is such a provider of liquidity, Nasdaq will analyze that market maker's trading activity using a new test.

For the reasons discussed below, the Commission has determined to grant accelerated approval of Nasdaq's request, in Amendment No. 4, to continue to suspend the current PMM standards until October 1, 1998. Further, given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has extended the comment period to the proposed rule change, as amended, to July 27, 1998.

II. Proposed Rule Change

As discussed in detail in Securities Exchange Act Release No. 39819, Nasdaq is proposing a new set of PMM standards. In the current filing, Nasdaq would amend the timing of the proposed pilot through which the NASD, the SEC, and the public may evaluate those new standards.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998).

[4] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, of Market Regulation (''Division''), SEC, dated April 29, 1998. Securities Exchange Act Release No. 39819 discussed Amendment No. 1 and Amendment No. 2 to the filing, which were filed with the Commission on March 25, and 26, 1998, respectively.

[5] *See* Securities Exchange Act Release No. 39936 (April 30, 1998) 63 FR 25253 (May 7, 1998).

[6] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated June 24, 1998.

[7] On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule (Exchange Act Rule 11Ac1–4) and adopted amendments to the Quote Rule (Exchange Act Rule 11Ac1–1), which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the ''Order Handling Rules''). *See* Securities Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996).

[8] *See* Securities Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Securities Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Securities Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998); Securities Exchange Act Release No. 39936 (April 30, 1998) 63 FR 25253 (May 7, 1998) (extending suspension through July 1, 1998).

The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

Rule 4612

(a)–(g) No Change

(h) [The Board of Governors may modify the threshold standards set forth in paragraphs (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on Nasdaq.] *This rule shall be in effect beginning October 1, 1998, and remain in effect until April 1, 1999.*

* * * * *

III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the current suspension of existing PMM standards until October 1, 1998, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Extending the suspension of the current PMM standards to accommodate implementing the new pilot is consistent with Section 15A(b)(6)[9] of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade. The Commission believes that continued suspension of the current PMM standards will facilitate Nasdaq's efforts in implementing more meaningful PMM standards which should help to enhance market liquidity by rewarding those market makers that meet the new standards. As a result, continuing the suspension of the current PMM standards is consistent with Section 15A(b)(6) of the Exchange Act.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the NASD's Short Sale Rule, any market maker exemptions to that rule, and the proposed new PMM standards. The Commission recognizes that the Short Sale Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with any relevant information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

As proposed, the new PMM standards will become effective October 1, 1998, when the suspension of the existing PMM standards, under Amendment No. 4, expires. Nasdaq notes that currently all market makers registered in a security are PMMs due to the suspension of the previous PMM standards, and will continue to be so designated on the pilot's proposed start date of October 1, 1998. Under the one-month look-back provision in the PMM pilot program, Nasdaq will consider the previous calendar month and the current month to determine a market maker's continued PMM eligibility if the market maker attained PMM status in a security during the previous month, but fails to meet the applicable thresholds for the current month. To give PMMs the full benefit of the one-month look-back period and to allow market makers time to adjust their trading activity to the new standards, Nasdaq proposes to implement the new standards so that no market maker that is designated as a PMM when the pilot begins on October 1, 1998, will lose its PMM status—based on a failure to meet the new PMM standards—until December 3, 1998. Nasdaq believes, and the Commission agrees, that it is fair to give market makers this time to make necessary adjustments to their trading activity to help them maintain their PMM designation, particularly since PMM standards have been suspended for more than a year and the proposed new PMM standards are more stringent than the previous standards. The PMM pilot, pursuant to Amendment No. 4, would run until April 1, 1999.

The Commission finds good cause for approving the extension of the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to market making to reintroduce outdated PMM standards for a brief period prior to implementing a new PMM pilot. Further, the current PMM standards have been suspended until July 1, 1998, at which time the old PMM standards—which are not a meaningful measure of a market maker's liquidity-providing activity—would be used again to determine market makers' PMM status. To ensure continuity in the PMM standards and the regulation of short selling activity, to maintain orderly markets, and to avoid confusion, it is necessary to continue the suspension of the prior PMM standards until the new standards are implemented on October 1, 1998.

IV. Solicitation of Comments

Given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal, the Commission hereby grants Nasdaq's request to extend the comment period for the proposed rule change, as amended, to July 27, 1998. Since making the proposal, the NASD has issued reports to all Nasdaq market makers in NNM issues to show how those market makers would have performed for April and May of 1998 had the proposed PMM standards been in place. The NASD also posted on The Nasdaq Trader Web Site[10] a stock-by-stock analysis of what percentage of market makers in each stock would have been PMMs under the proposed PMM standards in April and May of 1998. The Commission expects such data will allow market participants to submit more meaningful comments.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. In particular, the Commission requests that commenters provide alternative PMM standards, explaining why such alternative standards better identify and reward market participants who provide meaningful liquidity to the Nasdaq market. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted by July 27, 1998.

[9] 15 U.S.C. 78o–3(b)(6).

[10] *See* http://www.nasdaqtrader.com.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[11] that the portion of Amendment No. 4 to the proposed rule change, SR–NASD–98–26, that extends the suspension of the current PMM standards to October 1, 1998, be and hereby is approved on an accelerated basis.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17718 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2).

[12] In partially approving the proposal, the Commission has considered the approved portion's impact on efficiency, competition, and capital formation. Moreover, the pilot program, if fully implemented, likely will provide the Commission with data necessary to enable it to evaluate the impact of the proposed PMM standards on the Nasdaq market and market participants. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40139; File No. SR–NASD–97–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 Relating to an Extension of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

June 26, 1998.

I. Background

On June 25, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 5 to a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C), seeking to extend through July 31, 1998, the pilot program in which market makers may quote their actual size (*i.e.,* one normal unit of trading) in 150 Nasdaq stocks (''Actual Size Rule'').

The Commission is publishing this notice to solicit comments from interested persons and is approving Amendment No. 5 on an accelerated basis.

II. Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to extend the Actual Size Rule through July 31, 1998. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) No Change

(A)–(B) No Change

(C) As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least [June 30, 1998] *July 31, 1998,* a registered market maker in a security listed on the Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

III. Discussion

On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule[3] and adopted amendments to the Quote Rule,[4] which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the ''Order Handling Rules'').[5] To facilitate implementation of the Order Handling Rules and accommodate changes in the Nasdaq market that these rules brought about, the Commission later approved a variety of amendments to NASD Rules concerning Nasdaq's Small Order Execution System (''SOES'') and the SelectNet Service (''SelectNet'').[6]

In particular, the Commission temporarily approved a pilot program[7] whereby Nasdaq market makers in the first 50 stocks subject to the Commission's Order Handling Rules were only required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary accounts.[8] For non-pilot Nasdaq stocks, the minimum quotations size requirements of 1,000, 500, or 200 shares remained the same.[9]

Although the first 50 stocks were chosen to provide a broad cross section of the most liquid Nasdaq stocks, on October 29, 1997, the Commission approved an NASD proposal to amend NASD Rule 4613(a)(1)(C) to expand the pilot program to 150 Nasdaq stocks. The Commission also extended the pilot until March 28, 1998.[10] The additional 100 stocks were part of an enhanced sample designed to better represent the entire Nasdaq market. The Commission approved the expansion in response to comment letters suggesting that the first 50 stocks did not sufficiently represent the Nasdaq market because all 20 of the largest Nasdaq stocks were subject to the 100 share minimum. Thus, some commenters suggested that it was difficult to gauge the Actual Size Rule's effect on large Nasdaq stocks since there were no sufficiently large non-pilot stocks with which to compare those in the pilot.

The NASD has concluded an analysis of an expanded pilot, and on March 5, 1998, it filed with the Commission a proposed rule change to apply permanently the Actual Size Rule to all Nasdaq Stocks.[11] As part of that filing, the NASD published a 127-page economic study of the 150-stock pilot (''March 1998 Study'').

In the March 1998 Study, the NASD concluded that:

- The Actual Size Rule did not affect the market quality—in terms of spreads, volatility, depth, or liquidity—of pilot stocks.
- The Actual Size Rule has not altered the ability of investors to access market maker capital. For pilot stocks,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–4.

[4] 17 CFR 240.11Ac1–1.

[5] *See* Exchange Act Release No. 37619A (September 6, 1997) 64 FR 48290 (September 12, 1996).

[6] *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving SR–NASD–96–43).

[7] *Id.*

[8] The Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 or more shares, it must display a quote size reflecting the size of the customer's order, absent an exception from the Limit Order Display Rule. Market makers may display a greater quotation size if they so choose or if required to do so by the Limit Order Display Rule.

[9] *See* NASD Rule 4613(a)(2).

[10] *See* Exchange Act Release No. 39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

[11] *See* Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998) (SR–NASD–98–21).

retail investors continued to have substantial and reasonable access to dealer capital via both SOES and marker maker proprietary automatic execution systems.

• There was no evidence of any material difference in market quality of pilot stocks and peer non-pilot stocks during the market stress on October 27 and 28, 1997.

To provide the Commission with sufficient time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis, the NASD proposes to extend the current 150-stock pilot through July 31, 1998.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–26 and should be submitted by July 27, 1998.

V. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 5 to the Proposed Rule Change

The Commission approved the Actual Size Rule on a pilot basis so that its effects could be assessed. In doing so, the Commission stated that it believed that a reduction in the quotation size requirement could reduce the risks that market makers must take, produce accurate and informative quotations, and encourage market makers to maintain competitive prices even in the changing market conditions resulting from the Order Handling Rules.

As discussed above, the NASD has produced an extensive economic analysis of the pilot. The data appears to suggest that the pilot has not resulted in harm to the Nasdaq market. Indeed, as discussed above, the Actual Size Rule appears to be an appropriate adjustment of market making obligations in light of the changing market dynamics resulting from the Order Handling Rules. Nevertheless, the pilot report is lengthy and the Commission has received hundreds of comment letters on both the report and the NASD's proposal to adopt permanently the Actual Size Rule.[12] Extending the pilot through July 31, 1998, should provide the Commission with sufficient time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis.

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the extension of the pilot through July 31, 1998. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register** to permit the NASD to continue the pilot on an uninterrupted basis for an additional month.

Accordingly, the Commission believes that the proposed rule change (SR–NASD–97–26) is consistent with Sections 15A(b)(6) and (b)(9) of the Exchange Act[13] and

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[14] that the proposed rule change, SR–NASD–97–26, be and hereby is approved through July 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17784 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

[12] *Id.*

[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change will provide the Commission with additional time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis. Since the Commission believes that the data discussed above indicates that the pilot has not harmed the Nasdaq market thus far, the net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40132; File No. SR–OCC–97–02]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Regarding the Issuance, Clearance, and Settlement of Options on Unit Investment Trust Interests and Investment Company Shares That Hold Portfolios or Baskets of Common Stock

June 25, 1998.

On February 21, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–97–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On February 21, 1997, May 14, 1997, and June 11, 1998, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 9, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends OCC's existing by-laws and rules to accommodate the issuance, clearance, and settlement of options on exchange listed securities representing units of beneficial interests in open-end unit investment trusts (''trust units'') and in open-end management investment companies (''fund shares'') that hold securities based on an index or a portfolio of common stocks, such as shares that have been proposed for trading by the American Stock Exchange (''Amex'').[3] The Amex currently trades trust units know as Portfolio Depository Receipts (''SPDRs'') based on the Standard & Poor's (''S&P'') 500 index and on the S&P MidCap 400 index. SPDRs are trust units that represent beneficial ownership in the SPDR trust[4]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38706 (June 2, 1997), 62 FR 31468.

[3] Securities Exchange Act Release No. 38308 (February 19, 1997), 62 FR 8467 [File No. SR–Amex–96–44]. The Chicago Board Options Exchange has filed a proposed rule change to trade similar products. Securities Exchange Act Release No. 38342 (February 26, 1997), 62 FR 10098 [File No. SR–CBOE–97–03].

[4] The SPDR trust was established to accumulate and hold a portfolio of common stocks that is intended to track the price performance and dividend yield of a particular S&P index.

and trade similarly to shares of common stock.

The Amex also trades fund shares known as World Equity Benchmark Shares (''WEBS'') which are issued by an open-end management investment company consisting of seventeen separate series based on seventeen foreign equity market indexes.[5] The investment objective of each series is to provide results that correspond to the aggregate price and yield performance of publicly traded securities in a particular market as represented by a particular foreign equity index.

The Amex has proposed trading options on exchange-traded trust units and fund shares pursuant to the same rules and procedures that are generally applicable to trading in options on equity securities with only minor differences that affect their clearance and settlement.[6] These differences are that options on trust units and fund shares would be listed as European-style options only and that each option contract would cover 1000 trust units or fund shares as the unit of trading.

The general rights of a holder of a single call equity option contract are set forth in Article VI, Section 9(a) of OCC's by-laws, and the general rights of a holder of a single put equity option contract are set forth in Article VI, Section 9(b) of OCC's by-laws. Because options on trust units or fund shares are deemed equity option contracts under OCC's rules, OCC is amending Section 9(a) and (b) of Article VI to set forth the general rights of a holder of a single European-style equity call option [7] and a single European-style equity put option,[8] respectively. Furthermore, OCC is amending Interpretations and Policy .01 to Section 9, which provides that subsections (a) and (b) of Section 9 apply only to stock option contracts to clarify that the term ''stock option contracts'' will include option contracts on publicly traded interests in trust units, fund shares, or shares in entities similar to investment companies that hold portfolios or baskets of common stock.

OCC is adding Interpretation and Policy .01 to Article VI, Section 10 of the by-laws to reflect that, for series of options in which the underlying security is trust units or fund shares, the unit of trading is the amount of the underlying security deliverable upon the exercise of the option as specified by the exchange on which the option is traded unless otherwise specified by OCC in accordance with its by-laws and rules.

In addition, OCC is adding Rule 807 to its rules. The rule contains essentially the same provisions as those found in Interpretations and Policy .08 to Article VI, Section 11 of the by-laws.[9] Rule 807 sets forth the general provision that when a flexibly structured option contract with a European-style expiration has been adjusted to require upon exercise the delivery of a fixed amount of cash, the expiration date with respect to the option will be accelerated to fall on or shortly after the date on which the conversion of the underlying security to a right to receive cash occurs. The ability to accelerate an expiration date following an adjustment calling for a fixed amount of cash was added specifically to accommodate European-style, flexibly-structured equity options. Without the ability to accelerate, the option position would have to be maintained until it could be exercised at its regular expiration. For the same reason, OCC is making this applicable to all European-style stock option contracts. In connection with the addition of Rule 807, OCC is amending the term ''expiration date'' as defined in Article I, Section 1 of OCC's by-laws, to provide that the expiration date of a stock option contract is subject to the acceleration provisions of the new rule.

II. Discussion

Section 17A(b)(3)(F) of the Act [10] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes the rule change is consistent with OCC's obligation under the Act because OCC will clear and settle options on trust units and fund shares by using existing OCC systems, rules, and procedures. Thus, OCC should be able to implement the clearance and settlement of options on trust units and fund shares in a safe manner consistent with its statutory obligation due to the similarity of options on trust units and fund shares to option products currently cleared and settled by OCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17717 Filed 7–2–98; 8:45 am]

BILLING CODE 8010–01–M

[5] The initial series offered by this investment company are: the Australia Index Series; the Austria Index Series; the Belgium Index Series; the Canada Index Series; the France Index Series; the Germany Index Series; the Hong Kong Index Series; the Italy Index Series; the Japan Index Series; the Malaysia Index Series; the Mexico (Free) Index Series; the Netherlands Index Series; the Singapore (Free) Index Series; the Spain Index Series; the Sweden Index Series; the Switzerland Index Series; and the United Kingdom Index Series.

[6] *Supra* note 3.

[7] A holder of a single European-style call option contract will have the right on and only on the expiration date, expiring at the expiration time on such date, to purchase from OCC at the aggregate exercise price the number of units of the underlying security represented by such option contract.

[8] A holder of a single European-style put option contract will have the right on and only on the expiration date, expiring at the expiration time on such date, to sell to OCC at the aggregate exercise price the number of units of the underlying security represented by such option contract.

[9] Section 11 sets forth the general rules pertaining to adjustments on stock option contracts. OCC has deleted Section .08 from the Interpretations and Policies and moved these provisions to new Rule 807.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0273]

Capital Across America, L.P.; Notice of Issuance of a Small Business Investment Company License

On April 21, 1998, an application was filed by Capital Across America, L.P., 414 Union Street, Suite 2025, Nashville, Tennessee 37219, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) 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. 04/04–0273 on June 17, 1998, to Capital Across America, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 17, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–17714 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/03–0185]

J.P. Morgan Investment Corporation; Notice of Request for Exemption

On April 30, 1998, J.P. Morgan Investment Corporation (the ''Licensee''), a Delaware corporation and SBIC Licensee number 02/03–0185, filed a request to the SBA pursuant to Section 107.730(a)(1) of the Regulations governing small business investment companies (13 CFR 107.730(a)(1)(1998)) for an exemption allowing the Licensee to invest in a newly formed business, The RiskMetrics Group, LLC. Sixty Wall Street SBIC Fund, L.P., a Delaware limited partnership and SBIC License No. 02/02–0563 may also request permission to invest in RiskMetrics Group, LLC.

The RiskMetrics Group, LLC is currently in need of additional capital, however, the Licensee can only offer this assistance to The RiskMetrics Group, LLC upon receipt of a prior written exemption from SBA. The exemption requested is the basis for this notice, and this notice is required pursuant to Section 107.730(g) of the Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

Dated: June 24, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–17823 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3095]

Commonwealth of Kentucky (and Contiguous Counties in West Virginia)

Martin County and the contiguous Counties of Floyd, Johnson, Lawrence, and Pike in Kentucky, and Mingo and Wayne Counties in West Virginia constitute a disaster area as a result of damages caused by heavy rains and flash flooding that occurred on June 11, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 24, 1998 and for economic injury until the close of business on March 24, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.000%.

Homeowners Without Credit Available Elsewhere: 3.500%.

Businesses With Credit Available Elsewhere: 8.000%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 7.125%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%.

The numbers assigned to this disaster for physical damages are 309506 for Kentucky and 309606 for West Virginia. For economic injury the numbers are 990600 for Kentucky and 990700 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–17706 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3093]

State of New York

Saratoga County and the contiguous Counties of Albany, Fulton, Hamilton, Montgomery, Rensselaer, Schenectady, Warren, and Washington in the State of New York constitute a disaster area as a result of damages caused tornadoes and high winds that occurred on May 31, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 21, 1998 and for economic injury until the close of business on March 22, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.000%.

Homeowners Without Credit Available Elsewhere: 3.500%.

Businesses With Credit Available Elsewhere: 8.000%.

Businesses and Non-Profit Organizations Without Credit: Available Elsewhere. 4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 7.125%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%.

The numbers assigned to this disaster are 309312 for physical damage and 990200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 22, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–17707 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3090]

State of Oregon

As a result of the President's major disaster declaration on June 12, 1998, I find that Crook County, Oregon constitutes a disaster area due to damages caused by flooding that occurred May 28 through June 3, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 11, 1998, and for loans for economic injury until the close of business on March 12, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Deschutes, Grant, Harney, Jefferson, and Wheeler in the State of Oregon may be filed until the specified date at the above location.

The interest rates are:

Physical Damage

Homeowners With Credit Available Elsewhere: 7.000%.

Homeowners Without Credit Available Elsewhere: 3.500%.

Businesses With Credit Available Elsewhere: 8.000%.

Businesses Without Credit Available Elsewhere: 4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 7.125%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 309006 and for economic injury the number is 988800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–17708 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3089; Amendment #1]

Commonwealth of Pennsylvania

In accordance with a notice from the Federal Emergency Management Agency dated June 16, 1998, the above-numbered Declaration is hereby amended to include Beaver, Pike, and Susquehanna Counties in the Commonwealth of Pennsylvania as a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred May 31 through June 2, 1998. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated locations: Lawrence, Monroe, and Wayne Counties in Pennsylvania; Columbiana, County, Ohio; Hancock County, West Virginia; Warren and Sussex Counties in New Jersey; and Broome Orange, Sullivan, and Tioga Counties in New York.

Any counties contiguous to the above-name primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 7, 1998 and for economic injury the termination date is March 8, 1999.

The economic injury numbers are 990800 for Ohio; 990900 for West Virginia; 991000 for New Jersey; and 991100 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–17709 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078; Amendment #5]

State of Tennessee

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to July 19, 1998.

All other information remains the same, i.e., the deadline for filing applications for economic injury is January 20, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–17713 Filed 7–2–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2845]

The Bureau of Personnel, Recruitment Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; Application for Federal Employment (DS–1950).

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Personnel, Recruitment Office.

Title of Information Collection: Application for Federal Employment.

Frequency: Yearly.

Form Number: DS–1950.

Respondents: Used by individuals to apply for certain excepted positions at the Department of State.

Estimated Number of Respondents: 25,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 12,500 hours.

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 INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: June 18, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–17740 Filed 7–2–98; 8:45 am]

BILLING CODE 4710–15–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Area Trade of the Americas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of Free Trade of the Americas (FTAA) negotiations; request for pubic comment on initial U.S. objectives for the nine negotiating groups.

SUMMARY: The Trade Staff Committee (TPSC) is providing notice of the United States' participation in trade negotiations with the 33 countries in the Western Hemisphere participating in the Summit of the Americas [1] and of the

[1] Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and

principles and objectives for the negotiations to which the 34 countries have agreed. The TPSC invites public comment on initial U.S. objectives for each of the nine FTAA negotiating groups.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. All questions concerning the negotiations should be directed to Karen M. Lezny, Director for the Free Trade Area of the Americas, Office of the Western Hemisphere, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas (FTAA) by the year 2005, and to achieve concrete progress toward that objective by the end of the century. The 34 leaders agreed to negotiate a balanced and comprehensive agreement covering the following areas, among others: tariffs and non-tariff barriers affecting trade in goods and services; agriculture; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards; rules of origin; antidumping and countervailing duties; sanitary and phytosanitary standards and procedures; dispute resolution; and competition policy. The 34 Western Hemisphere ministers responsible for grade met four times; in June 1995 in Denver, Colorado; in March 1996 in Cartagena, Colombia; in May 1997 in Belo Horizonte, Brazil; and, in March 1998 in San Jose, Costa Rica, in order to prepare for the negotiation of the FTAA Agreement. The trade ministers created 11 working groups that collected and analyzed information on existing trade-related measures in each area to assist them in their preparations.

At the San Jose meeting in March 1998, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. The trade ministers reaffirmed the principles and objectives that have guided work on the FTAA since Miami, including that the agreement will be balanced, comprehensive, and WTO-consistent. They also reaffirmed that the agreement will constitute a single undertaking; will take into account the needs, economic conditions and opportunities of the smaller economies; and, will not raise additional barriers to the trade of other countries. The ministers pledged to continue to avoid to the greatest extent possible the adoption of policies that adversely affect trade in the hemisphere. They also reiterated that the negotiation of the FTAA will take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action with a view to contributing to raising living standards, to improving the working conditions of all people in the Americas and to better protecting the environment.

On April 18–19, 1998, President Clinton and his 33 counterparts in the Western Hemisphere initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which include the establishment initially of nine negotiating groups to be guided by general principles and objectives and specified objectives as agreed by the ministers in March 1998. The leaders also agreed to the establishment of a Trade Negotiation Committee (TNC) composed of the 34 vice ministers responsible for trade to oversee the negotiation. The TNC held its first meeting on June 17–19 in Buenos Aires. Three other entities also were established: a Committee of Government Representatives on Civil Society, a joint public-private sector Experts Committee on Electronic Commerce, and a Consultative Group on Smaller Economies.

The nine negotiating groups are for: Market Access,[2] Agriculture; Investment; Services; Government Procurement; Dispute Settlement; Intellectual Property Rights; Subsidies, Antidumping and Countervailing Duties; and Competition Policy. They will begin their work no later than September 30, 1998 and will meet in Miami, Florida. The negotiating groups will be guided in their work by the general principles and objectives as well as the specific objectives agreed by the ministers, as set out in Annex I and Annex II of the San Jose Declaration, reproduced below.

The establishment of nine negotiating groups is an initial structure for the negotiations. This structure is flexible and is expected to be modified over time as required to assist the negotiations.

Since the Santiago Summit, USTR has held informal consultations with various sectors of civil society, including consumer, labor, business and environmental interests, which have expressed views and an interest in commenting on U.S. positions and objectives for the nine negotiating groups.

Public Comments

To prepare for the initial meetings of the nine negotiating groups starting in September 1998, the TPSC invites written comment on what should be the U.S. positions and objectives with respect to each of the negotiating groups. U.S. negotiators seek input beyond the general principles and objectives and specific objectives agreed to in San Jose by the United States as one of the 34-countries.

USTR will seek additional public comment separately on other issues related to the FTAA, including the Committee of Government Representatives on Civil Society and concerning the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries.

Those persons wishing to submit written comments should provide twenty (20) typed copies (in English) no later than Wednesday, July 29, 1998, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW, Washington, D.C., 20508. Comments should state clearly the position taken and should describe the specific information supporting that position.

If the submission contains business confidential information, twenty copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the

Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, United States, and Venezuela.

[2] The market access negotiating group will cover tariffs, non-tariff measures, standards and technical barriers to trade (for both agricultural and industrial products), customs procedures (for both agricultural and industrial products), rules of origin (for both agricultural and industrial products), and safeguards (for both agricultural and industrial products). The agriculture negotiating group will cover tariff, non-tariff measures, sanitary and phytosanitary measure (for both agricultural and industrial products), and export subsidies and other trade-distorting practices affecting agricultural products in the Hemisphere.

submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th. St., N.W., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

San Jose Declaration

Annex I—General Principles and Objectives

The negotiations for the construction of the FTAA will be guided by the following General Principles and Objectives:

General Principles

(a) Decisions in the FTAA negotiating process will be made by consensus.

(b) Negotiations will be conducted in a transparent manner to ensure mutual advantage and increased benefits to all participants of the FTAA.

(c) The FTAA Agreement will be consistent with the rules and disciplines of the WTO. With this purpose, the participating countries reiterate their commitment to multilateral rules and disciplines, in particular Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994 and its Uruguay Round Understanding, and Article V of the General Agreement on Trade in Services (GATS).

(d) The FTAA should improve upon WTO rules and disciplines wherever possible and appropriate, taking into account the full implications of the rights and obligations of countries as members of the WTO.

(e) The negotiations will begin simultaneously in all issue areas. The initiation, conduct and outcome of the negotiations of the FTAA shall be treated as parts of a single undertaking which will embody the rights and obligations as mutually agreed upon.

(f) The FTAA can co-exist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA.

(g) Countries may negotiate and accept the obligations of the FTAA individually or as members of a sub-regional integration group negotiating as a unit.

(h) Special attention should be given to the needs, economic conditions (including transition costs and possible internal dislocations) and opportunities of smaller economies, to ensure their full participation in the FTAA process.

(i) The rights and obligations of the FTAA will be shared by all countries. In the negotiation of the various thematic areas, measures such as technical assistance in specific areas and longer periods for implementing the obligations could be included on a case by case basis, in order to facilitate the adjustment of smaller economies and the full participation of all countries in the FTAA.

(j) The measures agreed upon to facilitate the integration of smaller economies in the FTAA process shall be transparent, simple and easily applicable, recognizing the degree of heterogeneity among them.

(k) All countries shall ensure that their laws, regulations and administrative procedures conform to their obligations under the FTAA agreement.

(l) In order to ensure the full participation of all countries in the FTAA, the differences in their level of development should be taken into account.

General Objectives

(a) To promote prosperity through increased economic integration and free trade among the countries of our Hemisphere, which are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment.

(b) To establish a Free Trade Area, in which barriers to trade in goods and services and investment will be progressively eliminated, concluding negotiations no later than 2005 and achieving concrete progress toward the attainment of this objective by the end of this century.

(c) To maximize market openness through high levels of disciplines through a balanced and comprehensive agreement.

(d) To provide opportunities to facilitate the integration of the smaller economies in the FTAA process in order to realize their opportunities and increase their level of development.

(e) To strive to make our trade liberalization and environmental policies mutually supportive, taking into account work undertaken by the WTO and other international organizations.

(f) To further secure, in accordance with our respective laws and regulations, the observance and promotion of worker rights, renewing our commitment to the observance of internationally recognized core labor standards and acknowledging that the International Labor organization is the competent body to set and deal with those core labor standards.

Annex II—Objectives by Issue Area

We have agreed that the negotiations for the construction of the FTAA, in the different issue area, will be guided by the following objectives:

Market Access

(a) Consistent with the provisions of the WTO, including article XXIV of the General Agreement on Tariffs and Trade (GATT 1994) and its Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, to progressively eliminate, tariffs, and non tariff barriers, as well as other measures with equivalent effects, which restrict trade between participating countries.

(b) All tariffs will be subject to negotiation.

(c) Different trade liberalization timetables may be negotiated.

(d) To facilitate the integration of smaller economies and their full participation in the FTAA negotiations.

Agriculture

(a) The objectives of the negotiating group on Market Access shall apply to trade in agricultural products. Rules of origin, customs procedures and Technical Barriers to Trade issues will be addressed in the Market Access negotiating group.

(b) To ensure that sanitary and phytosanitary measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction to international trade, in order to prevent protectionist trade practices and facilitate trade in the hemisphere. Consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), said measures will only be applied to achieve the appropriate level of protection for human, animal or plant life or health, will be based on scientific principles, and will not be maintained without sufficient scientific evidence.

Negotiations in this area involve identifying and developing measures needed to facilitate trade, following and examining in depth the provisions set down in the WTO/SPS Agreement.

(c) To eliminate agricultural export subsidies affecting trade in the Hemisphere.

(d) To identify other trade-distorting practices for agricultural products, including those that have an effect equivalent to agriculture export subsidies, and bring them under greater discipline.

(e) Agricultural products covered are the goods referred to in Annex I of the WTO Agriculture Agreement.

(f) Incorporate progress made in the multilateral negotiations on agriculture to be held according to Article 20 of the Agreement on Agriculture, as well as the results of the review of the SPS Agreement.

Rules of Origin

(a) To develop an efficient and transparent system of rules of origin, including nomenclature and certificates of origin, in order to facilitate the exchange of goods, without creating unnecessary obstacles to trade.

Customs Procedures

(a) To simplify customs procedures, in order to facilitate trade and reduce administrative costs.

(b) To create and implement mechanisms to exchange information in customs issues among FTAA countries.

(c) To design effective systems to detect and combat fraud and other illicit customs activities, without creating unnecessary obstacles to foreign trade.

(d) To promote customs mechanisms and measures that ensure operations be conducted with transparency, efficiency, integrity and responsibility.

Investment

(a) To establish a fair and transparent legal framework to promote investment through the creation of a stable and predictable environment that protects the investor, his investment and related flows, without creating obstacles to investments from outside the hemisphere.

Standards and Technical Barriers to Trade

(a) To eliminate and prevent unnecessary technical barriers to trade in the FTAA, based on the proposals contained in the Common Objectives Paper approved by the Working Group.

Subsidies, Antidumping and Countervailing Duties

(a) To examine ways to deepen, if appropriate, existing disciplines provided in the WTO Agreement on Subsidies and Countervailing Measures and enhance compliance with the terms of the WTO Agreement on Subsidies and Countervailing Measures.

(b) To achieve a common understanding with a view to improving, where possible, the rules and procedures regarding the operation and application of trade remedy laws in order to not create unjustified barriers to trade in the Hemisphere.

Government Procurement

(a) The broad objective of negotiations in government procurement is to expand access to the government procurement markets of the FTAA countries.

More specifically, the objectives are:

(a) To achieve a normative framework that ensures openness and transparency of government procurement processes, without necessarily implying the establishment of identical government procurement systems in all countries;

(b) To ensure non-discrimination in government procurement within a scope to be negotiated;

(c) To ensure impartial and fair review for the resolution of procurement complaints and appeals by suppliers and the effective implementation of such resolutions.

Intellectual Property Rights

(a) To reduce distortions in trade in the Hemisphere and promote and ensure adequate and effective protection to intellectual property rights. Changes in technology must be considered.

Services

(a) Establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency;

(b) Ensure the integration of smaller economies into the FTAA process.

Competition Policy

The objectives of the negotiations are:

(a) General Objectives:

- To guarantee that the benefits of the FTAA liberalization process not be undermined by anti-competitive business practices.

(b) Specific Objectives:

- To advance towards the establishment of juridical and institutional coverage at the national, sub-regional or regional level, that proscribes the carrying out of anti-competitive business practices;
- To develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within countries of the Hemisphere.

Dispute Settlement

(a) To establish a fair, transparent and effective mechanism for dispute settlement among FTAA countries, taking into account *inter alia* the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

(b) To design ways to facilitate and promote the use of arbitration and other alternative dispute settlement mechanisms, to solve private trade controversies in the framework of the FTAA.

Work in different groups may be interrelated, such as agriculture and market access; services and investment; competition policy and subsidies, antidumping and countervailing duties; among others. The TNC shall identify linkages and outline appropriate procedures to ensure timely and effective coordination. We agree to give the mandate to the relevant negotiating groups to study issues relating to: the interaction between trade and competition policy, including antidumping measures; market access and agriculture, in order to identify any areas that may merit further consideration by us. The groups involved will report their results to the TNC no later than December 2000. This is without prejudice to decisions made by the TNC to dissolve, establish or merge groups. Likewise, the negotiating groups may establish ad-hoc working groups.

[FR Doc. 98–17723 Filed 7–2–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 30, 1998 [63 FR 15257].

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office Engineering, Federal Highway Administration, U.S. Department of Transportation, HNG–10, Room 3134, 400 7th St., SW., Washington, DC 20590–0001, telephone (202) 366–4104. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

1. Title: Develop and Submit Utility Accommodation Policies.

OMB Number: 2125–0514.

Type of Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: State highway agencies.

Abstract: The FHWA has elected to fulfill its statutory obligations regarding utility accommodation by requiring the State highway agencies to develop and submit to FHWA a policy statement on the authority of utilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for accommodating utilities within the rights-of-way of Federal-aid highway projects. Upon approval of the policy statement, the State highway agency may take any action required in accordance with the approved policy statement without case-by-case review by the FHWA. Utility accommodation policy statements have previously been approved by the FHWA for all the 50 State highway agencies and the highway agencies of the District of Columbia and the Commonwealth of Puerto Rico. Even so, these policy statements must periodically be reviewed to see if updating is necessary, and must periodically be updated to reflect policy changes.

Estimated Total Annual Burden: The estimated total annual reporting burden is 2,800 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and

clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publishing in the **Federal Register**.

Issued in Washington, DC, on June 29, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17719 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Form and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 USC Chapter 3501, et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collections and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 13, 1998 [63 FR 18072].

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 7th Street, SW., Room 3430, Washington, DC 20590 (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Airline Service Quality Performance.

OMB Control Number: 2138–0041.

Type of Request: Extension of a Currently Approved Collection.

Form No.: None.

Affected Entities: Large domestic passenger air carriers—Alaska Airlines, America West Airlines, American Airlines, Continental Air Lines, Delta Air Lines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Air Lines, US Airways.

Abstract: Since Part 234 has been effective, carriers' quality of service has improved, resulting in a decrease in the number of consumer complaints. The Department discloses the carriers' on-time performances and mishandled baggage information to the public. Airline passengers are now more informed to make carrier selections based on the quality of service provided.

Aircraft tail number, wheels-up and wheels-down time gives the FAA valuable data for pinpointing and analyzing air traffic delays. Wheels-up and wheels-down time are used in conjunction with departure and arrival times to show the extent of ground delays. Elapsed flight time (computed from the wheels-up time and the wheels-down time) reveals delays experienced in the air. The reporting of the aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. Data by aircraft type allows the FAA to calculate the capacity impacted by air traffic congestion. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels.

Estimated Annual Burden Hours: 1,440 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, ATTN: DOT/BTS Desk Officer. Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect when OMB receives it within 30 days of publication.

Issued in Washington, DC on June 29, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17725 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998 [63 FR 11472].

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: High Density Traffic Airports Slot Allocation and Transfer Methods.

OMB Number: 2120–0524.

Type of Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Business or other for profit.

Abstract: High Density Traffic Airports Slot Allocation and Transfer Methods. The FAA uses this information to allocate slots and maintain accurate records of slot transfers at the High Density Traffic Airports. The information will be provided by air carriers and commuter operators or other persons holding a slot at High Density Traffic Airports.

Estimated annual burden: 1800 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden

of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publishing in the **Federal Register**.

Issued in Washington, DC, on June 25, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17726 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collections and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on March 16, 1998 [63 FR 12858].

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Robinson, NHTSA Information Collection Clearance Officer at (202) 366–9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: 1998 Motor Vehicle Occupant Safety Survey.

OMB Control Number: 2127—New.

Type of Request: New collection.

Form(s): DTHH22–98–R–05080.

Affected Public: Individuals or households.

Abstract: NHTSA proposes to conduct a 1998 Motor Vehicle Occupant Safety Survey by telephone among a national probability sample of 8,000 adults (age 16 and older). Participation by respondents would be voluntary. NHTSA's information needs require seat belt and child safety seat sections too large to merge into a single survey instrument without producing an inordinate burden on respondents. Rather than reduce these sections, the proposed survey instrument would be divided into two series of modules. Each module would be administered to one-half the total number of subjects to be interviewed. Module Series #1 of the questionnaire would focus on seat belts and include smaller sections on air bags, motorcyclist safety, and general driving (including speed). Module Series #2 would focus on child safety seats, accompanied by smaller sections on bicyclist safety and Emergency Medical Services. Both series would contain sections on crash injury experience, and on drinking and driving because of the extensive impact of alcohol on the highway safety problem. Some basic seat belt questions contained in Module Series #1 would be duplicated on Module Series #2. In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 26, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17727 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998 [63 FR 11472].

DATES: Comments must be submitted on or before August 5, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification Procedures for Products and Parts, FAR 21.

OMB Control Number: 2120–0018.

Type of Request: Extension of a currently approved collection.

Affected Public: Aircraft parts designers, manufacturers, and aircraft owners.

Abstract: 14 CFR part 21 prescribes certification procedures for aircraft, aircraft engines, propellers, products and parts. Information collected is used to determine compliance and applicant eligibility.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW.,

Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect when OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 26, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–17728 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 26, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2768.

Date Filed: June 24, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 22, 1998.

Description: Application of Far Eastern Air Transport Corporation pursuant to 49 U.S.C. Sections 41302, and 211.13 and Subpart Q of the Regulations, requests an Amendment to its Application for a Foreign Air Carrier Permit to engage in scheduled and charter foreign air transportation of persons, property and mail from points behind Taiwan via Taiwan and intermediate points to a point or points in the United States and beyond.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–17812 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending June 26, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3975
Date Filed: June 23, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 945
Korea-Russia fares (TC3 points in Russia)
Intended effective date: July 1, 1998

Docket Number: OST–98–3985
Date Filed: June 25, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA-EUR 0052 dated June 23, 1998
USA-Europe Expedited Resos (excluding Austria, Belgium, Germany, Neth, Scand & Switz)
r–1—002j r–3—044ss r–5—015h
r–2—054ss r–4—064ss r–6—015v
Intended effective date: expedited August 1, 1998

Docket Number: OST–98–3986
Date Filed: June 25, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC ME-AFR 0014 dated June 23, 1998
Middle East-Africa Expedited Reso 002t
Intended effective date: August 1, 1998

Docket Number: OST–98–3987
Date Filed: June 25, 1998
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0100 dated May 19, 1998
Composite Cargo Resolutions r1–12
CTC COMP 0103 dated May 19, 1998
Worldwide Area Cargo Resolutions R13–46
MINUTES—CTC COMP 0105 dated May 29, 1998
TABLES—CTC1 RATES 0007 dated June 19, 1998, CTC1 RATES 0008 dated June 19, 1998, CTC2 ME RATES 0008 dated June 23, 1998, CTC2 EUR-ME RATES 0010 dated June 23, 1998, CTC3 RATES 0008 dated June 19, 1998, CTC3 RATES 0009 dated June 19, 1998, CTC31 N/C RATES 0005 dated June 23, 1998, CTC31 S RATES 0003 dated June 23, 1998, CTC123 RATES 0006 dated June 23, 1998
Intended effective date: October 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–17813 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Wednesday, August 5, 1998. The meeting begins at 9:30 a.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Previous Meeting's Minutes (A); (3) Federal Reports (I/D); (4) Board Retreat Report-Out—TBD (A)—(a) Topic #1—Board Internal Policy Direction: Governance Structure; Executive Limitations; Scope of Board Activities; (b) Topic #2—Board External Policy Direction & Priority Objectives: Federal Advisory Role; International Role; Training Role; State Chapter Relationship; (5) Intelligent Vehicle Initiative RFI Response Analysis (A); (6) Coordinating Council Workshop Report (A), (a) Topic #1—Role of the Coordinating Council; (b) Topic #2—Review of IVI Analysis; (c) Topic #3—TEA–21 Deployment Policy: Deployment Integration, and Architecture and Standards Conformity; (7) State Chapters Council Report (I); (8) ITS America Association Report (I); (9) President's Report (I/D); (10) Other Program Business.

11:30 a.m. Business Session (U.S. DOT participants excused. Board Members, ITS America Members, and Staff only.) (11) Report of the Membership Committee (I); (12) Report of the Administrative Policy and Finance Committee (I/D); (13) Report of

the Nominating Committee (A); (14) Other Business; (15) Adjournment until October 11, 1998, Board of Directors Meeting in Conjunction with the Fifth ITS World Congress at the Inter-Continental Hotel, Seoul, Korea (not a Federal Advisory Committee Meeting).

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Wednesday, August 5, 1998, from 9:30 a.m.–noon.

ADDRESSES: The Hyatt Regency Savannah, #2 W. Bay Street, Savannah, Georgia, 31401. Phone: (912) 238–1234. Fax: (912) 944–3678.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, DC 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 29, 1998.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 98–17746 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on New Rochelle Intermodal Transportation Center Project, New Rochelle, New York

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) and Federal Transit Administration (FTA) regulations under 23 CFR Part 771, the FTA and the Westchester County Department of Transportation (WCDOT) intend to prepare an Environmental Impact Statement (EIS) to assess the impacts of a project known as the New Rochelle Intermodal Transportation Center. The EIS will also comply with the requirements of the 1990 Clean Air Act Amendments (CAAA) and Executive Order 12898 on Environmental Justice.

The project consists of a proposed multi-level garage and other vehicular and pedestrian circulation improvements to be constructed on the site of the existing at-grade parking lot along the southbound Metro-North railroad tracks at the New Rochelle Train Station in New Rochelle (Westchester County), New York. The proposed project is intended to be financed through FTA and local funding sources. The project is being administered by the City of New Rochelle (City) Department of Development on behalf of WCDOT.

The proposed garage and station site redesign are intended to better serve Metro-North and Amtrak train operations, Westchester County bus service, taxi and private bus operations, and commuters parking at the station, and improve pedestrian and vehicle circulation. The proposed project includes a new 1,000-space parking structure, improved vehicular and pedestrian circulation, bicycle storage, and separate taxi, bus, and auto passenger pick up/drop off areas. The project will be designed to be in character with the New Rochelle train station building on the project site.

In addition to assessing the proposed intermodal center, the EIS will evaluate the No Build alternative and any other reasonable alternatives determined through the scoping process. Scoping will occur both through correspondence with interested persons, organizations, and federal, state, and local agencies and through a public meeting.

Involved agencies may include: National Railroad Passenger Corporation (Amtrak), New York State Thruway Authority, Metro-North Railroad (MTA), and New York State Historic Preservation Office (SHPO).

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the City of New Rochelle by and will be accepted by the Department up to thirty days following the close of the public scoping meeting. Oral comments may be given at the scoping meeting. *Scoping Meeting:* A public scoping meeting will be held on Tuesday, July 21, 1998, 8:00 PM, in City Hall, 515 North Avenue, New Rochelle, NY.

ADDRESSES: *Written comments* on the project scope should be sent to Mark Stellato, City of New Rochelle, Department of Development, New Rochelle City Hall, 515 North Avenue, New Rochelle, NY 10801.

FOR FURTHER INFORMATION CONTACT: Anthony G. Carr, Director, Planning and Program Development, Federal Transit Administration, at 212–264–8162.

SUPPLEMENATRY INFORMATION:

Scoping

The FTA is initiating a scoping process for the purpose of determining the scope of issues to be addressed in the EIS. All interested individuals, organizations, and Federal, State, and local agencies are invited to participate in identifying any significant social, economic, and environmental issues related to the proposed project and defining the alternatives to be evaluated in the EIS. A draft Scoping Document describing the purpose of the project and impact issues is being mailed to affected Federal, State, and local agencies as well as interested parties. Copies of the draft Scoping Document may be obtained from Mark Stellato, City of New Rochelle Department of Development at (914) 654–2191.

Following a presentation on the project, comments on the scope of the EIS will be received and transcribed at this meeting. Scoping comments may be submitted at the public scoping meeting and/or submitted in writing at the address listed above. It is important that interested parties and Federal, State, and local agencies take this opportunity to identify environmental concerns that should be addressed in the EIS. Further, because the preliminary design components of the New Rochelle Intermodal Transportation Center Project are currently being formulated and refined, the scoping process offers an opportunity to incorporate public environmental concerns into the urban design and engineering processes of the project.

Description of Study Area and Project Need

The proposed action (New Rochelle Intermodal Transportation Center) includes the construction of a 1,000-space, multi-level parking garage on the site of the existing New Rochelle train station as well as the reconfiguration and redesign of the train station site to

create an intermodal transportation center. The New Rochelle train station is located in the central business district of the City of New Rochelle, Westchester County, New York. The station site is bordered on the north by the New England Section (I–95) of the New York State Thruway; on the south by Metro-North's New Haven Division; on the east by North Avenue, and on the west by Division Street. It is a major commuter stop along the MTA Metro-North Railroad's New Haven Division as well as Amtrak's New England Express, Springfield, and Vermont lines. In addition, the New Rochelle station will be the only stop in Westchester for Amtrak's high speed Northeast Corridor service between Washington, DC and Boston, Massachusetts. The station is also a hub for the County's Bee-Line bus service.

The City, the New York State Department of Transportation, and WCDOT will consolidate to the maximum extent feasible various transportation services into a single intermodal hub adjacent to the train station building. The overall goals and objectives of this project are to provide a convenient, secure, operationally efficient transportation center which considers internal circulation, site access, user friendliness, bus pick up and drop-off areas, commuter parking, ADA access, taxi layover, kiss-and-ride, and pedestrian as well as bicycle access.

Alternatives

The EIS will evaluate reasonable alternatives that will assist in achieving the objectives of the New Rochelle Intermodal Transportation Center Project. Alternatives to be analyzed would include a No Build Alternative under which no change to the New Rochelle Station would occur. Other alternatives to be considered would be developed during the scoping and public comment period and could include design alternatives.

Probable Effects/Potential Impacts for Analysis

The EIS will evaluate all potential significant social, economic, and environmental impacts of the alternatives. Primary issues include traffic and transportation, air quality, noise, and the landmark-eligibility of the Train Station Building. Both positive and negative impacts will be evaluated for the construction period and for the long term period of operation. Measures to mitigate adverse impacts will be identified, where reasonable and appropriate. The Build year for the proposed project is anticipated to be 2001.

FTA and State Procedures

The EIS process will be conducted in accordance with the regulations and guidance established by NEPA, as well as FTA's regulations under 23 CFR 771 and associated guidance documents.

Following the completion of the scoping process, a draft EIS will be prepared and made available for public review. There will be a 45-day public comment period and public hearing on the draft EIS. After its publication and the public hearing, a final EIS will be prepared with appropriate revisions and additions responding to all substantive comments received. The final EIS will serve as the basis for a Record of Decision issued on the proposed action.

Because the proposed action also includes actions by New York State, county, and local agencies, it will also be assessed in accordance with the New York State Environmental Quality Review Act (SEQRA). The City of New Rochelle will serve as the lead agency for SEQRA documentation. The content and format of the Federal EIS will be designed to also meet the requirements of SEQRA for the action. All time frames, public notices, public hearings, and comment periods will be coordinated in accordance with both NEPA and SEQRA requirements.

Issued on: June 30, 1998.

Letitia Thompson,

Regional Administrator.

[FR Doc. 98–17820 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3125; Notice 02]

RIN 2127–AH04

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 1996 passenger motor vehicles that occurred in calendar year (CY) 1996. The final 1996 theft data indicate a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1995. The final theft rate for MY 1996 passenger vehicles stolen in calendar year 1996 (3.28 thefts per thousand vehicles produced) decreased by 8.1 percent from the theft rate for CY/MY 1995 vehicles (3.57 thefts per thousand vehicles produced). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment. The data were calculated for informational purposes only.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the section 33104(b)(4) mandate, this document reports the final theft data for CY 1996, the most recent calendar year for which data are available.

In calculating the 1996 theft rates, NHTSA followed the same procedures it used in calculating the MY 1995 theft rates. (For 1995 theft data calculations, see 62 FR 44416, August 21, 1997.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1996 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1996 vehicles of that line stolen during calendar year 1996 by the total number of vehicles in that line manufactured for MY 1996, as reported to the Environmental Protection Agency (EPA).

The final 1996 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1995. The final theft rate for MY 1996 passenger vehicles stolen in CY 1996 decreased to 3.28 thefts per thousand vehicles produced, a decrease of 8.1 percent from the rate of 3.57 thefts per thousand vehicles experienced by MY 1995 vehicles in CY 1995. For MY 1996 vehicles, out of a total of 204 vehicle lines, 71 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 71 vehicle lines with a theft rate higher than 3.5826, 67 are passenger car lines, 4 are multipurpose passenger vehicle lines, and none are light-duty truck lines.

On Monday, February 9, 1998, NHTSA published the preliminary theft rates for CY 1996 passenger motor vehicles in the **Federal Register** (63 FR 6603). The agency tentatively ranked each of the MY 1996 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. In response to the February 1998 notice, the agency received written comments from the Chrysler Corporation (Chrysler), the General Motors Corporation (GM) and Mercedes-Benz of North America (Mercedes). In their comments, all three manufacturers provided the agency with either corrected production figures or nameplate changes for their vehicle lines. (The written corrections are available at the docket number cited at the beginning of this notice.)

The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, the final theft rate and ranking of the vehicle lines changed from those published in the February 1998 notice.

In its comments, Chrysler commented that the Chrysler Sebring Convertible and the Chrysler Sebring Coupe are completely different vehicles. They had been erroneously listed as one vehicle line entry with combined theft and production figures. In response to Chrysler's comment, NHTSA is making the necessary corrections to list these two vehicle lines as separate entries in the final theft listing. As a result of these corrections, the Chrysler Sebring previously ranked No. 44 with a theft rate of 4.7341 is now listed as the Chrysler Sebring Convertible ranked No. 98 with a theft rate of 2.7315 and the Chrysler Sebring Coupe ranked No. 12 with a theft rate of 7.6859. Additionally, Chrysler commented that the listing erroneously omitted the Jeep Wrangler vehicle line. After further review of vehicle production data and confirmation by Chrysler, it was revealed that the Jeep Wrangler vehicle line was not produced for MY 1996. Therefore, the Chrysler Jeep Wrangler vehicle line will remain unlisted.

Chrysler also informed the agency that the production volume for the Jeep Cherokee was erroneously listed. In response to this comment, the production volume for the Jeep Cherokee has been corrected and the final theft list has been revised accordingly. As a result of the correction, the Jeep Cherokee previously ranked No. 88 with a theft rate of 3.0596, remains ranked the same but now has a theft rate of 3.0878. Chrysler also informed the agency that the production volume for the Dodge B1500/B2500 line was incorrect. After further analysis of the production volumes, it was confirmed with Chrysler that the production volume listed by the agency was not in error. Therefore, the production volume and the theft rate for this line will remain unchanged.

GM informed the agency that the nameplate for the Oldsmobile Cutlass Ciera SL should be changed to the Oldsmobile Ciera, the Chevrolet Lumina APV should be changed to the Chevrolet Lumina Minivan, the Oldsmobile Bravada APV should be changed to the Oldsmobile Bravada, the Oldsmobile 88 should be changed to Oldsmobile Eighty-Eight, and the Oldsmobile 98 should be changed to Oldsmobile Ninety-Eight. The final theft list has been modified to reflect these changes.

Additionally, Mercedes informed the agency that because the 124 line has been replaced by the 210 line, beginning with MY 1996, the nameplate for the 124 (E-Class) vehicle line should be changed to the 210 (E-Class) vehicle line. The final theft list has been revised accordingly.

The following list represents NHTSA's final calculation of theft rates for all 1996 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1996 motor vehicle thefts of model year 1996 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996

	Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
1	MITSUBISHI	DIAMANTE	28	600	46.6667
2	MAZDA	MX–3	1	27	37.0370
3	ROLLS-ROYCE	SILVER DAWN	1	31	32.2581
4	TOYOTA	SUPRA	7	275	25.4545
5	CHRYSLER CORP.	INTREPID [1]	8	465	17.2043
6	MITSUBISHI	MIRAGE	364	31,933	11.3989
7	TOYOTA	LEXUS GS	27	2,535	10.6509
8	MITSUBISHI	MONTERO	112	11,026	10.1578
9	NISSAN	300ZX	28	2,893	9.6785
10	CHRYSLER CORP.	DODGE STEALTH	3	358	8.3799
11	NISSAN	STANZA ALTIMA	719	92,478	7.7748
12	CHRYSLER CORP.	SEBRING COUPE	250	32,527	7.6859
13	CHRYSLER CORP.	PLYMOUTH NEON	779	103,871	7.4997
14	BMW	8	2	267	7.4906
15	TOYOTA	LEXUS SC	34	4,785	7.1055
16	CHRYSLER CORP.	DODGE NEON	926	131,821	7.0247
17	CHRYSLER CORP.	JEEP GRAND CHEROKEE	1,978	281,814	7.0188
18	SAAB	SAAB 9000	23	3,284	7.0037
19	MITSUBISHI	GALANT	371	54,673	6.7858

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

	Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
20	GENERAL MOTORS	CHEVROLET CORVETTE	137	21,008	6.5213
21	ROLLS-ROYCE	SILVER SPUR	1	155	6.4516
22	HYUNDAI	ACCENT	300	46,691	6.4252
23	MITSUBISHI	ECLIPSE	323	51,055	6.3265
24	CHRYSLER CORP.	DODGE STRATUS	622	99,683	6.2398
25	HONDA/ACURA	NSX	3	486	6.1728
26	SUZUKI	SWIFT	12	2,087	5.7499
27	NISSAN	MAXIMA	893	156,602	5.7024
28	MITSUBISHI	EXPO	7	1,230	5.6911
29	FORD MOTOR CO.	MERCURY TRACER	74	13,199	5.6065
30	HYUNDAI	SONATA	54	9,694	5.5705
31	TOYOTA	TERCEL	335	60,704	5.5186
32	FORD MOTOR CO.	MUSTANG	696	126,357	5.5082
33	CHRYSLER CORP.	NEW YORKER/LHS	209	38,284	5.4592
34	TOYOTA	COROLLA	1,136	210,277	5.4024
35	SUZUKI	ESTEEM	32	5,926	5.3999
36	NISSAN	SENTRA/200SX	894	168,554	5.3039
37	GENERAL MOTORS	OLDSMOBILE CIERA	658	124,817	5.2717
38	MERCEDES BENZ	129 (SL-CLASS)	29	5,530	5.2441
39	TOYOTA	LEXUS LS	120	22,919	5.2358
40	HONDA	PRELUDE	50	9,683	5.1637
41	CHRYSLER CORP.	DODGE INTREPID	714	145,289	4.9143
42	GENERAL MOTORS	OLDSMOBILE ACHIEVA	173	35,605	4.8589
43	MAZDA	MILLENIA	56	11,669	4.7990
44	CHRYSLER CORP.	PLYMOUTH BREEZE	224	46,718	4.7947
45	FORD MOTOR CO.	ASPIRE	143	30,287	4.7215
46	GENERAL MOTORS	CHEVROLET CORSICA	675	149,133	4.5262
47	NISSAN	INFINITI J30	24	5,340	4.4944
48	FORD MOTOR CO.	ESCORT	553	125,391	4.4102
49	TOYOTA	4-RUNNER	295	67,361	4.3794
50	MERCEDES BENZ	140 (S-CLASS)	58	13,320	4.3544
51	HONDA	ACCORD	1,629	377,911	4.3105
52	CHRYSLER CORP.	STRATUS [1]	1	232	4.3103
53	GENERAL MOTORS	CHEVROLET LUMINA MINIVAN	101	23,522	4.2939
54	GENERAL MOTORS	CHEVROLET CAMARO	261	61,449	4.2474
55	GENERAL MOTORS	BUICK CENTURY	391	92,430	4.2302
56	GENERAL MOTORS	GEO METRO	355	84,371	4.2076
57	TOYOTA	CAMRY	1,447	344,599	4.1991
58	NISSAN	INFINITI Q45	17	4,059	4.1882
59	MITSUBISHI	3000GT	21	5,127	4.0960
60	TOYOTA	PASEO	28	6,837	4.0954
61	NISSAN	240SX	30	7,334	4.0905
62	FORD MOTOR CO.	CONTOUR	653	167,572	3.8968
63	BMW	M3	6	1,561	3.8437
64	GENERAL MOTORS	PONTIAC GRAND AM	790	206,435	3.8269
65	MAZDA	626/MX–6	320	84,528	3.7857
66	GENERAL MOTORS	PONTIAC FIREBIRD	116	31,038	3.7374
67	GENERAL MOTORS	CHEVROLET CAVALIER	1,001	269,595	3.7130
68	FORD MOTOR CO.	MERCURY MYSTIQUE	189	51,666	3.6581
69	BMW	3	140	38,444	3.6417
70	HONDA	DEL SOL	11	3,034	3.6256
71	HONDA/ACURA	INTEGRA	177	49,077	3.6066
72	CHRYSLER CORP.	CIRRUS	156	43,695	3.5702
73	SUZUKI	SIDEKICK	67	18,982	3.5297
74	GENERAL MOTORS	CHEVROLET BERETTA	152	43,270	3.5128
75	HONDA/ACURA	TL	132	37,629	3.5079
76	FORD MOTOR CO.	LINCOLN TOWN CAR	314	90,750	3.4601
77	GENERAL MOTORS	PONTIAC TRANS SPORT	56	16,355	3.4240
78	HYUNDAI	ELANTRA	96	28,040	3.4237
79	FORD MOTOR CO.	EXPLORER	1,427	419,288	3.4034
80	CHRYSLER CORP.	EAGLE VISION	43	12,830	3.3515
81	KIA MOTORS	SEPHIA	89	27,048	3.2904
82	MAZDA	PROTÉGÉ	196	59,602	3.2885
83	CHRYSLER CORP.	DODGE AVENGER	126	38,949	3.2350
84	CHRYSLER CORP.	EAGLE SUMMIT	3	932	3.2189
85	AUDI	CABRIOLET	4	1,258	3.1797
86	CHRYSLER CORP.	DODGE B1500/B2500 VAN	5	1,594	3.1368
87	BMW	7	19	6,134	3.0975

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

	Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
88	CHRYSLER CORP.	JEEP CHEROKEE	575	186,217	3.0878
89	FORD MOTOR CO.	THUNDERBIRD	259	85,015	3.0465
90	GENERAL MOTORS	PONTIAC GRAND PRIX	232	77,375	2.9984
91	TOYOTA	LEXUS ES	121	41,140	2.9412
92	GENERAL MOTORS	GEO PRIZM	215	73,200	2.9372
93	GENERAL MOTORS	BUICK SKYLARK	121	41,856	2.8909
94	CHRYSLER CORP.	EAGLE TALON	33	11,518	2.8651
95	NISSAN	PATHFINDER	161	56,635	2.8428
96	NISSAN	INFINITI I30	100	35,950	2.7816
97	CHRYSLER CORP.	DODGE VIPER	5	1,812	2.7594
98	CHRYSLER CORP.	SEBRING CONVERTIBLE	131	47,959	2.7315
99	TOYOTA	CELICA	28	10,293	2.7203
100	ISUZU	TROOPER	48	17,881	2.6844
101	GENERAL MOTORS	CADILLAC DEVILLE	285	107,649	2.6475
102	FORD MOTOR CO.	PROBE	79	30,146	2.6206
103	FORD MOTOR CO.	TAURUS	1,031	393,897	2.6174
104	ISUZU	RODEO	115	44,067	2.6097
105	GENERAL MOTORS	PONTIAC SUNFIRE	251	97,143	2.5838
106	CHRYSLER CORP.	DODGE DAKOTA PICKUP TRUCK	249	96,653	2.5762
107	GENERAL MOTORS	GEO TRACKER	138	53,907	2.5600
108	HONDA	CIVIC	598	233,620	2.5597
109	FORD MOTOR CO.	LINCOLN MARK VIII	34	13,331	2.5504
110	PORSCHE	911	19	7,456	2.5483
111	TOYOTA	TACOMA PICKUP TRUCK	322	132,011	2.4392
112	VOLKSWAGEN	JETTA	202	83,898	2.4077
113	GENERAL MOTORS	PONTIAC BONNEVILLE	166	69,642	2.3836
114	FORD MOTOR CO.	MERCURY SABLE	293	123,305	2.3762
115	JAGUAR	XJ6	18	7,658	2.3505
116	GENERAL MOTORS	OLDSMOBILE SILHOUETTE	14	6,128	2.2846
117	GENERAL MOTORS	CHEVROLET CAPRICE	135	60,201	2.2425
118	CHRYSLER CORP.	PLYMOUTH VOYAGER	411	183,469	2.2402
119	GENERAL MOTORS	CHEVROLET BLAZER S–10	569	254,875	2.2325
120	HONDA/ACURA	SLX	8	3,589	2.2290
121	CHRYSLER CORP.	NEON [1]	2	909	2.2002
122	TOYOTA	AVALON	145	65,924	2.1995
123	MAZDA	MX–5 MIATA	41	18,994	2.1586
124	NISSAN	INFINITI G20	33	15,509	2.1278
125	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	157	74,371	2.1110
126	TOYOTA	T100 PICKUP TRUCK	80	37,941	2.1085
127	FORD MOTOR CO	MERCURY COUGAR	80	38,919	2.0556
128	GENERAL MOTORS	GMC JIMMY S–15	170	83,199	2.0433
129	GENERAL MOTORS	CADILLAC ELDORADO	40	20,040	1.9960
130	GENERAL MOTORS	BUICK REGAL	199	99,729	1.9954
131	MERCEDES BENZ	202 (C–CLASS)	48	24,200	1.9835
132	GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	596	302,631	1.9694
133	JAGUAR	XJ12	1	509	1.9646
134	HONDA	PASSPORT	49	25,041	1.9568
135	VOLKSWAGEN	CABRIO	10	5,155	1.9399
136	VOLVO	850	118	60,899	1.9376
137	GENERAL MOTORS	CHEVROLET ASTRO VAN	143	74,183	1.9277
138	TOYOTA	RAV4	81	42,646	1.8994
139	CHRYSLER CORP	DODGE CARAVAN	629	344,553	1.8256
140	NISSAN	PICKUP TRUCK	179	99,156	1.8052
141	TOYOTA	PREVIA VAN	14	8,022	1.7452
142	FORD MOTOR CO	RANGER PICKUP TRUCK	490	282,203	1.7363
143	HONDA/ACURA	3.5RL	26	15,176	1.7132
144	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	350	208,469	1.6789
145	FORD MOTOR CO	WINDSTAR VAN	376	231,107	1.6270
146	GENERAL MOTORS	SATURN SC	82	50,439	1.6257
147	AUDI	A4	25	15,407	1.6226
148	GENERAL MOTORS	OLDSMOBILE BRAVADA	20	12,525	1.5968
149	MAZDA	B SERIES PICKUP TRUCK	73	45,730	1.5963
150	VOLKSWAGEN	GOLF/GTI	36	22,747	1.5826
151	JAGUAR	XJS	5	3,235	1.5456
152	GENERAL MOTORS	OLDSMOBILE EIGHTY-EIGHT	83	53,916	1.5394
153	MERCEDES BENZ	210 (E–CLASS)	29	19,001	1.5262
154	FORD MOTOR CO	LINCOLN CONTINENTAL	41	27,829	1.4733
155	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	73	50,795	1.4371

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

	Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
156 ...	FORD MOTOR CO	MERCURY GRAND MARQUIS	136	95,020	1.4313
157 ...	SUZUKI	X–90	7	4,907	1.4265
158 ...	GENERAL MOTORS	GMC SAFARI VAN	32	22,540	1.4197
159 ...	CHRYSLER CORP	CONCORDE	71	50,123	1.4165
160 ...	GENERAL MOTORS	CADILLAC SEVILLE	46	33,641	1.3674
161 ...	VOLKSWAGEN	PASSAT	25	18,770	1.3319
162 ...	GENERAL MOTORS	SATURN SL	273	210,472	1.2971
163 ...	JAGUAR	VANDEN PLAS	6	4,688	1.2799
164 ...	FORD MOTOR CO	AEROSTAR VAN	75	59,468	1.2612
165 ...	NISSAN	QUEST	56	45,543	1.2296
166 ...	GENERAL MOTORS	BUICK RIVIERA	20	17,389	1.1502
167 ...	GENERAL MOTORS	BUICK PARK AVENUE	53	47,008	1.1275
168 ...	MAZDA	MPV	16	14,595	1.0963
169 ...	VOLVO	960	20	18,266	1.0949
170 ...	CHRYSLER CORP	TOWN & COUNTRY MPV	113	105,993	1.0661
171 ...	KIA MOTORS	SPORTAGE	9	8,638	1.0419
172 ...	SUBARU	LEGACY	82	79,809	1.0275
173 ...	ISUZU	HOMBRE PICKUP TRUCK	13	12,993	1.0005
174 ...	ISUZU	OASIS	4	4,001	0.9998
175 ...	FORD MOTOR CO.	MERCURY VILLAGER MPV	53	57,403	0.9233
176 ...	GENERAL MOTORS	OLDSMOBILE AURORA	20	22,349	0.8949
177 ...	FORD MOTOR CO.	CROWN VICTORIA	95	108,250	0.8776
178 ...	CHRYSLER CORP.	CARAVAN [1]	1	1,140	0.8772
179 ...	SUBARU	IMPREZA	14	16,337	0.8570
180 ...	GENERAL MOTORS	SATURN SW	14	16,539	0.8465
181 ...	SAAB	SAAB 900	19	22,516	0.8438
182 ...	GENERAL MOTORS	CADILLAC FLEETWOOD	7	8,346	0.8387
183 ...	GENERAL MOTORS	BUICK FUNERAL COACH/HEARSE	1	1,457	0.6863
184 ...	GENERAL MOTORS	BUICK LESABRE	33	52,129	0.6330
185 ...	BMW	Z3	6	11,542	0.5198
186 ...	GENERAL MOTORS	BUICK ROADMASTER	11	21,495	0.5117
187 ...	HONDA	ODYSSEY	8	19,266	0.4152
188 ...	GENERAL MOTORS	OLDSMOBILE NINETY-EIGHT	5	14,383	0.3476
189 ...	AUDI	A6	3	9,269	0.3237
190 ...	FIAT	FERRARI F355	0	286	0.0000
191 ...	GENERAL MOTORS	GMC C1500 SIERRA PICKUP	0	5,912	0.0000
192 ...	GENERAL MOTORS	GMC G1500/2500 SAVANA VAN	0	2,113	0.0000
193 ...	GENERAL MOTORS	CHEVROLET G1500/2500 CHEVY VAN	0	9,271	0.0000
194 ...	GENERAL MOTORS	CHEVROLET C1500 PICKUP	0	14,441	0.0000
195 ...	GENERAL MOTORS	CADILLAC LIMOUSINE	0	1,598	0.0000
196 ...	JAGUAR	XJR	0	506	0.0000
197 ...	LAMBORGHINI	DB132/DIABLO	0	35	00.0000
198 ...	MITSUBISHI	PICKUP TRUCK	0	725	0.0000
199 ...	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	47	0.0000
200 ...	ROLLS-ROYCE	BENTLEY BROOKLANDS	0	87	0.0000
201 ...	ROLLS-ROYCE	BENTLEY AZURE	0	84	0.0000
202 ...	ROLLS-ROYCE	BENTLEY TURBO R/TURBO RL	0	66	0.0000
203 ...	SUBARU	SVX	0	852	0.0000
204 ...	VECTOR AEROMOTIVE	AVTECH SC/M12	0	11	0.0000

[1] Special production of vehicles for sale only in Puerto Rico under the Chrysler nameplate.

Issued on: June 25, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–17778 Filed 7–2–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub-No. 34X)]

Grand Trunk Western Railroad Incorporated—Abandonment Exemption—in Oakland County, MI

Grand Trunk Western Railroad Incorporated (GTW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.73-mile line of its railroad on the Cass City Subdivision between milepost 0.72 and milepost 1.25 in Oakland County, Pontiac, MI. The line traverses United States Postal Service Zip Code 48342.[1]

GTW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic that previously moved over the line can

[1] On June 24, 1998, GTW informed the Board that the actual mileage for the line is 0.53 instead of 0.73 as stated in its verified notice.

be rerouted over other GTW lines;[2] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 16, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 27, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 Sixteenth Street, NW, Washington, DC 20006.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

GTW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 10, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GTW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by GTW's filing of a notice of consummation by July 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17802 Filed 7–2–98; 8:45 am]

BILLING CODE 4915–00–P

[2] In its environmental and historic reports, GTW stated that traffic has not moved over this line segment in ''excess of one year'' which conflicted with the certification in the notice of exemption. On June 24, 1998, GTW informed the Board that no traffic has moved over the line segment since October 1995.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Second Test of General Aviation Telephonic Entry (Gate II)

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a second general test to evaluate further the effectiveness of new operational procedures regarding the processing of aircraft by way of telephonic entry of certain pre-registered, passenger-carrying, general aviation aircraft flights entering the United States directly from Canada. This second test will expand the scope of participation to ports with one full-time inspector and will include approved small charter/air taxi aircraft returning with crew members only. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the basis on which Customs will select participants for the test.

EFFECTIVE DATES: Applications will be available and accepted at the Customs office located at the Detroit Metropolitan Airport beginning July 6, 1998. The test will commence no earlier than August 5, 1998, and will be evaluated after 1 year. Comments must be received on or before August 5, 1998.

ADDRESSES: Applications to participate in the program test are available from and should be mailed to the Detroit Metropolitan Airport: U.S. Customs Service, GATE Program Center, International Terminal, Detroit Metropolitan Airport, Detroit, Michigan 48242. Written comments regarding this notice should be addressed to: U.S. Customs Service, Passenger Process Owner, Passenger Operations Division, 1300 Pennsylvania Ave., NW, Room 5.4–D, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: Priscilla Frink (202) 927–1323.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1996, Customs implemented the General Aviation Telephonic Entry (GATE) Program on a test basis to evaluate the effectiveness of a new operations procedure regarding the telephonic entry of certain pre-registered, passenger-carrying, general aviation aircraft flights entering the United States directly from Canada (*see* 61 FR 46902, dated September 5, 1996). The test was to last one year and the results evaluated. Although the initial test was to be open to all eligible flights along the northern border, because of personnel constraints and other matters, many flights could not participate in the GATE test.

Accordingly, because the evaluation of the initial test yielded only partial results and an analysis of the comments received showed a willingness to participate in GATE by the traveling community if only the program were more readily available, Customs has decided to conduct a second test of GATE. This second test will expand the scope of participation to ports with one full-time inspector and will allow approved small charter/air taxi aircraft returning with crew members only. Customs will implement the second test for not less than 1 year; however, the

test may be extended for an additional time period not to exceed 180 days.

For programs designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) implements the general testing procedures. This test is established pursuant to that regulation.

I. Description of Proposed Test

The Concept of Telephonic Entry

Any aircraft arriving in the United States from a foreign airport or place is required to (1) give advance notification of its arrival, (2) immediately report its arrival to Customs, and (3) land at the airport designated by Customs for entry. *See*, 19 U.S.C. 1433(c) and implementing Customs Regulations at 19 CFR Part 122, subparts C and D. Individual passengers are also required to report their arrival to Customs. *See*, 19 U.S.C. 1459 and implementing Customs Regulations at 19 CFR Part 123. Because historical data on certain general aviation aircraft (aircraft comprising private and corporate aircraft, and air ambulances that have a seating capacity of fifteen or fewer passengers) indicated a high degree of compliance with Customs and other federal agency reporting laws, Customs developed the GATE program to allow certain pre-registered, passenger-carrying flights of such aircraft to report their entry telephonically when entering the United States directly from Canada. To provide a means for measuring the effectiveness of GATE, random inspections were built into the program. Thus, the GATE program was designed to combine the proven benefits of facilitation and selectivity, thereby freeing valuable Customs resources for use in other areas.

The initial test was implemented at designated airports located nation-wide for flights entering the United States directly from Canada. (Flights arriving from areas south of the United States that were subject to the provisions of § 122.23 (19 CFR 122.23) were not eligible for this test). During the test period, pilots gave advance notice of their arrival—from a minimum of 3 hours up to a maximum of 72 hours in advance—to Customs by calling 1–800–98–CLEAR, and approved flights received advance clearance to land at a designated airport, provided the pilot(s) received a telephonic entry number.

Regulatory Provisions Affected

During this second GATE test, participants again will be provided with a telephonic entry number in lieu of having to comply with normal inspection requirements. Accordingly, for test participants the normal arrival reporting and landing requirements of Parts 122 and 123 of the Customs Regulations (*see*, 19 CFR Parts 122, subparts C and D, and 123) will not be followed. However, participants will still be subject to civil and criminal penalties and sanctions for any violations of other U.S. Customs laws.

II. Eligibility Criteria

A. Aircraft & Airports

Only U.S.- and Canadian-registered general aviation aircraft that will arrive in the United States directly from Canada are eligible to participate in the GATE test. For purposes of this test, the term *general aviation aircraft* means aircraft comprising private and corporate aircraft, approved small charter/air taxi aircraft and air ambulances that have a seating capacity of fifteen or fewer passengers that are returning to the U.S. with crew members only.

Aircraft transiting Canada are not eligible for this test. Also, flights that arrive from areas south of the United States and are subject to the provisions of § 122.23 (19 CFR 122.23) are not eligible for this test. Further, aircraft that will carry cargo, merchandise requiring the payment of Customs duties, restricted or prohibited food products or other articles, or monetary instruments in excess of $10,000, will not qualify for this test.

GATE flights will be allowed to land at airports within a port of entry and most airports that are located within a reasonable commuting distance from a port of entry, provided the local port director having jurisdiction over the airport has designated the airport for GATE-test use. Although many airport locations have already been approved for GATE participation, other airports located outside of a port of entry may be approved by the local port director, based on a review of the facility after it is requested as a designated airport on an application. In such cases, the port director will take the following factors into consideration in determining whether to designate an airport for GATE-test use:

—Willingness of the airport operator to participate in the GATE test;
—The distance to the airport from the nearest Customs port of entry (so that random inspections can be performed), commuting time required for Customs officers, and Customs officer safety;
—Whether a secure place to work is provided at the airport; and
—Whether communications equipment is accessible.

B. Persons

Participation in the GATE test is voluntary. Only U.S. citizens, permanent resident aliens of the United States, Canadian citizens, or landed immigrants in Canada from Commonwealth countries, and who are regular passengers or flight crews of pre-registered flights, will be considered for this test. Each applicant must have a ''face to face'' inspection with either a U.S. Immigration or Customs officer, which clearly demonstrates the person's right to legally enter the United States, and must agree to carry all necessary personal identification and immigration documents.

Persons with evidence of a pending or past investigation which establishes illegal or dishonest conduct, persons involved in a violation of Customs laws (for example, civil, controlled substance violations, smuggling), and persons found to be inadmissible under the immigration laws of the United States are not eligible for this test.

Participation in this test will not constitute confidential information, and lists of participants will be made available to the public upon written request.

III. Test Application Procedure

General aviation aircraft owners, operators, and pilots who wish to have their passenger-carrying flights considered for participation in the GATE test should contact the Customs office at Detroit Metropolitan Airport in Michigan at the address listed at the front of this document to request an application for General Aviation Telephonic Entry Program form (Customs Form 442). Applications must be filed with the Customs port at Detroit Metropolitan Airport in Michigan 30 days prior to the date of the first scheduled flight in order to be considered for participation in the GATE test.

Selection Standards

Applicants will be approved/denied for the GATE test based on whether the personnel/aircraft information provided on the CF 442 meets all the above eligibility criteria. The port of Detroit, Michigan will determine the qualifications of all passengers/pilots/aircraft, and a letter approving or denying the test application will be sent to the applicant. Aircraft owners/operators must agree not to allow their general aviation aircraft to carry

passengers who are not listed and approved on the application. (To allow for the proper accounting of last-minute personnel changes to an application already on file with Customs, an Application Addendum form must be completed and sent to the Customs office at Detroit Metropolitan Airport). Further, aircraft owners/operators must agree not to allow persons to carry dutiable/commercial merchandise, restricted or prohibited food products or other articles, or monetary instruments of $10,000 or more on test flights.

If an application is denied for any reason other than because a particular airport is not designated for GATE-test use (for example, a denial based on information concerning passengers, pilots, or the aircraft), the applicant may appeal the decision to the Detroit Port Director within 10 working days from receipt of the denial letter. If the appeal to the Port Director results in another denial, then the applicant may appeal directly to the Passenger Process Owner at Customs Headquarters within 10 working days from receipt of the second denial letter.

IV. Test Evaluation Criteria

Customs will review all public comments received concerning any aspect of the test program or procedures, finalize procedures in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. After the second test period is concluded, evaluations of the test will be conducted and final results will be made available to the public upon request.

Dated: June 26, 1998.

John B. McGowan,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–17818 Filed 7–2–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Vietnam Fulbright: Foreign Student Exchange Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to manage a student exchange program. The program would bring 20–25, mid-career Vietnamese each year to the U.S. in order to pursue a Master's degree, or in some cases a Ph.D., in fields related to economic development to include—but not limited to—economics, business, public policy, public administration, law, and international relations. The proposal must also include renewal costs for approximately 30–35 Vietnamese Fulbright students currently studying in the U.S. (mostly second-year, but some third-year students).

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

The program must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title And Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEF–99–01.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 31, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. The grant should begin on or about October 1, 1998.

Duration: October 1, 1998–September 30, 2000.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchange Programs Divisions/East Asia Fulbright Branch, E/AEF, Room 208, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–6788/5404, fax: (202) 401–1728; email: sborja@usia.gov to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive A Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify *USIA Program Officer Sue Borja* on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEF–99–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIS will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including—but not limited to—ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319

provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The United States Information Agency has supported a Vietnamese student exchange program since 1992 which has enabled over a hundred and fifty Vietnamese students to pursue two-year Master's degrees (as well as some Ph.Ds) in economics, business, public policy and administration, law, and international relations at a wide range of U.S. colleges and universities.

The goals of the program are to foster mutual understanding and strengthen ties between the two countries and to support the U.S. foreign policy goal of promoting the establishment of a modern market economy in Vietnam.

Guidelines

The program should focus on selection 20–25 mid-career scholars and managers each year from throughout the country from those Vietnamese institutions critical to the economic transition. The program must include the following components: recruitment, selection, pre-academic and academic placement, pre-departure support and orientation, grantee administration, and evaluation. The grantee must maintain continuous liaison with the United States Information Service (USIS) in Vietnam and with the USIA Fulbright Office in Washington concerning the management of the program. The Vietnam Fulbright program is a component of the U.S. government's foreign policy with Vietnam as well as a member of the overall Fulbright Program which currently operates in over 140 countries worldwide.

Recruitment

Through continued and regular negotiation and resulting agreement with the Vietnamese government (including the Vietnamese Ministry of Education and Training), the recruitment and selection process has been, and must remain, an open and independent operation. Recruitment must include continued efforts to stimulate interest in the Fulbright program and careful interviewing, testing, and application counseling in order to develop a pool of qualified applicants to submit to a panel review for final recommendation to USIA. Recruitment should include in-country workshops and group meetings with potential candidates who have submitted curricula vita and initial essays, including an impromptu writing test for English ability. This should be followed by in-depth, one-on-one interviews from which a pool of applicants is invited to submit full applications for review by a selection panel.

Recruitment begins in the spring, 18 months prior to the fall semester in which the students are to begin their academic program (most, if not all, students will need to enroll in a summer English and/or pre-academic program). Please note that for the FY99 program, the current grantee already began recruiting students in the spring of 1998 for academic year 1999–2000. Therefore, if a new grantee is selected by USIA, then the former grantee and USIA would work out the transfer of the student information and files to the successor grantee.

Selection

The final pool of applicants is prepared for panel review complete with TOEFL scores and a written evaluation from each applicant. Panels are held in the fall one year prior to the academic year in which the award is due to begin.

The independent selection panel must consist of a group of scholars experienced in the fields of study and professional education programs targeted in this program. The panelists should also have some knowledge of, or experience with, U.S.-Vietnam educational exchanges, the Vietnamese education system, and other education systems in which the Vietnamese might have studied as undergraduates—such as those of Eastern Europe and the former Soviet Union. USIA reserves the right to review the panel member selection. The selection panel reviews the applicants' files, selects awardees for final approval by the J. William Fulbright Foreign Scholarship Board, and advises on university placement for the awardees.

Pre-academic and Academic Placement

The grantee will place the selected students at English language summer programs and pre-academic programs, as necessary, and at academic programs at a range of appropriate universities and colleges in the U.S. Placement includes negotiating for cost share (tuition reduction/waivers, etc.) from the universities and colleges.

Pre-departure Support and Orientation

The grantee will provide pre-departure orientation counseling (academic, social, and cultural adjustment) and logistical support for the selected Vietnamese students. The grantee will ensure personal contact and follow-up contact with the Vietnamese authorities, maintain contact with the U.S. Embassy Consular Office and the Vietnamese officials who process the students' visas, make travel arrangements to the U.S. for the selected Vietnamese students and provide them with any other assistance needed.

Student Administration/Supervision

During the period of the award, the grantee organization will maintain regular contact with the students to provide assistance, monitor academic work, and deal with any problems that might arise. The grantee will establish a series of mailings to students regarding taxes, financial payments, reports, exit travel arrangements, and invitations to meetings/orientations. Students are required to submit one formal report at mid-point of their award which is to be shared with USIA.

Evaluation

During the period of their award, the students will report on the progress of their research and the quality of their reception at their institutions of affiliation. The grantee will organize an exit interview before the student departures from the U.S.

Programs must comply with J–1 visa regulations. Please refer to the program's specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

Organizations must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. The award may not exceed $1,800,000 for both new and renewal students.

''Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000''.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) Program participant costs: travel, test fees, pre-departure expenses, pre-academic/English training, tuition, stipend, tax withholding, educational materials, enrichment programs;

(2) Renewal costs for current Vietnamese Fulbright students (estimate 30–35);

(3) Staff salaries and benefits;

(4) Domestic/International travel and per diem for recruitment, selection, orientation of students;

(5) Reproduction, communication, supplies; and

(6) Overhead/Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East Asian and Pacific Affairs, and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technical eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs hold strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The Vietnamese Fulbright students should come from throughout Vietnam, from a variety of institutions, and represent both genders as equally as possible.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other evaluation technique plus description of a methodology that will be used to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded, or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budget in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, then allocated and committed through internal USIA procedures.

Dated: June 26, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–17769 Filed 7–2–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 128
Monday, July 6, 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 HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA-1030-IFC]

RIN 0938-AI29

Medicare Program; Establishment of the Medicare+Choice Program

Correction

In rule document 98–16731 beginning on page 34968, in the issue of Friday, June 26, 1998, make the following corrections:

PART 422—[CORRECTED]

1. On page 35067, in the first column, in amendatory instruction 7., in the third line, ''422.522'' should read ''422.552''.

2. On the same page, in the same column, in amendatory instruction 7., in the fifth line, ''44'' should read ''422''.

BILLING CODE 1505-01-D

federal register

Monday
July 6, 1998

Part II

Environmental Protection Agency

Reissuance of NPDES General Permits for Storm Water Discharges From Construction Activities in Region 6; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6119–7]

Reissuance of NPDES General Permits for Storm Water DIscharges from Construction Activities in Region 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: Region 6 is issuing the final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with construction activity in Region 6. EPA first issued permits for these activities in September 1992. These permits subsequently expired in September 1997. Today's permits, which replace those expired permits, are similar to the permits issued in 1992. The main changes from those 1992 permits are summarized in the **SUPPLEMENTARY INFORMATION** section, below.

ADDRESSES: The index to the administrative record and the complete administrative record are available at the Water Docket, MC–4101, U.S. EPA, 401 M Street SW, Washington, DC 20460. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The index to the administrative record is also available from EPA Region 6, Water Quality Protection Division, Customer Service Branch (6WQ–CA) 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

DATES: These general permits shall be effective on July 6, 1998.

NOTICE OF INTENT: A NOTICE OF INTENT (NOI) FORM MUST BE SUBMITTED TO OBTAIN COVERAGE FOR STORM WATER DISCHARGES UNDER THESE PERMITS. THE NOI FORM IS GIVEN IN ADDENDUM C OF THESE PERMITS. DEADLINES FOR SUBMITTAL OF NOI'S ARE PROVIDED IN PART II.A OF THE PERMITS.

FOR FURTHER INFORMATION CONTACT: For further information on the NPDES Construction General Permits, call the EPA Region 6 Storm Water Hotline at 1–800–245–6510. Information is also available through the EPA Region 6's storm water web site at ''http://www.epa.gov/region6/sw/ and on the PIPES bulletin board web site at ''http://pipes.ehsg.saic.com/pipes.htm''.

SUPPLEMENTARY INFORMATION:

Contents

I. Introduction
II. Answers to Common Questions
III. Section 401 Certification and Coastal Zone Management Act
IV. Endangered Species Protection
V. Historic Properties Protection
VI. Regulatory Review (Executive Order 12866)
VII. Unfunded Mandates Reform Act
VIII. Paperwork Reduction Act
IX. Regulatory Flexibility Act

I. Introduction

The United States Environmental Protection Agency Region 6 office is reissuing the general permits which authorizes the discharge storm water associated with construction activity. As used in this permit, ''storm water associated with construction activity'' means construction activity disturbing at least five acres, or construction activity disturbing less than five acres which is part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres (*See* 40 CFR 122.26(b)(14)(x)).

These permits replace the previous Baseline Construction General Permits which were issued for a five-year term in September 1992. The most significant changes from the 1992 permits are:

► New conditions to protect listed endangered and threatened species and critical habitats;

► Expanded coverage to construction sites under five acres of disturbed land which are not part of a larger common plan of development or sale when an operator has been designated by the Director to obtain coverage.

► A requirement to post at the construction site the confirmation of permit coverage (the permit number or copy of the Notice of Intent (NOI) if a permit number has not yet been assigned) including a brief description of the project;

► Storm water pollution prevention plan performance objectives have been added.

These general permits for storm water discharges associated with construction activity was proposed on June 2, 1997 (62 FR 29786), and are hereby issued for the following areas in Region 6: The States of New Mexico and Texas; Indian Country lands in Louisiana, Oklahoma, Texas and New Mexico (except Navajo Reservation Lands and Ute Mountain Reservation Lands); and oil and gas construction in the State of Oklahoma.

II. Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. These answers are fairly broad and may not take into account all scenarios possible at construction sites. More details on these issues are provided at 63 FR 7858 (February 17, 1998) in the ''Summary of Responses to Comments on the Proposed Permit'' section of the reissuance of NPDES General Permits From Construction Activities for Regions 1, 2, 3, 7, 8, 9 and 10.

How do I Know if I Need a Permit?

You need a storm water permit if you can be considered an ''operator'' of the construction activity that would result in the ''discharge of storm water associated with construction activity.'' You must become a permittee if you meet either of the following two criteria:

► You have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or

► You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

There may be more than one party at a site performing the tasks relating to ''operational control'' as defined above. Depending on the site and the relationship between the parties (e.g., owner, developer), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. The following are three general operator scenarios (variations on any of the three are possible as the number of ''owners'' and contractors increases):

► *Owner as Sole Permittee.* The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). He may be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.

► *Contractor as Sole Permittee.* The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (e.g., a ''turnkey'' project). Here, the contractor would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an

operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of ''operator'' and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

► *Owner and Contractor as Co-Permittees.* The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

► You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

► your activities on site result in earth disturbance and you are not legally a subcontractor, but a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). This particular provision will apply to most utility service line installations. For further information concerning whether utility service line installations meet the definition of operator and require permit coverage, see the discussion under ''Installation of Utility Service Lines'' in Section VIII, Summary Response to Public Comments of the Fact Sheet.

In addition, for purposes of this permit and determining who is an operator, ''owner'' refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, but it May Be Part of a ''Larger Common Plan of Development or Sale.'' How Can I Tell and What Must I do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The ''plan'' in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects ''filling in'' the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting.

What Must I do to Satisfy The Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Addendum A for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this ''coat tail'' eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front ''clearance'' for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

Today's permit does not currently impose requirements related to historic preservation, though EPA may modify the permit at a later date after further discussions with the Advisory Council on Historic Preservation. Therefore, under today's permit, EPA will conduct consultations as it did under the pre-existing Baseline Construction General Permit on a case-by-case basis as needed. Removal of the proposed permit provisions related to historic preservation in no way relieves applicants and permittees of their obligations to comply with applicable State, Tribal or local laws for the preservation of historic properties. EPA reminds permittees that according to section 110(k) of the National Historic Preservation Act (NHPA), an intentional action to significantly adversely affect historic resources with intent to avoid Federal historic preservation requirements may jeopardize future permit coverage for such a permittee.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are

under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the CGP. You must also look in Part X of the permit to determine if copies of the NOI form are to be sent to a State or Indian Tribe.

If I Am on an ongoing Construction Project, do I Have to Fill in a New NOI To Be Covered by the Permit?

Yes, if you are on an ongoing construction project, a construction project which started prior to the effective date of this permit, you must complete a revised NOI Form (EPA Form 3510–9) to obtain coverage under this permit. However, applicants who have previously submitted an NOI for permit coverage prior to the effective date of this permit have the option to leave the section regarding Addendum A on endangered species blank unless there is a potential impact on endangered species or their habitat.

How do I Know Which Permit Conditions Apply to Me?

You are responsible for complying with all parts of the permit that are applicable to the construction activities you perform. Part III.E. of the permit defines the roles of various operators at a site. In addition, several States and Indian Tribes require alternative or additional permit conditions, and these can be found in Part X of the permit.

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will Not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively ''continued.'' You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

► The permit being reissued or replaced;

► Submittal of a Notice of Termination (NOT);

► Issuance of an individual permit for your activity; or

► The Director issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project Is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

III. Section 401 Certification and Coastal Zone Management Act

Section 401 of the Clean Water Act states that EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received section 401 certification from the appropriate States and Indian Tribes for all facilities covered by today's permits. Additional permit requirements were required as a condition of certification by the State of Texas and by the Pueblos of Isleta, Nambe, Picuris, Pojoaque, Sandia, Tesuque and Santa Clara in New Mexico. These additional permit requirements are contained in Part X of the permits.

The Coastal Zone Management Act (CZMA) requires all Federal permitting actions to be reviewed for consistency with each approved State Coastal Zone Management Plan. Texas is the only State covered by these permits that has an approved Coastal Zone Management Plan. EPA Region 6 has determined that the permit is consistent with the Texas Coastal Zone Management Plan. The Texas Coastal Zone Management Plan procedures for Federal consistency with Coastal Management Program goals and policies (31 TAC 506.12) state that if an activity requiring a state agency or subdivision action above thresholds requires an equivalent Federal permit, the Texas Coastal Coordination Council may determine the consistency of the state agency/subdivision action or the Federal permit, but not both. Permittees whose construction projects are located within the boundary of the Texas Coastal Management Program above thresholds will be required, as a part of pre-construction project approval, to have a consistency review by the Texas Council. An additional consistency review by the Texas Coastal Coordination Council of the storm water discharges from these construction projects covered by today's permit is, therefore, not required.

IV. Endangered Species Protection

A. Background

The Construction General Permit (CGP) also contains conditions to ensure the activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as ''listed species''), and listed species habitat that is designated under

the ESA as critical (''critical habitat''). In addition, the permit's coverage does not extend to discharges and discharge-related activities likely to jeopardize the continued existence of species proposed but not yet listed as endangered or threatened or result in the adverse modification of habitat proposed to be designated critical habitat.

The ESA places several different requirements on activities covered by the CGP. First, section 9 of the ESA and the ESA implementing regulations generally prohibit any person from ''taking'' a listed animal species (e.g., harassing or harming it) unless the take is authorized under the ESA. This prohibition applies to all entities and includes EPA, permit applicants, permittees and the public at large. Second, section 7(a)(2) of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) (''the Services'') to insure that any action authorized, funded or carried out by them (also known as ''agency actions'') are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Jeopardizing the continued existence of a listed species means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species (*See* 40 CFR 402.02).

The ESA section 7 implementing regulations at 50 CFR 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. This effect, among other things, can be beneficial, detrimental, direct and indirect. The issuance of the CGP by EPA is thus subject to the ESA section 7(a)(2) consultation requirements. Finally, ESA section 7(a)(1) directs Federal agencies to use their authority to further the purposes of the ESA by carrying out programs for the conservation of listed species, and section 7(a)(4) directs Federal agencies to confer with the Services on Agency actions likely to jeopardize the existence of species proposed but not yet finally listed or result in the adverse modification of critical habitat proposed to be designated.

The ESA regulations provide for two types of consultation: formal and informal. Informal consultation is an optional process that includes discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs.

Also of relevance for the CGP are ESA section 10 incidental taking permits. Section 10 of the ESA allows persons, including non-Federal entities to incidentally take listed animal species, where otherwise prohibited, through the issuance of a permit after development of a habitat conservation plan (HCP). These procedures were developed to allow non-Federal entities such as developers to, among other things, alter habitat without incurring takings liability where take is minimized to the extent practicable.

B. Conditions in the June 2, 1997 Proposed Permit To Protect Species and Critical Habitat

The CGP was proposed with a number of conditions to ensure that storm water discharges and best management practices (BMPs) to control storm water runoff were protective of listed species or critical habitat. Specifically, coverage under the proposed CGP would be granted only under the following circumstances:

1. An applicant's storm water discharges or BMPs to control storm water runoff were not likely to adversely affect listed species (identified in Addendum A of the permit) or critical habitat; or

2. The applicant's activity was previously authorized under § 7 or § 10 of the Endangered Species Act (ESA) and that authorization addressed storm water discharges and BMPs to control storm water runoff; or

3. The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under § 7 or § 10 of the ESA which accounted for storm water discharges and BMPs to control storm water runoff; or

4. Consultation under § 7 of the ESA was conducted for the applicant's activity which resulted in either a no jeopardy opinion or a written concurrence on a finding of no likelihood of adverse effects; or

5. The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under items 1., 2., 3. or 4. above.

The proposal required that applicants assess the impacts of their ''storm water discharges'' and ''BMPs to control storm water runoff'' on listed species and critical habitat that are located ''in proximity'' to the those discharges and BMPs when developing Storm Water Pollution Prevention Plans (SWPPPs) as part of the application process. The proposed CGP also required applicants to include measures in SWPPPs to protect listed species and critical habitat. ''In proximity'' was defined in Addendum A to include species:

► Located in the path or immediate area through which or over which contaminated point source storm water flows from construction activities to the point of discharge into the receiving water;

► Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or

► Located in the area of a site where storm water BMPs are planned or are to be constructed.

EPA also solicited comment on whether the area or scope of impacts to be considered by applicants should be broadened to encompass listed species found on the entire construction site and not just those species found ''in proximity'' as currently defined in Addendum A.

Failure by permittees to abide by measures in their SWPPPs to protect species and critical habitat would invalidate permit coverage. Attached to the proposed permits were instructions (Addendum A) to assist permit applicants in making this inquiry. The proposal indicated that a county-by-county species list would be included in Addendum A of the final permit to assist applicants in determining if listed species might be ''in proximity'' to storm water discharges and BMPs. EPA did not provide a draft species list in proposed Addendum A. Instead, EPA referred commenters to a similar species list that was used for an earlier EPA-issued storm water permit, the Multisector Storm Water General Permit, that was issued on September 29, 1995 (*See* 62 FR 29792, note 12, June 2, 1997).

C. Final CGP Conditions To Protect Listed Species

On April 28, 1997, EPA entered into formal consultation with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the ''Services'') for issuance of the CGP. After discussions with the Services, EPA terminated formal consultation and entered into ESA section 7 informal consultation and conferencing with the Fish and Wildlife Service (FWS) and the National Fisheries Service Services (NMFS) on June 11, 1997. On November 4, and 26, 1997, EPA completed ESA informal consultation when NMFS and FWS provided their respective concurrences with EPA's finding that issuance of the CGP was not likely to adversely affect listed species or critical habitat. However, the negotiations on CGP did not consider ongoing construction projects; i.e., construction projects which started prior to the effective date of these permits.

In January, 1998, Region 6 decided to address ESA certification issues for ongoing construction projects before finalizing the permit. In February, 1998, EPA Region 6 began a supplemental informal consultation with FWS and NMFS on language to clarify requirements for ongoing construction activity. EPA Region 6 completed ESA informal section 7 consultation and conferencing when FWS and NMFS provided their concurrences that issuance of these permits is unlikely to adversely affect listed species or critical habitat on June 9, and 15, respectively. With the completion of these consultations, EPA Region 6 has reduced the administrative burden associated with obtaining permit coverage for ongoing construction projects for the federal agencies and the regulated community.

Based on that consultation and in consideration of comments received on the June 2, 1997, proposal, EPA has placed the following conditions in the permit to protect listed species and critical habitat (*See* Part I.B.3.e). Coverage under the CGP is available for construction projects only if:

a. The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (Part I.B.3.e.(2)(a)); or

b. Formal or informal consultation with the Services under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal on (e.g., an ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act [NEPA] review); or

c. The applicant's construction activities are covered by a permit under section 10 of the ESA and that permit addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat (Part I.B.3.e.(2)(c)); or

d. The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

The CGP requires that applicants consider effects to listed species and critical habitat when developing SWPPPs and require that those plans include measures, as appropriate, to protect those resources. Failure by permittees to abide by measures in the SWPPPs to protect species and critical habitat may invalidate permit coverage.

This permit requires all projects commencing construction after the effective date of this permit, to follow the procedures provided in Addendum A of the permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impaction on endangered or threatened species or a critical habitat. Nothing in the permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

Addendum A contains instructions to assist permit applicants in making this inquiry. Those instructions require that applicants ascertain: (1) If their construction activities would occur in critical habitat; (2) whether listed species are in the project area; and (3) whether the applicant's storm water discharges and discharge-related activities are likely to adversely affect listed species or critical habitat. If adverse effects are likely, then applicants would have to meet one of the eligibility requirements of Part I.B.3.e.(2)(b)–(d) (paragraphs b., c., and d. above) to receive permit coverage. ''Discharge-related activities'' include activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and measures to control, reduce or prevent storm water pollution including the siting, construction and operation of BMPs. The ''project area'' includes:

1. Area(s) on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes the entire area or areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity;

2. Area(s) where storm water discharges flow from the construction site to the point of discharge into receiving waters;

3. Area(s) where storm water from construction activities discharges into the receiving waters and the area(s) in the immediate vicinity of the point of discharge; and

4. Area(s) where storm water BMPs will be constructed and operated, including any area(s) where storm water flows to and from BMPs.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters.

Addendum A also contains information on where to find information on listed and proposed species organized by State and county to assist applicants in determining if further inquiry is necessary as to whether listed species are present in the project area. Applicants can check the Office of Wastewater Management's website (http://www.epa.gov/owm). CGP applicants can also get updated species information for their county by calling the appropriate FWS or NMFS office. EPA Region 6 applicants can also contact the EPA Region 6 Storm Water Hotline (1–800–245–6510) for updated species information.

The CGP also requires that applicants comply with any conditions imposed under the eligibility requirements of Part I.B.3.e.(2)a., b., c., or d. above to remain eligible for coverage under this

permit. Such conditions must be incorporated in the applicant's SWPPP. The CGP does not authorize any prohibited take (as defined under section 3 of the ESA and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the ESA. The CGP does not authorize any storm water discharges or storm water discharge-related activities that are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

It is EPA's intention to provide permit applicants with the greatest possible flexibility in meeting permit requirements for protecting listed species and critical habitat. Thus, EPA is allowing applicants to use either section 7 or section 10 ESA mechanisms to address situations where adverse effects are likely (*See* Part I.B.3.e.(2)(b) and (c)). Also, to give applicants additional flexibility in meeting the Part I.B.3.e. eligibility requirements and with the timing of informal consultations, the permit automatically designates CGP applicants as non-Federal representatives for the purpose of carrying out informal consultation. However, EPA notes that meeting ESA requirements raises difficult implementation issues on how to best ensure that the permits are protective of listed species and critical habitats without unduly burdening permit applicants, permittees, and State, local, and Federal governmental entities. Thus, EPA intends in the future to review those permit conditions and procedures that relate to the ESA and the protection of historic resources to see how well that goal has been achieved and may revise the permits if necessary to better achieve that goal.

V. Historic Property Protection

A. Background

The National Historic Preservation Act of 1966, as amended, (NHPA) establishes a national historic preservation program for the identification and protection of historic properties and resources. Under the NHPA, identification of historic properties is coordinated by the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or other Tribal Representatives (in the absence of a THPO). Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions on historic properties that are listed or eligible for listing on the National Register of Historic Places and to seek comments from the Advisory Council on Historic Preservation (ACHP). The permit was proposed with a number of conditions pertaining to the consideration of historic properties. EPA has decided to not include those conditions because the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) have requested that EPA not include such conditions in the final permit at this time. The ACHP and the NCSHPO have recommended that EPA issue the permit but recommend that EPA continue working with them and Tribes regarding the possible development of a more comprehensive and efficient approach to ensure that effects to historic properties are given appropriate consideration while ensuring undue burdens are not imposed on applicants and regulatory authorities. EPA plans to continue working with the ACHP, NCSHPO and Tribes on this effort and may modify the permit to incorporate procedures regarding the protection of historic resources at a later date.

B. Future CGP Conditions To Protect or Consider Effects to Historic Properties

In response to comments received on the permit proposal and because the Agency is still discussing historic preservation with the Advisory Council on Historic Preservation (ACHP), the final permit reserves permit requirements related to historic preservation. Today's final permit does not include the eligibility restrictions and evaluation requirements from the proposed permit. After future discussions with the ACHP, EPA may modify the permit to reflect those discussions.

VI. Regulatory Review (Executive Order 12866)

Under Executive Order 12866, (58 FR 51735 [October 4, 1993]) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this re-issued general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866.

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA § 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA § 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA § 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA § 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA § 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA § 421(10) defines

''rule'' based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines ''rule'' to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA § 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide ''an opportunity for a hearing'' under CWA § 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA § 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. ''Regulatory requirements'' might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii) and (g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA § 203 would not apply.

VIII. Paperwork Reduction Act

On June 2, 1997, EPA solicited comments on the proposed revision to the current Information Collection Request (ICR) document for this permit (ICR approved OMB; OMB No. 2040–0086, expiration, August 31, 1998) to accommodate the increased information requirements in the new NOI for the construction general permit (62 FR 29826). A revised NOI form has been approved (EPA Form 3510–9 OMB No. 2040–0188.) This revised form is included in the permit in Addendum C. EPA estimates an increase in the burden associated with filling out the NOI form for the permit due to added requirements under the Endangered Species Act. EPA also anticipates a small increase in the time because of the requirement to submit an NOT upon completion of construction activities.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

EPA did not prepare an initial regulatory flexibility analysis (IRFA) for the proposed CGP. (Note that in today's action, EPA is issuing a separate general permit for each jurisdiction where EPA issues permits; i.e., in certain States, Indian Country lands and Federal facilities within certain States. However, for purposes of readability, reference is made to the permits in the singular form such as ''permit'' or ''CGP'' rather than in plural form.) In the notice of the proposed permit, EPA explained its view that issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA. Nevertheless, in keeping with EPA's policy to consider the impact of its actions on small entities even when it is not legally required to do so, the Agency considered the potential impact of the permit on small entities that would be eligible for coverage under the permit. EPA concluded that the permit, if issued as drafted, would not have a significant impact on a substantial number of small entities. EPA based its conclusion on the fact that the draft permit was largely the same as the previous permit issued in 1992 and, to the extent it differed, provided dischargers with more flexibility than that permit allowed.

Some commenters on the proposed CGP disagreed with EPA's conclusions that NPDES general permits are not subject to rulemaking requirements and that the proposed permit would not have a significant impact on small entities. They asserted that the CGP is subject to rulemaking requirements and thus the RFA, and that the Agency should have prepared an IRFA for the permit.

In light of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed again the applicable law, including the CWA, relevant CWA case law and the APA, as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded, as set forth in the proposal, that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including *licensing.*'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes ''rule making'' requirements. The APA defines *rule making* as ''the agency process for formulating, amending, or repealing a rule.'' APA § 551(5). By its terms, then, § 553 applies only to ''rules'' and not also to ''orders,'' which

include permits. As the Attorney General's Manual on the APA explains, ''the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]'' (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants ''[except as in compliance with'' specified sections of the CWA, including section 402. 33 U.S.C. 1311(a). Section 402 of the CWA authorizes EPA ''to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA].'' 33 U.S.C. 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precedent to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC* v. *Train,* 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC* v. *Costle*, 568 F.2d 1369, 1381. (D.C. Cir. 1977). Adopting the courts' suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general *permit,* not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's NPDES general permit for storm water discharges associated with construction activity is effective only with respect to those dischargers that *choose* to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger violates § 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for ''a hearing'' prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the CGP being issued today, the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied. Specifically, EPA has analyzed the potential impact of the general permit on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the previous general permit that it replaces (the Baseline Construction General Permit), the permit will make available to many small entities, particularly operators of construction sites, a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than discharges typically regulated under individual NPDES permits. Thus, general permits like the permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Furthermore, the general permit is virtually identical to its predecessor, the Baseline Construction General Permit, under which many construction operators have operated during the past five years. Moreover, the other new provisions of the permit have been designed to minimize burdens on small entities, including eliminating the requirement that construction site operators require that their contractors and subcontractors sign a standard certification statement agreeing to abide by storm water pollution prevention plan provisions developed for a project. In today's general permit, only the operator(s) of a construction site are required to satisfy certification requirements under the permit. EPA believes this modification from the prior permit should reduce any such adverse economic impacts on both operators and contractors/subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the final general permit, even if it were a rule, will not have a significant economic impact on a substantial number of small entities.

Storm Water General Permit for Construction Activities in Region 6

NPDES Permit No. [See Part I.A.]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on [insert the date of publication of the final permit in the **Federal Register**].

This permit and the authorization to discharge shall expire at midnight, July 7, 2003.

Signed: June 24, 1998.

William B. Hathaway,

Director, Water Quality Protection Division.

NPDES General Permits for Storm Water Discharges from Construction Activities

Table of Contents

Part I. Coverage Under this Permit
A. Permit Area
B. Eligibility
C. Obtaining Authorization
D. Terminating Coverage
Part II. Notice of Intent Requirements
A. Deadlines for Notification
B. Contents of Notice of Intent
C. Where to Submit
Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations
A. Prohibition on Non-Storm Water Discharges
B. Releases in Excess of Reportable Quantities
C. Spills
D. Discharge Compliance with Water Quality Standards
E. Responsibilities of Operators
F. Consistency with the Texas Coastal Management Program
Part IV. Storm Water Pollution Prevention Plans
A. Deadlines for Plan Preparation and Compliance
B. Signature, Plan Review and Making Plans Available
C. Keeping Plans Current
D. Contents of Plan
Part V. Retention of Records
A. Documents
B. Accessibility
C. Addresses
Part VI. Standard Permit Conditions
A. Duty to Comply
B. Continuation of the Expired General Permit
C. Need to Halt or Reduce Activity not a Defense
D. Duty to Mitigate
E. Duty to Provide Information.
F. Other Information
G. Signatory Requirements
H. Penalties for Falsification of Reports
I. Oil and Hazardous Substance Liability
J. Property Rights
K. Severability
L. Requiring an Individual Permit or an Alternative General Permit
M. State/Tribal Environmental Laws
N. Proper Operation and Maintenance
O. Inspection and Entry
P. Permit Actions
Part VII. Reopener Clause
Part VIII. Termination of Coverage
A. Notice of Termination
B. Addresses
Part IX. Definitions
Part X. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories
Addenda
A. Endangered Species
B. Historic Properties (Reserved)
C. Notice of Intent (NOI) Form
D. Notice of Termination (NOT) Form

Part I. Coverage Under This Permit

A. Permit Area

The permit language is structured as if it were a single permit, with State, Indian Country land, or other area-specific conditions specified in Part X. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

Region 6

LAR10*##I: Indian Country lands in the State of Louisiana
NMR10*###: The State of New Mexico, except Indian Country lands
NMR10*##I: Indian Country lands in the State of New Mexico, except Navajo Reservation Lands and Ute Mountain Reservation Lands
OKR10*##I: Indian Country lands in the State of Oklahoma
OKR10*##F: Oil and Gas Sites in State of Oklahoma
TXR10*###: The State of Texas, except Indian Country lands
TXR10*##I: Indian Country lands in the State of Texas

B. Eligibility

1. Permittees are authorized to discharge pollutants in storm water runoff associated with construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Discharges identified under Part I.B.3 are excluded from coverage. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate controls and measures are identified in a storm water pollution prevention plan covering the discharges from the support activity areas.

3. Limitations on Coverage

a. *Post Construction Discharges.* This permit does not authorize storm water discharges that originate from the site *after* construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Industrial post-construction storm water discharges may need to be covered by a separate NPDES permit.

b. *Discharges Mixed with Non-Storm Water.* This permit does not authorize discharges that are mixed with sources of non-storm water, other than those discharges which are identified in Part III.A.2. or 3. (exceptions to prohibition on non-storm water discharges) and are in compliance with Part IV.D.5 (non-storm water discharges).

c. *Discharges Covered by Another Permit.* This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part VI.L.

d. *Discharges Threatening Water Quality.* This permit does not authorize storm water discharges from construction sites that the Director (EPA) determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary in accordance with Part VI.L. However, the Director may authorize coverage under this permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards have been included in the storm water pollution prevention plan;

e. *Storm water discharges and storm water discharge-related activities that are not protective of Federally listed endangered and threatened (''listed'') species or designated critical habitat (''critical habitat'').*

(1) For the purposes of complying with the Part I.B.3.e. eligibility requirements, ''storm water discharge-related activities'' include:

(a) Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and

(b) Measures to control storm water including the siting, construction and operation of best management practices

(BMPs) to control, reduce or prevent storm water pollution.

(2) Coverage under this permit is available only if the applicant certifies that it meets at least one of the criteria in paragraphs (a)–(d) below. Failure to continue to meet one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit.

(a) The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or

(b) Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the ''Services'') under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal action (e.g., a ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act (NEPA) review); or

(c) The applicant's construction activities are authorized under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat; or

(d) The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

(3) For all projects commencing construction after the effective date of this permit, applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impaction on endangered or threatened species or a critical habitat. Nothing in this permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

(4) The applicant must comply with any applicable terms, conditions or other requirements developed in the process of meeting eligibility requirements of Part I.B.3.e.(2)(a), (b), (c), or (d) above to remain eligible for coverage under this permit. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(5) Applicants who choose to conduct informal consultation to meet the eligibility requirements of Part I.B.3.e.(2)(b) are automatically designated as non-Federal representatives under this permit. See 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representatives must notify EPA and the appropriate Service office in writing of that decision.

(6) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities cause prohibited ''take'' (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

(7) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

f. *Storm water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties.* (Reserved)

C. Obtaining Authorization

1. In order for storm water discharges from construction activities to be authorized under this general permit, an operator must:

a. Meet the Part I.B eligibility requirements;

b. Except as provided in Parts II.A.5 and II.A.6, develop a storm water pollution prevention plan (SWPPP) covering either the entire site or all portions of the site for which they are operators (see definition in Part IX.N) according to the requirements in Part IV. A ''joint'' SWPPP may be developed and implemented as a cooperative effort where there is more than one operator at a site; and

c. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided in Addendum C of this permit. Only one NOI need be submitted to cover all of the permittee's activities on the common plan of development or sale (e.g., you do not need to submit a separate NOI for each separate lot in a residential subdivision or for two separate buildings being constructed at a manufacturing facility, provided your SWPPP covers each area for which you are an operator). The SWPPP must be implemented upon commencement of construction activities.

2. Any new operator on site, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to obtain permit coverage.

3. Unless notified by the Director to the contrary, operators who submit a correctly completed NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L).

D. Terminating Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) in accordance with Part VIII of this permit. Compliance with this permit is required until an NOT is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT is signed.

2. All permittees must submit a NOT within thirty (30) days after one or more of the following conditions have been met:

a. Final stabilization (see definition Part IX.I) has been achieved on all portions of the site for which the permittee is responsible (including if applicable, returning agricultural land to its pre-construction agricultural use);

b. Another operator/permittee has assumed control according to Part VI.G.2.c. over all areas of the site that have not been finally stabilized; or

c. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

Enforcement actions may be taken if a permittee submits a NOT without

meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor) must submit a NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after a NOI has been submitted under Parts II.A.1 or II.A.2, the new operator must submit a NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this permit which did *not* receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

1. Use of Revised NOI Form

The revised NOI form [EPA Form 3510–9] shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local sediment and erosion control plans. Copies of SWPPPs or permits should *not* be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be disturbed (if less than 1 acre, enter ''1'');

i. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e. (Endangered Species) the applicant is certifying eligibility; and

Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M Street, SW, Washington, DC 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air

conditioning condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

D. Discharge Compliance With Water Quality Standards

Operators seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify the operator of such violation(s). The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

E. Responsibilities of Operators

Permittees may meet one or both of the operational control components in the definition of ''operator'' found in Part IX.N. Either Parts III.E.1 or III.E.2 or both will apply depending on the type of operational control exerted by an individual permittee. Part III.E.3 applies to all permittees.

1. Permittees with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., developer or owner), must:

a. Ensure the project specifications that they develop meet the minimum requirements of Part IV (Storm Water Pollution Prevention Plans (SWPPP)) and all other applicable conditions;

b. Ensure that the SWPPP indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications), and ensure all other permittees implementing portions of the SWPPP impacted by any changes they make to the plan are notified of such modifications in a timely manner; and

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number for parties with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions. If these parties have not been identified at the time the SWPPP is initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (e.g., general contractor) and the plan updated.

2. Permittee(s) with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., general contractor) must:

a. Ensure that the SWPPP for portions of the project where they are operators meets the minimum requirements of Part IV (Storm Water Pollution Prevention Plan) and identifies the parties responsible for implementation of control measures identified in the plan;

b. Ensure that the SWPPP indicates areas of the project where they have operational control over day-to-day activities;

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications);

3. Permittees with operational control over only a portion of a larger construction project (e.g., one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species and implementation of BMPs and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another party's pollution controls ineffective. Permittees must either implement their portions of a common SWPPP or develop and implement their own SWPPP.

F. Consistency With the Texas Coastal Management Program

This permit does not relieve permittees whose construction project is located within the boundary of the Texas Coastal Management Program of their responsibility to insure consistency with all applicable requirements of this State program. While pre-construction approval of development projects is not within the jurisdiction of the Federal NPDES permit program, State or local pre-construction project approvals and/or permits may be required. The permittee's Storm Water Pollution Prevention Plan must be consistent with any storm water discharge-related requirements established pursuant to, or necessary to be consistent with, the Texas Coastal Management Program. This permit may be reopened, upon petition by the State, to include more stringent discharge requirements applying to areas within the State's designated coastal zone.

The Texas Coastal Management Program boundary covers part or all of the following Texas Counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy. To determine if a construction project is located within the Texas Coastal Zone, and if so, the applicable requirements of the Texas Coastal Management Program, please

contact the Texas General Land Office's Coastal Hotline at 1–800–85–BEACH or access their Internet site at ''http://red.glo.state.tx.us/res-mgmt/coastal/''. Information is also available from the Texas Coastal Coordination Council's Coastal Permitting Assistance Office at 1–888–3–PERMIT or via the Internet at ''http://red.glo.state.tx.us/coastalpermits/''.

Part IV. Storm Water Pollution Prevention Plans

At least one storm water pollution prevention plan (SWPPP) shall be developed for each construction project or site covered by this permit. For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive SWPPP is encouraged. Individual operators at a site may, but are not required, to develop separate SWPPPs that cover only their portion of the project provided reference is made to other operators at the site. In instances where there is more than one SWPPP for a site, coordination must be conducted between the permittees to ensure the storm water discharge controls and other measures are consistent with one another (e.g., provisions to protect listed species and critical habitat).

Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The SWPPP shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of this permit.

When developing SWPPPs, applicants must follow the procedures in Addendum A of this permit to determine whether listed endangered or threatened species or critical habitat would be affected by the applicant's storm water discharges or storm water discharge-related activities. Any information on whether listed species or critical habitat are found in proximity to the construction site must be included in the SWPPP. Any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect listed species or critical habitat from storm water discharges or storm water discharge-related activity must be incorporated into the SWPPP. Permittees must implement the applicable provisions of the SWPPP required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The storm water pollution prevention plan shall:

1. Be completed prior to the submittal of an NOI to be covered under this permit (except as provided in Parts II.A.5 and II.A.6) updated as appropriate; and

2. Provide for compliance with the terms and schedule of the SWPPP beginning with the initiation of construction activities.

B. Signature, Plan Review and Making Plans Available

1. The SWPPP shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (Retention of Records) of this permit.

2. The permittee shall post a notice near the main entrance of the construction site with the following information:

a. The NPDES permit number for the project or a copy of the NOI if a permit number has not yet been assigned;

b. The name and telephone number of a local contact person;

c. A brief description of the project; and

d. The location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

If posting this information near a main entrance is infeasible due to safety concerns, the notice shall be posted in a local public building. If the construction project is a linear construction project (e.g., pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that permittees allow members of the public access to a construction site.

3. The permittee shall make SWPPPs available upon request to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site. The copy of the SWPPP that is required to be kept on-site or locally available must be made available to the Director for review at the time of an on-site inspection. Also, in the interest of public involvement, EPA encourages permittees to make their SWPPPs available to the public for viewing during normal business hours.

4. The Director may notify the permittee at any time that the SWPPP does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provision of this permit which are not being met by the SWPPP as well as those requiring modification in order to meet the minimum requirements of this Part. Within seven (7) calendar days of receipt of such notification from the Director (or as otherwise provided by the Director), the permittee shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

C. Keeping Plans Current

The permittee must amend the storm water pollution prevention plan whenever:

1. There is a change in design, construction, operation, or maintenance which has a significant effect on the discharge of pollutants to the waters of the United States which has not been addressed in the SWPPP; or

2. Inspections or investigations by site operators, local, State, Tribal or Federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.1 of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

D. Contents of Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

1. Site Description

Each SWPPP shall provide a description of potential pollutant sources and other information as indicated below:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);

c. Estimates of the total area of the site and the total area of the site that is

expected to be disturbed by excavation, grading, or other activities including off-site borrow and fill areas;

d. An estimate of the runoff coefficient of the site for both the pre-construction and post-construction conditions and data describing the soil or the quality of any discharge from the site;

e. A general location map (e.g., a portion of a city or county map) and a site map indicating the following: drainage patterns and approximate slopes anticipated after major grading activities; areas of soil disturbance; areas which will not be disturbed; locations of major structural and nonstructural controls identified in the SWPPP; locations where stabilization practices are expected to occur; locations of off-site material, waste, borrow or equipment storage areas; surface waters (including wetlands); and locations where storm water discharges to a surface water;

f. Location and description of any discharge associated with industrial activity other than construction, including storm water discharges from dedicated asphalt plants and dedicated concrete plants, which is covered by this permit;

g. The name of the receiving water(s) and the areal extent and description of wetland or other special aquatic sites (as described under 40 CFR 230.3(q–1)) at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project;

h. A copy of the permit requirements (attaching a copy of this permit is acceptable);

i. Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the construction activity and whether such species may be affected by the applicant's storm water discharges or storm water discharge-related activities; and

j. Information on whether storm water discharges or storm water discharge-related activities would have an affect on a property that is listed or eligible for listing on the National Register of Historic Places; where effects may occur, any written agreements with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects.

2. Controls

Each SWPPP shall include a description of appropriate control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. The SWPPP must clearly describe for each major activity identified in Part IV.D.1.b: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which permittee is responsible for implementation (e.g., perimeter controls for one portion of the site will be installed by Contractor A after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site; and perimeter controls will be actively maintained by Contractor B until final stabilization of those portions of the site up-gradient of the perimeter control; and temporary perimeter controls will be removed by the owner after final stabilization). The description and implementation of control measures shall address the following minimum components:

a. *Erosion and Sediment Controls.*

(1) Short and Long Term Goals and Criteria:

(a) The construction-phase erosion and sediment controls should be designed to retain sediment on site to the extent practicable.

(b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

(c) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts (e.g., fugitive sediment in street could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

(d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.

(e) Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (e.g., screening outfalls, picked up daily).

(f) Offsite material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the SWPPP.

(2) *Stabilization Practices:* The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

The following records shall be maintained and attached to the SWPPP: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; and the dates when stabilization measures are initiated.

Except as provided in Parts IV.D.2.a.(2)(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(3) *Structural Practices:* The SWPPP must include a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Structural practices may include but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection,

rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable. The installation of these devices may be subject to section 404 of the CWA.

(a) For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design. For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. Where neither the sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

(b) For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2 year, 24 hour storm or 3,600 cubic feet of storage per acre drained is provided. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWPPP. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may also require a separate permit under section 404 of the CWA. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed may, in themselves, need authorization under a separate NPDES permit.

(1) Such practices may include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

c. *Other Controls.*

(1) No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The SWPPP shall be consistent with applicable State, Tribal and/or local waste disposal, sanitary sewer or septic system regulations to the extent these are located within the permitted area.

(4) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(6) The SWPPP shall include a description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e(4) of this permit. Failure to describe and implement such measures will result in storm water discharges from construction activities that are ineligible for coverage under this permit.

d. *Approved State, Tribal or Local Plans.*

(1) Permittees which discharge storm water associated with construction activities must ensure their storm water pollution prevention plan is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials.

(2) Storm water pollution prevention plans must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials for which the permittee receives written notice.

3. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Part IV.D.4. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm

water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspections shall be conducted at least once every month.

Permittees are eligible for a waiver of monthly inspection requirements until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met: (1) the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); (2) land disturbance activities have been suspended; and (3) the beginning and ending dates of the waiver period are documented in the SWPPP.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Sediment and erosion control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the SWPPP shall be modified as necessary (e.g., show additional controls on map required by Part IV.D.1; revise description of controls required by Part IV.D.2) to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Actions taken in accordance with Part IV.D.4.b of this permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 or 3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part V. Retention of Records

A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

C. Addresses

Except for the submittal of NOIs and NOTs (see Parts II.C and VIII.B, respectively), all written correspondence concerning discharges in any State, Indian Country land or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, shall be sent to the address listed below: United States EPA, Region 6, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN-WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205.

Part VI. Standard Permit Conditions

A. Duty To Comply

1. The Permittee Must Comply With All Conditions of This Permit

Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (**Federal Register**: December 31, 1996, Volume 61, Number 252, pages 69359–69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514–

13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

a. *Criminal.*

(1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309.c.4 of the Clean Water Act).

b. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

c. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) *Class I Penalty.* Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

(2) *Class II Penalty.* Not to exceed $11,000 per day for each day during which the violation continues, nor shall the maximum amount exceed $137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the *earlier* of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. The permittee's submittal of a Notice of Termination; or

3. Issuance of an individual permit for the permittee's discharges; or

4. A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty To Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent and Notices of Termination shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an

individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to Authorization.* If an authorization under Part II.B is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new Notice of Intent satisfying the requirements of Part II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Part II.A.3, and sent to the address specified in Part II.C.

d. *Certification.* Any person signing documents under Part VI.G shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Tribal Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges

through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to, a violation of a water quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordance with Part I.C of this permit, or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. EPA may propose a modification to this permit after further discussions between the Agency and the Advisory Council on Historic Preservation for the protection of historic properties.

Part VIII. Termination of Coverage

A. Notice of Termination

Permittees must submit a completed Notice of Termination (NOT) that is signed in accordance with Part VI.G of this permit when one or more of the conditions contained in Part I.D.2. (Terminating Coverage) have been met at a construction project. The NOT form found in Addendum D will be used unless it has been replaced by a revised version by the Director. The Notice of Termination shall include the following information:

1. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

2. An indication of whether the storm water discharges associated with construction activity have been eliminated (i.e., regulated discharges of storm water are being terminated) or the permittee is no longer an operator at the site;

3. The name, address and telephone number of the permittee submitting the Notice of Termination;

4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;

5. The latitude and longitude of the construction site; and

6. The following certification, signed in accordance with Part VI.G (signatory requirements) of this permit. For construction projects with more than one permittee and/or operator, the permittee need only make this certification for those portions of the construction site where the permittee was authorized under this permit and not for areas where the permittee was not an operator:

''I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by a general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.''

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized (as defined in Part IX.I) and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to ensure final stabilization is maintained, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated from the portion of the construction site where the operator had control.

B. Addresses

1. All Notices of Termination, signed in accordance with Part VI.G of this permit, are to be submitted using the form provided by the Director (or a photocopy thereof), to the address specified on the NOT form.

Part IX. Definitions

A. *Best Management Practices* (''BMPs'') means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

B. *Control Measure* as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

C. *Commencement of Construction* the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

D. *CWA* means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*

E. *Director* means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

F. *Discharge* when used without qualification means the ''discharge of a pollutant.''

G. *Discharge of Storm Water Associated With Construction Activity* as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

H. *Facility or Activity* means any NPDES ''point source'' or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

I. *Final Stabilization* means that either:

1. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area

has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. In some parts of the country, background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final stabilization (e.g., if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization; on a beach with no natural vegetation, no stabilization is required); or

2. For individual lots in residential construction by either: (a) the homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off their sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ''waters of the United States,'' and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in (1) or (2) above.

J. *Flow-Weighted Composite Sample* means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

K. *Large and Medium Municipal Separate Storm Sewer System* means all municipal separate storm sewers that are either:

1. Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR 122); or

2. Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or

3. Owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

L. *NOI* means Notice of Intent to be covered by this permit (see Part II of this permit).

M. *NOT* means Notice of Termination (see Part VIII of this permit).

N. *Operator* for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of ''owner or operator'' and ''facility or activity'' are applied to discharges of storm water associated with construction activity.

O. *Owner or operator* means the owner or operator of any ''facility or activity'' subject to regulation under the NPDES program.

P. *Point Source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Q. *Pollutant* is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

R. *Runoff coefficient* means the fraction of total rainfall that will appear at the conveyance as runoff.

S. *Storm Water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

T. *Storm Water Associated With Industrial Activity* is defined at 40 CFR 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale.

U. *Waters of the United States* means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate ''wetlands'';

3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs (a) through (d) of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423 which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean

Water Act jurisdiction remains with EPA.

Part X. Permit Conditions Applicable to Specific States and Indian Country Lands

The provisions of this Part provide additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions required as part of the State or Tribal CWA Section 401 certification process. The additional revisions and requirements listed below are set forth in connection with, and only apply to, the following States and Indian Country lands.

1. LAR10##I: Indian Country Lands in the State of Louisiana*

No additional requirements.

2. NMR10###: The State of New Mexico, Except Indian Country Lands*

No additional requirements.

3. NMR10##I: Indian Country Lands in the State of New Mexico, Except Navajo Reservation Lands (see Region 9) and Ute Mountain Reservation Lands (see Region 8)*

a. *Pueblo of Isleta.* Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Isleta. NOIs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, concurrently with their submission to EPA at the following address: Isleta Environment Department, Water Quality Program, Pueblo of Isleta, PO Box 1270, Isleta, New Mexico 87022.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Isleta. NOTs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, concurrently with their submission to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Isleta. Storm water pollution prevention plans must be submitted to the Pueblo of Isleta Environment Department, Water Quality Program, ten working days prior to commencing the project on Pueblo of Isleta tribal lands. SWPPPs are to be sent to the address given in Part II.C.2.

b. *Pueblo of Nambe.* Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Nambe Department of Environment and Natural Resources.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Nambe. NOIs shall also be submitted to the Pueblo of Nambe Department of Environment and Natural Resources at the same time they are submitted to EPA at the following address: Pueblo of Nambe, Department of Environment and Natural Resources, Route 1 Box 11788, Santa Fe, New Mexico 87501, Phone (505) 455–2036, Fax (505) 455–2038.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Nambe. NOTs shall also be submitted to the Pueblo of Nambe Department of Environment and Natural Resources at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Nambe. Storm water pollution prevention plans must be submitted to the Pueblo of Nambe Department of Environment and Natural Resources before the project on Pueblo of Nambe tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

c. Pueblo of Picuris. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Picuris Environment Department.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Picuris. NOIs shall also be submitted to the Pueblo of Picuris Environment Department at the same time they are submitted to EPA at the following address: Pueblo of Picuris, Environment Department, P.O. Box 127, Penasco, New Mexico 87553, Phone (505) 587–2519, Fax (505) 587–1071.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Picuris. NOTs shall also be submitted to the Pueblo of Picuris Environment Department at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Picuris. Storm water pollution prevention plans must be submitted to the Picuris Environment Department before the project on Pueblo of Picuris tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

d. Pueblo of Pojoaque. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Pojoaque Environment Department Director.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Pojoaque. NOIs shall also be submitted to the Pueblo of Pojoaque Environment Department Director at the same time they are submitted to EPA at the following address: Pueblo of Pojoaque, Environment Department, Route 11, P.O. Box 208, Santa Fe, New Mexico 87501, Phone (505) 455–3383, Fax (505) 455–3633.

(2) Part VIII.B.2 of the permit is added as follows:

Special NOT Requirements for the Pueblo of Pojoaque. NOTs shall also be submitted to the Pueblo of Pojoaque Environment Department Director at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Pojoaque. Storm water pollution prevention plans must be submitted to the Pueblo of Pojoaque Environment Department Director before the project on Pueblo of Pojoaque tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

e. Pueblo of San Juan. No additional requirements.

f. Pueblo of Sandia. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Sandia Environment Department.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Sandia. NOIs shall also be submitted to the Pueblo of Sandia Environment Department at the same time they are submitted to EPA at the following address: Pueblo of Sandia, Environment Department, Box 6008, Bernalillo, New Mexico 87004, Phone (505) 867–4533; Fax (505) 867–9235.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Sandia. NOTs shall also be submitted to the Pueblo of Sandia Environment Department at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Sandia. Storm water pollution prevention plans must be submitted to the Pueblo of Sandia Environment Department before commencement of the project on Pueblo of Sandia tribal lands. SWPPPs are to be sent to the address given in Part II.C.2.

g. Pueblo of Tesuque. Copies of Notices of Intent (NOI), Notices of Termination (NOT), Storm Water Pollution Prevention Plans (SWPPPs), inspection reports, all certifications and ''other information'' must be submitted, by hand delivery or certified mail, to the Pueblo of Tesuque.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Tesuque. NOIs shall also be submitted to the Pueblo of Tesuque at least five (5) days prior to any ground disturbing activity at the following address: Pueblo of Tesuque, Environment Department, Route 5, Box 3260–T, Santa Fe, New Mexico 87501, Phone (505) 983–2667; Fax (505) 982–2331.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Tesuque. NOTs shall also be submitted to the Pueblo of Tesuque at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Tesuque. Storm water pollution prevention plans must be submitted to the Pueblo of Tesuque at least five (5) days prior to any ground disturbing activity on Pueblo of Tesuque tribal lands. SWPPPs are to be sent to the address given in Part II.C.2.

(4) Part V.D is added to the permit as follows:

Special Reporting Requirements for the Pueblo of Tesuque. Copies of all certifications required by Section IV.D, and copies of ''other information'' required by Section VI.F shall be provided to the Pueblo of Tesuque, by hand delivery or certified mail. Also, copies of all inspection reports required under Section IV.D.4.c. shall be submitted within five (5) days of completion of the inspection. All information sent to the Pueblo of Tesuque is to be sent to the address given in Part II.C.2.

h. Santa Clara Pueblo. Copies of Notices of Intent (NOI) and Notices of Termination (NOT) must be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs.

(1) Part I.C.4. is added to the permit as follows:

Special Authorization Requirements for the Santa Clara Pueblo. Prior to submitting a Notice of Intent, the operator must obtain permission from the Santa Clara Governors Office to do the construction. If the project is approved by the tribal administration, the operator may proceed with submitting a Notice of Intent (NOI).

(2) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Santa Clara Pueblo. NOIs shall also be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs at least two (2) weeks prior to the start of construction at the following address: Santa Clara Governors Office, PO Box 580, Espanola, New Mexico 87532, Phone (505) 753–7326; Fax (505) 753–8988.

(3) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Santa Clara Pueblo. NOTs shall also be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs at least two (2) weeks prior to the start of construction. NOTs are to be sent to the address given in Part II.C.2.

i. All Other Indian Country lands in New Mexico. No additional requirements.

4. OKR10##I: Indian Country Lands in the State of Oklahoma*

No additional requirements.

5. OKR10##F: Oil and Gas Sites in the State of Oklahoma*

No additional requirements.

6. TXR10###: The State of Texas, Except Indian Country Lands*

a. Part III of the permit is modified as follows: Change the title of Part III. (*Special Conditions, Management Practices, and other Non-Numeric Limitations*) to: *Part III. Special Conditions, Management Practices, and other Limitations.*

b. Part III.G is added to the permit as follows:

Special Numeric Limitations for Discharges from Ready-Mixed Concrete Plants in the State of Texas, except Indian Country lands. All discharges of storm water from ready-mixed concrete plants covered by this permit must comply with the following limitations:

pH—Between 6.0 and 9.0 standard units
Oil and Grease—15 mg/l as a daily maximum
Total Suspended Solids—65 mg/l as a daily maximum

These limitations must be taken into account when designing the storm water control measures to be used for areas draining any ready-mixed concrete plants operated by the permittee.

7. TXR10##I: Indian Country Lands in the State of Texas*

No additional requirements.

Addendum A—Endangered Species

I. Instructions for Applicants

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by the Construction General Permit (CGP) are protective of endangered and threatened species and critical habitat. To ensure that those goals are met, applicants for CGP coverage are required under Part I.B.3.e. to assess the impacts of their storm water discharges and storm water discharge-related activities on Federally listed endangered and threatened species (''listed species'') and designated critical habitat (''critical habitat'') by following Steps One through Six listed below. EPA strongly recommends that applicants follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in the planning process. At minimum, the procedures should be followed when developing the storm water pollution prevention plan.

Permittees and applicants also have an independent ESA obligation to ensure that their activities do not result in any prohibited ''takes'' of listed species.[1] Many of the measures required in the CGP and in these instructions to protect species may also assist permittees in ensuring that their construction activities do not result in a prohibited take of species in violation of § 9 of the ESA. Applicants who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that

[1] Section 9 of the ESA prohibits any person from ''taking'' a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a ''incidental take statement'' as part of undergoing ESA § 7 formal consultation; (2) where an incidental take permit is obtained under ESA § 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

they are protected from potential takings liability under ESA § 9 by obtaining either an ESA § 10 permit or by requesting formal consultation under ESA § 7 (as described in more detail in Step Seven below). Applicants who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA § 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, applicants should apply for an ESA § 10 permit. Where applicants are not sure whether to pursue a § 10 permit or a § 7 consultation for takings protection, they should confer with the appropriate Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) office.

This permit provides for the possibility of multiple permittees at a construction site. Applicants should be aware that in many cases they can meet the permit eligibility requirements by relying on another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c). This is allowed under Part I.B.3.e.(2)(d) of the permit. However, the other operator's certification must apply to the applicant's project area and must address the effects from the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based. This situation will typically occur where a developer or primary contractor, such as one for construction of a subdivision or industrial park, conducts a comprehensive assessment of effects on listed species and critical habitat for the entire construction project, certifies eligibility under Part I.B.3.e.(2)(a), (b) or (c), and that certification is relied upon by other operators (i.e., contractors) at the site. However, applicants that consider relying on another operator's certification should carefully review that certification along with any supporting information. If an applicant does not believe that the operator's certification provides adequate coverage for the applicant's storm water discharges and storm water discharge-related activities or for the applicant's particular project area, the applicant should provide its own independent certification under Part I.B.3.e.(2)(a), (b), or (c).

B. Procedures

To receive coverage under the Construction General Permit, applicants must assess the potential effects of their storm water discharges and storm water discharge-related activities on listed species and their critical habitat. To make this assessment, applicants must follow the steps outlined below prior to completing and submitting Notice of Intent (NOI) form. Applicants who are able to certify eligibility under Parts I.B.3.e.(2)(b), (c) or (d) because of a previously issued ESA § 10 permit, a previously completed ESA § 7 consultation, or because the applicant's activities were already addressed in another operator's certification of eligibility may proceed directly to Step Six.

Note.—The revised NOI form which was included in the CGP (*see* 62 FR 29822–29823, June 2, 1997) requires that applicants provide detailed certification information on listed species. That form is still under development and is not expected to be finalized before this permit is issued. Until the revised NOI form is finalized, applicants must use the existing NOI form which does not contain the specific certification provisions relating to listed species and critical habitats at construction projects. However, use of the existing NOI form does not relieve applicants of their obligation to follow the procedures listed below to determine if their construction storm water discharges or storm water discharge-related activities meet permit eligibility requirements for the protection of listed species and critical habitat. By following these instructions, applicants will have sufficient information on listed species and critical habitat in order to complete either the existing or revised NOI form and sign the certification statement.

Step One: Determine if the Construction Site Is Found Within Designated Critical Habitat for Listed Species

Some, but not all, listed species have designated critical habitat. Exact locations of such habitat is provided in the Service regulations at 50 CFR Parts 17 and 226. To determine if their construction site occurs within designated critical habitat, applicants should either:

- Contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. A list of FWS and NMFS offices is found in Section II of this Addendum; or
- Contact the State or Tribal Natural Heritage Centers. These centers compile and disseminate information on Federally listed and other protected species. They frequently have the most current information on listed species and critical habitat. A list of these centers is provided in Section III of this Addendum; or
- Review those regulations (which can be found in many larger libraries).

If the construction site is not located in designated critical habitat, then the applicant does not need to consider impacts to critical habitat when following Steps Two through Six below. If the site is located within critical habitat, then the applicant must look at impacts to critical habitat when following Steps Two through Six. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: Determine if Listed Species Are Located in the County(ies) Where the Construction Activity Will Occur

Section IV of the Addendum contains a county-by-county list of listed endangered and threatened species (''listed species''), and proposed endangered and threatened species (''proposed species''). Since the list was current as of September 1, 1997, applicants must also check with other sources for updated species and county information. These sources include: Sections II and III of this Addendum; EPA's Office of Wastewater Management's web page at ''http://www.epa.gov/owm'' where updates of the county-by-county list will be posted on a periodic basis; **Federal Register** Notices; State wildlife protection offices; a biologist or similar professional in the environmental field; or any other method which can be reasonably expected to provide this information. Applicants with construction projects located in EPA Region 2 and Region 6 can call the Storm Water General Permits Hotline at (800) 245–6510 for further assistance, while applicants with projects located in EPA Regions 1, 3, 7, 8, 9 and 10 may contact the appropriate EPA Regional Office.

Where a facility is located in more than one county, the lists for all counties should be reviewed. Where a facility discharges into a water body which serves as a border between counties or which crosses a county line which is in the immediate vicinity of the point of discharge, applicants should also review the species list for the county which lies immediately downstream or is across the water body from the point of discharge.

After a review of the available information from the sources mentioned above, if no listed species are located in a facility's county or if a facility's county is not listed, and the construction site is not located in critical habitat as described under Step One, an applicant is eligible for CGP coverage without further inquiry into the presence of, or effect to, listed species. The applicant must check the appropriate certification item on the revised NOI form (Part I.B.3.e.(2)(a)).

Once the applicant has determined which listed species are located in his or her facility's county, the applicant must follow Step Three.

Step Three: Determine if any Federally Listed Endangered and Threatened Species May Be Present in the Project Area

The project area consists of:

- The areas on the construction site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity.

Example(s)

1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity.
2. Where grading causes storm water to flow into a small wetland or other habitat that is on the site which contains listed species.

- The areas where storm water discharges flow from the construction site to the point of discharge into receiving waters.

Example(s)

1. Where storm water flows into a ditch, swale, or gully which leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.

- The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge.

Example(s)

1. Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.

• The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs.

Example(s)

1. Where a storm water retention pond would be built.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP. Instead, applicants should use the method which allows them to determine, to the best of their knowledge, whether listed species are located in their project area. These methods may include:

• Conducting visual inspections: This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal storm water collection systems.

• Contacting the nearest State or Tribal wildlife agency, the Fish and Wildlife Service (FWS), or the National Marine Fisheries Service (NMFS). Many endangered and threatened species are found in well-defined areas or habitats. Such information is frequently known to State, Tribal, or Federal wildlife agencies. A list of FWS and NMFS offices is provided in Section II of this Addendum below.

• Contacting local/regional conservation groups or the State or Tribal Natural Heritage Centers (see Section III of this Addendum). State and local conservation groups may have location specific listed species information. The Natural Heritage Centers inventory species and their locations and maintain lists of sightings and habitats.

• Submitting a data request to a Natural Heritage Center. Many of these centers will provide site specific information on the presence of listed species in a project area. Some of these centers will charge a fee for researching data requests.

• Conducting a formal biological survey. Larger construction sites with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in the project area and whether there are likely adverse effects. Biological surveys are frequently performed by environmental consulting firms. A biological survey can be used to follow Steps Four through Six of these instructions.

• Conducting an environmental assessment under the National Environmental Policy Act (NEPA). Some construction activities may require environmental assessments under NEPA. Such assessments may indicate if listed species are in the project area. Coverage under the CGP does not trigger such an assessment because the permit does not regulate any dischargers subject to New Source Performance Standards under Section 306 of the Clean Water Act, and is thus statutorily exempted from NEPA. *See* CWA § 511(c). However, some construction activities might require review under NEPA because of Federal funding or other Federal involvement in the project.

If no species are found in the project area, an applicant is eligible for CGP coverage. Applicants must provide the necessary certification on the revised NOI form. If listed species are found in the project area, applicants must indicate the location and nature of this presence in the storm water pollution prevention plan and follow Step Four.

Step Four: Determine if Listed Species or Critical Habitat Are Likely To Be Adversely Affected by the Construction Activity's Storm Water Discharges or Storm Water Discharge-Related Activities

To receive CGP coverage, applicants must assess whether their storm water discharges or storm water discharge-related activities are likely to adversely affect listed species or critical habitat. ''Storm water discharge-related activities'' include:

• Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to excavation, site development, grading, and other surface disturbance activities; and

• Measures to control storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

Potential adverse effects from storm water discharges and storm water discharge-related activities include:

• *Hydrological.* Storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs which can impact listed species or critical habitat.

• *Habitat.* Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of storm water BMPs, may adversely affect listed species or their habitat. Storm water may drain or inundate listed species habitat.

• *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If the applicant is having difficulty in determining whether his or her project is likely to adversely Affect a listed species or critical habitat, then the appropriate office of the FWS, NMFS or Natural Heritage Center listed in Sections II and III of this Addendum should be contacted for assistance. If adverse effects are not likely, then the applicant should make the appropriate certification on the revised NOI form and apply for coverage under the permit. If adverse effects are likely, applicants must follow Step Five.

Step Five: Determine if Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant makes a preliminary determination that adverse effects are likely, it can still receive coverage under Part I.B.3.e.(2)(a) of the CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for permit coverage. These measures may involve relatively simple changes to construction activities such as re-routing a storm water discharge to bypass an area where species are located, relocating BMPs, or by changing the ''footprint'' of the construction activity. Applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate the likelihood of adverse impacts to listed species and/or critical habitat. (See 50 CFR 402.13(b).) This can entail the initiation of informal consultation with the FWS and/or NMFS which is described in more detail in Step Six.

If applicants adopt measures to avoid or eliminate adverse effects, they must continue to abide by those measures during the course of permit coverage. These measures must be described in the storm water pollution prevention plan and may be enforceable as permit conditions. If appropriate measures to avoid the likelihood of adverse effects are not available to the applicant, the applicant must follow Step Six.

Step Six: Determine if the Eligibility Requirements of Part I.B.3.e.(2)(b)–(d) Can Be Met

Where adverse effects are likely, the applicant must contact the EPA and FWS/NMFS. Applicants may still be eligible for CGP coverage if any likely adverse effects can be addressed through meeting the criteria of Part I.B.3.e.(2)(b)–(d) of the permit. These criteria are as follows:

1. An ESA Section 7 Consultation Is Performed for the Applicant's Activity (See Part I.B.3.e.(2)(b)

Formal or informal ESA § 7 consultation is performed with the FWS and/or NMFS which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. The formal consultation must result in either a ''no jeopardy opinion'' or a ''jeopardy opinion'' that identifies reasonable and prudent alternatives to avoid jeopardy which are to be implemented by the applicant. The informal consultation must result in a written concurrence by the Service(s) on a finding that the applicant's storm water discharge(s) and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (for informal consultation, see 50 CFR 402.13).

Most consultations are accomplished through informal consultation. By the terms of this permit, EPA has automatically designated applicants as non-Federal representatives for the purpose of conducting informal consultations. *See* Part I.B.3.e.(5) and 50 CFR 402.08 and 402.13. When conducting informal ESA § 7 consultation as a non-Federal representative, applicants must follow the procedures found in 50 CFR 402 of the ESA regulations.

Applicants must also notify EPA and the Services of their intention and agreement to conduct consultation as a non-Federal representative. Consultation may occur in the context of another Federal action at the construction site (e.g., where ESA § 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project which incorporates a section 7 consultation). Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, applicants may, if they wish, initiate consultation with the Services at Step Five.

Whether ESA § 7 consultation must be performed with either the FWS, NMFS or both Services depends on the listed species which may be affected by the applicant's activity. In general, NMFS has jurisdiction over marine, estuarine, and anadromous species. Applicants should also be aware that while formal § 7 consultation provides protection from incidental takings liability, informal consultation does not.

2. An Incidental Taking Permit Under Section 10 of the ESA Is Issued for the Applicants Activity (See Part I.B.3.e.(2)(c))

The applicant's construction activities are authorized through the issuance of a permit under § 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharge(s) and storm water discharge-related activities on listed species and critical habitat. Applicants must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR § 17.22(b)(1) (FWS) and § 222.22 (NMFS)). Application instructions for Section 10 permits for NMFS species can be obtained by (1) accessing the ''Office of Protected Resources'' sector of the NMFS Home Page at ''http://www.nmfs.gov'' or by contacting the National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, Maryland 20910; telephone (301) 713–1401, fax (301) 713–0376.

3. The Applicant Is Covered Under the Eligibility Certification of Another Operator for the Project Area (See Part I.B.3.e.(2)(d))

The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(b), or (c) which also included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based. Certification under Part I.B.3.e.(2)(d) is discussed in more detail in Section I.A. of this addendum.

The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs I.B.3.e(2)(a), (b), (c), (d) to ensure that its storm water discharges and storm water discharge-related activities are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's SWPPP. If the eligibility requirements of Part I.B.3.e.(2)(a)-(d) cannot be met, then the applicant may not receive coverage under the CGP. Applicants should then consider applying to EPA for an individual permit.

II. List of Fish and Wildlife Service and National Marine Fisheries Service Offices

A. U.S. Fish and Wildlife Service Offices

National Website for Endangered Species Information

Endangered Species Home page: http://www.fws.gov/r9endspp/endspp.html

Regional, State, Field and Project Offices

USFWS Region Two

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, P.O. Box 1306, Albuquerque, NM 87103

State, Field, and Project Offices (Region Two)

Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Field Office, 6300 Ocean Dr., Campus Box 338, Corpus Christi, TX 78412

Field Supervisor, U.S. Fish and Wildlife Service, Arlington Field Office, 711 Stadium Dr., East, Suite 252, Arlington, TX 76011

Field Supervisor, U.S. Fish and Wildlife Service, Clear Lake Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058

Field Supervisor, U.S. Fish and Wildlife Service, Oklahoma Field Office, 222 S. Houston, Suite a, Tulsa, OK 74127

Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Field Office, 2105 Osuna, NE, Albuquerque, NM 87113

Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Serv. Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758

Field Supervisor, U.S. Fish and Wildlife Service, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951

USFWS Region Four

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD—Ecological Services, 1875 Century Blvd., Suite 200, Atlanta, GA 30345

State, Field, and Project Offices (Region Four)

Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1612 June Avenue, Panama City, FL 32405–3721

Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecosystem Field Office, 1360 U.S. Hwy 1, #5; P.O. Box 2676, Vero Beach, FL 32961–2676

Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 491, Boqueron, PR 00622

Field Supervisor, U.S. Fish and Wildlife Service, Puerto Rican Parrot Field Office, P.O. Box 1600, Rio Grande, PR 00745

Field Supervisor, U.S. Fish and Wildlife Service, Brunswick Field Office, 4270 Norwich Street, Brunswick, GA 31520–2523

Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive S., Suite 310, Jacksonville, FL 32216–0912

Field Supervisor, U.S. Fish and Wildlife Service, Charleston Field Office, 217 Ft. Johnson Road, P.O. Box 12559, Charleston, SC 29422–2559

Field Supervisor, U.S. Fish and Wildlife Service, Clemson F.O., Dept. of Forest Resources, 261 Lehotsky Hall, Box 341003, Clemson, SC 29634–1003

Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Field Office, P.O. Box 33726, Raleigh, NC 27636–3726

Field Supervisor, U.S. Fish and Wildlife Service, Cookeville Field Office, 446 Neal Street, Cookeville, TN 38501

Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, NC 28801

Field Supervisor, U.S. Fish and Wildlife Service, Daphne Field Office, P.O. Drawer 1190, Daphne, AL 36526

Field Supervisor, U.S. Fish and Wildlife Service, Vicksburg Field Office, 2524 S. Frontage Road, Suite B, Vicksburg, MS 39180–5269

Field Supervisor, U.S. Fish and Wildlife Svc., Lafayette Field Office, Brandywine II, Suite 102, 825 Kaliste Saloom Road, Lafayette, LA 70508

Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Pkwy Suite A, Jackson, MS 39213

B. National Marine Fisheries Service Offices

The National Marine Fisheries Service is developing a database to provide county and territorial water (up to three miles offshore) information on the presence of endangered and threatened species and critical habitat. The database is projected to be available to the public sometime in December 1997. The database should be found at the ''Office of Protected Resources'' site on the NMFS Homepage at ''http://www.nmfs.gov''.

Regional and Field Office

Southeast Region

Protective Species Management Branch, National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, Florida 33702–2432

III. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers,

corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website (http://www.heritage.tnc.org) which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below:

Oklahoma Natural Heritage Inventory

Oklahoma Biological Survey, 111 East Chesapeake Street, University of Oklahoma, Norman, OK 73019–0575, 405/325–1985 Fax: 405/325–7702, Web site: http://obssun02.uoknor.edu/biosurvey/onhi/home.html

Louisiana Natural Heritage Program

Department of Wildlife & Fisheries, P.O. Box 98000, Baton Rouge, LA 70898–9000, 504/765–2821 Fax: 504/765–2607

Navajo Natural Heritage Program

P.O. Box 1480, Window Rock, Navajo Nation, AZ 86515, (520) 871–7603, (520) 871–7069 (FAX)

Texas Biological and Conservation Data System

3000 South IH–35, Suite 100, Austin, TX 78704, 512/912–7011 Fax: 512/912–7058

IV. County List of Endangered and Threatened Species

Please see February 17, 1998, **Federal Register** Vol. 63 no. 31 for county by county listing or contact EPA Region 6 Storm Water Hotline (1–800–245–6510). EPA's Office of Wastewater Management's web page at ''http://www.epa.gov/owm'' will post periodic updates of the county-by-county list. You may also check the list of endangered and threatened species published by the Fish and Wildlife Service on the Endangered Species Home Page (http://www.fws.gov/~r9endspp/enddspp.htm) which is also attached to the FWS Home Page in the ''Nationwide Activities Category''. List of species under NMFS jurisdiction can be found on the NMFS Homepage (http:www.nmfs.gov) under the ''Protected Resources Program.'' Lists and maps of critical habitat can be found in the Code of Federal Regulations (CFRs) at 50 CFR parts 17 and 226.

Addendum B—Historic Properties (Reserved)

Instructions related to historic preservation have not been included in the permit at this time. EPA may modify the permit to include such provisions at a later date. This does not relieve applicants or permittees of their responsibility to comply with applicable State, Tribal or local laws for the protection of historic properties.

Addendum C—Revised Notice of Intent Form

The Notice of Intent form (EPA3510–9) replaces the Notice of Intent form (EPA 3510–6 (8–98)). The revised form is contained in this Addendum. According to the provisions in Part II.B.1 of this permit, applicants are reminded they must certify that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, or their critical habitat. EPA may modify this permit to include provisions relating to historic preservation.

BILLING CODE 6560–50–P

THIS FORM REPLACES PREVIOUS FORM 3510-6 (8-98)
See Reverse for Instructions

Form Approved. OMB No. 2040-0188

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with CONSTRUCTION ACTIVITY Under a NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State/Indian Country Land identified in Section II of this form. Submission of this Notice of Intent also constitutes notice that the party identified in Section I of this form meets the eligibility requirements in Part I.B. of the general permit (including those related to protection of endangered species determined through the procedures in Addendum A of the general permit), understands that continued authorization to discharge is contingent on maintaining permit eligibility, and that implementation of the Storm Water Pollution Prevention Plan required under Part IV of the general permit will begin at the time the permittee commences work on the construction project identified in Secion II below. IN ORDER TO OBTAIN AUTHORIZATION, ALL INFORMATION REQUESTED MUST BE INCLUDED ON THIS FORM. SEE INSTRUCTIONS ON BACK OF FORM.

I. Owner/Operator (Applicant) Information

Name: _____ Phone: _____

Address: _____ Status of Owner/Operator: ☐

City: _____ State: ___ Zip Code: _____-____

II. Project/Site Information

Is the facility located on Indian Country Lands? Yes ☐ No ☐

Project Name: _____

Project Address/Location: _____

City: _____ State: ___ Zip Code: _____-____

Latitude: _____ Longitude: _____ County: _____

Has the Storm Water Pollution Prevention Plan (SWPPP) been prepared? Yes ☐ No ☐

Optional: Address of location of SWPPP for viewing ☐ Address in Section I above ☐ Address in Section II above ☐ Other address (if known) below:

SWPPP Address: _____ Phone: _____

City: _____ State: ___ Zip Code: _____-____

Name of Receiving Water: _____

_____ (Month Day Year) Estimated Construction Start Date

_____ (Month Day Year) Estimated Completion Date

Estimate of area to be disturbed (to nearest acre): _____

Estimate of Likelihood of Discharge (choose only one):

1. ☐ Unlikely
2. ☐ Once per month
3. ☐ Once per week
4. ☐ Once per day
5. ☐ Continual

Based on instruction provided in Addendum A of the permit, are there any listed endangered or threatened species, or designated critical habitat in the project area?

Yes ☐ No ☐

I have satisfied permit eligibility with regard to protection of endangered species through the indicated section of Part I.B.3.e.(2) of the permit (check one or more boxes):

(a) ☐ (b) ☐ (c) ☐ (d) ☐

III. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: _____ Date: _____

Signature: _____

EPA Form 3510-9 replaced 3510-6 (8-98)

EPA

Instructions – EPA Form 3510-9

Form Approved. OMB No. 2040-0188

Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity to be Covered Under a NPDES Permit

Who Must File a Notice of Intent Form

Under the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et.seq.; the Act), except as provided by Part I.B.3 the permit, Federal law prohibits discharges of pollutants in storm water from construction activities without a National Pollutant Discharge Elimination System Permit. Operator(s) of construction sites where 5 or more acres are disturbed, smaller sites that are part of a larger common plan of development or sale where there is a cumulative disturbance of at least 5 acres, or any site designated by the Director, must submit an NOI to obtain coverage under an NPDES Storm Water Construction General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a State agency, write to or telephone the Notice of Intent Processing Center at (703) 931-3230.

Where to File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent (4203)
USEPA
401 M. Street, SW
Washington, D.C. 20460

Do not send Storm Water Pollution Prevention Plans (SWPPPs) to the above address. For overnight/express delivery of NOIs, please include the room number 2104 Northeast Mall and phone number (202) 260-9541 in the address.

When to File

This form must be filed at least 48 hours before construction begins.

Completing the Form

OBTAIN AND READ A COPY OF THE APPROPRIATE EPA STORM WATER CONSTRUCTION GENERAL PERMIT FOR YOUR AREA. To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks (abbreviate if necessary to stay within the number of characters allowed for each item). Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Notice of Intent Processing Center at (703) 931-3230.

Section I. Facility Owner/Operator (Applicant) Information

Provide the legal name, mailing address, and telephone number of the person, firm, public organization, or any other entity that meet either of the following two criteria: (1) they have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) they have the day-to-day operational control of those activities at the project necessary to ensure compliance with SWPPP requirements or other permit conditions. Each person that meets either of these criteria must file this form. Do not use a colloquial name. Correspondence for the permit will be sent to this address.

Enter the appropriate letter to indicate the legal status of the owner/operator of the project: F = Federal; S = State; M = Public (other than federal or state); P = Private.

Section II. Project/Site Information

Enter the official or legal name and complete street address, including city, county, state, zip code, and phone number of the project or site. If it lacks a street address, indicate with a general statement the location of the site (e.g., Intersection of State Highways 61 and 34). Complete site information must be provided for permit coverage to be granted.

The applicant must also provide the latitude and longitude of the facility in degrees, minutes, and seconds to the nearest 15 seconds. The latitude and longitude of your facility can be located on USGS quadrangle maps. Quadrangle maps can be obtained by calling 1-800 USA MAPS. Longitude and latitude may also be obtained at the Census Bureau Internet site: http://www.census.gov/cgi-bin/gazetteer.

Latitude and longitude for a facility in decimal form must be converted to degrees, minutes and seconds for proper entry on the NOI form. To convert decimal latitude or longitude to degrees, minutes, and seconds, follow the steps in the following example.

Convert decimal latitude 45.1234567 to degrees, minutes, and seconds.

1) The numbers to the left of the decimal point are degrees.
2) To obtain minutes, multiply the first four numbers to the right of the decimal point by 0.006. 1234 x .006 = 7.404.
3) The numbers to the left of the decimal point in the result obtained in step 2 are the minutes: 7'.
4) To obtain seconds, multiply the remaining three numbers to the right of the decimal from the result in step 2 by 0.06: 404 x 0.06 = 24.24. Since the numbers to the right of the decimal point are not used, the result is 24".
5) The conversion for 45.1234 = 45° 7' 24".

Indicate whether the project is on Indian Country Lands.

Indicate if the Storm Water Pollution Prevention Plan (SWPPP) has been developed. Refer to Part IV of the general permit for information on SWPPPs. To be eligible for coverage, a SWPPP must have been prepared.

Optional: Provide the address and phone number where the SWPPP can be viewed if different from addresses previously given. Check appropriate box.

Enter the name of the closest water body which receives the project's construction storm water discharge.

Enter the estimated construction start and completion dates using four digits for the year (i.e. 05/27/1998).

Enter the estimated area to be disturbed including but not limited to: grubbing, excavation, grading, and utilities and infrastructure installation. Indicate to the nearest acre; if less than 1 acre, enter "1." Note: 1 acre = 43,560 sq. ft.

Indicate your best estimate of the likelihood of storm water discharges from the project. EPA recognizes that actual discharges may differ from this estimate due to unforeseen or chance circumstances.

Indicate if there are any listed endangered or threatened species, or designated critical habitat in the project area.

Indicate which Part of the permit that the applicant is eligible with regard to protection of endangered or threatened species, or designated critical habitat.

Section III. Certification

Federal Statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner of the proprietor, or

For a municipality, state, federal, or other public facility: by either a principal executive or ranking elected official. An unsigned or undated NOI form will not be granted permit coverage.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 3.7 hours. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number on any correspondence. Do not send the completed form to this address.

Addendum D—Notice of Termination Form

From the effective date of this permit, permittees are to use the existing Notice of Termination form (EPA Form 3510–7) contained in this Addendum until they are instructed by the Director (EPA) to use a revised version. Permittees are to complete, sign and submit the form in accordance with Part VIII of the permit when terminating permit coverage at a construction project when one or more or the conditions contained in Part I.D.2 have been met.

THIS FORM REPLACES PREVIOUS FORM 3510-7 (8-92)
Please See Instructions Before Completing This Form

Form Approved. OMB No. 2040-0086
Approval expires: 8-31-98

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under a NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: ☐☐☐☐☐☐☐☐☐☐ Check Here if You are No Longer the Operator of the Facility: ☐ Check Here if the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Phone: ☐☐☐ ☐☐☐ ☐☐☐☐

Address: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

City: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ State: ☐☐ ZIP Code: ☐☐☐☐☐-☐☐☐☐

III. Facility/Site Location Information

Name: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Address: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

City: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ State: ☐☐ ZIP Code: ☐☐☐☐☐-☐☐☐☐

Latitude: ☐☐☐☐☐ Longitude: ☐☐☐☐☐ Quarter: ☐☐ Section: ☐☐ Township: ☐☐☐ Range: ☐☐☐☐

IV. Certification: I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Date: ☐☐ ☐☐ ☐☐

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under an EPA-issued National Pollutant Discharge Elimination System (NPDES) General Permit (including the 1995 Multi-Sector Permit) for Storm Water Dicharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26(b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination (4203)
401 M Street, S.W.
Washington, DC 20460

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, telephone or write the Notice of Intent Processing Center at (703) 931-3230.

EPA Form 3510-7 (8-98)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, telephone or write your EPA Regional storm water contact person.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, an other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 98–17521 Filed 7–2–98; 8:45 am]
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federal register

Monday
July 6, 1998

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 13, 16, 32 and 52

Federal Acquisition Regulation; Electronic Funds Transfer; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 16, 32 and 52

[FAR Case 91–118]

RIN 9000–AG49

Federal Acquisition Regulation; Electronic Funds Transfer

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments and to facilitate implementation of Public Law 104–134 which mandates payment by EFT in certain situations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 4, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over the Internet should be addressed to: farcase.91–118@gsa.gov.

Please cite FAR case 91–118 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAR case 91–118.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** on August 29, 1996 (61 FR 45770) to implement subsection (x)(1) of the Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act is chapter 10 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134). Subsection (x)(1) amends 31 U.S.C. 3332 to require, beginning July 26, 1996, that all Federal payments to a recipient who becomes eligible for that type of payment shall be made by electronic funds transfer. The statute provides an exemption for payments to certain recipients, and stipulates that the Department of the Treasury is responsible for issuing regulations necessary for carrying out the statute. On July 26, 1996, the Department of the Treasury's Financial Management Service issued an interim rule (61 FR 39254) which added Part 208 to Title 31, Code of Federal Regulations, to provide regulations for payments through EFT.

This proposed FAR rule differs significantly from the interim FAR rule. One of the main differences is the location where the Government will receive the contractor's EFT information. The interim rule clauses at 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, and 52.232–34, Optional Information for Electronic Funds Transfer Payment, require the contractor to submit that information directly to the payment office. The proposed rule revises these two contract clauses with new language at 52.232–33, Payment by Electronic Funds Transfer (CCR), and 52.232–34, Payment by Electronic Funds Transfer (Non-CCR). The new clause at 52.232–33 is prescribed when the payment office uses the Central Contract Registration (CCR) database as its source of EFT information. The new clause at 52.232–34 is used when the contractor submits EFT information to a source other than the CCR database.

The proposed rule also recognizes that agencies may use differing administrative approaches in the collection, tracking, and maintenance of contractor EFT banking information. The two most distinctly different approaches are those that involve obtaining contractor banking information prior to award (as a condition of award) as opposed to obtaining that information after award (as a normal contract performance duty).

The proposed rule also differs from the interim rule by more rigidly requiring payment by EFT except for two categories of exceptions described at FAR 32.1103–1: ''non-banked contractors'' and ''non-EFT system''. In contrast, the interim rule provides the clause at 52.232–34 for optional submission of EFT information by the contractor for payments occurring on or before January 1, 1999. The determination whether a particular payment must be made by EFT is made by the payment official. In addition, the proposed rule contains three new clauses at 52.232–X1, Designation of Office for Government Receipt of EFT Information, 52.232–X2, Payment by Third Party, and 52.232–X3, Multiple Payment Arrangements. The clause at 52.232–X1 is prescribed when the Government has designated an office other than the payment office to receive the contractor's EFT information. The clause at 52.232–X2 is prescribed when payment on a written contract is made by a third party on behalf of the Government (*e.g.*, Governmentwide commercial purchase card). The clause at 52.232–X3 is prescribed when the contract or agreement provides for the use of delivery orders and provides for multiple types of payment arrangements. The solicitation provision at 52.232–X4, Submission of EFT Information with Offer, is prescribed when the Government has determined that EFT banking information is to be submitted prior to award, along with the offer.

Public comments were received from sixteen sources. All comments were considered in the development of this proposed rule.

B. Regulatory Flexibility Act

The rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the majority of small entities will have payment made by EFT under their contracts. An Initial Regulatory Flexibility Analysis (IRFA) was performed in conjunction with the interim rule published at 61 FR 45770, August 29, 1996, and a revised Initial Regulatory Flexibility Analysis has been performed in conjunction with this proposed rule. The analysis is summarized as follows:

The rule will apply, prior to January 2, 1999, to all small businesses who enter into contracts with the Federal Government except for two categories: ''Non-banked'' contractors'' and ''Non-EFT system''. ''Non-banked contractors'' are those contractors who do not have an account at a domestic United States financial institution and do not have an authorized payment agent. These contractors are waived from the requirement to be paid by EFT, upon submission of a certificate. Contractors are also exempt from receiving payment by EFT if agencies are unable to make payment because of system limitations. This ''non-EFT system'' category consists of contracts (1) in which the cognizant payment offices are not capable of making payment through EFT; (2) that are paid in other than U.S. dollars; (3) that are classified; (4) that are awarded by a deployed

contracting officer in the course of military operations; and (5) where payments are received by, or on behalf of, the contractor outside the United States or Puerto Rico. On and after January 2, 1999, however, payments under all contracts, subject to implementing regulations of the Secretary of the Treasury, are required to be made by EFT. To date no supporting data has been collected, therefore there is no estimate available of the number of small businesses that will be subject to the rule.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subparts shall also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 91–118 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) applies because the proposed rule contains information collection requirements. The Office of Management and Budget has approved an information collection concerning Electronic Funds Transfer (9000–0144) through August 31, 1999, based on the requirements in the interim rule for contractors to provide EFT information for each contract award. The proposed rule decreases the collection requirements since the rule permits contractors to provide EFT information to the CCR database on an annual basis, rather than per contract award.

Annual Reporting Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents:* 14,000; *Responses per respondent:* 10; *Total annual responses:* 140,000; *Preparation hours per response:* .5; and *Total response burden hours:* 70,000.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under **ADDRESSES.** Please cite FAR case 91–118, Electronic Funds Transfer, in all correspondence related to this estimate.

List of Subjects in 48 CFR Parts 13, 16, 32 and 52

Government procurement.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 13, 16, 32 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 13, 16, 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 13.301 is amended in paragraph (c)(3) by adding a sentence at the end to read as follows:

13.301 Governmentwide commercial purchase card.

* * * * *

(c) * * *

(3) * * * See 32.1105(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

3. Section 13.302–1 is amended by revising paragraph (e) to read as follows:

13.302–1 General.

* * * * *

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) is required for payments except as provided in 32.1103–1. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

PART 16—TYPES OF CONTRACTS

4. Section 16.505 is amended in paragraph (a) by redesignating paragraph (a)(6)(viii) as (a)(6)(ix) and by adding a new (a)(6)(viii) to read as follows:

16.505 Ordering.

(a) * * *

(6) * * *

(viii) Method of payment and payment office, if not specified in the contract (see 32.1105(e)).

* * * * *

PART 32—CONTRACT FINANCING

5. Subpart 32.11 is revised to read as follows:

Subpart 32.11—Electronic Funds Transfer

Sec.
32.1100 Scope of subpart.
32.1101 Statutory requirements.
32.1102 Definitions.
32.1103 Policy.
32.1103–1 Applicability.
32.1103–2 Protection of EFT information.
32.1103–3 Assignment of claims.
32.1103–4 EFT mechanisms.
32.1103–5 Government inability to make EFT payment.
32.1103–6 Payment information.
32.1103–7 EFT for contracts awarded from solicitations issued prior to July 26, 1996.
32.1104 Payment by Governmentwide commercial purchase card.
32.1105 Solicitation provision and contract clauses.

Subpart 32.11—Electronic Fund Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for providing financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

For contracts resulting from solicitations issued on or after July 26, 1996, 31 U.S.C. 3332, as implemented by Department of the Treasury regulations, requires payment be made by EFT in most situations (see 32.1103–1). For all contracts, regardless of solicitation date, 31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury, that all payments made after January 1, 1999, be made by EFT.

32.1102 Definitions.

EFT information means information necessary for making a payment by electronic funds transfer through specified EFT mechanisms.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Federal Reserve Wire

transfers, transfers made at automatic teller machines, and point-of-sale terminals (*e.g.*, Governmentwide commercial purchase cards).

Governmentwide commercial purchase card, as used in this part, means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

Payment information means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Policy.

Except as authorized by this subpart or otherwise authorized in accordance with Treasury regulations at 31 CFR 208, all types of contract payments shall be made by an EFT method.

32.1103–1 Applicability.

Pursuant to 31 U.S.C. 3332, payment through EFT is the required method of contract payment. However, certain classes of contracts have been authorized limited exceptions from the requirement to pay by EFT.

(a) Non-Banked Contractors. Through January 1, 1999, contractors that do not have an account at a domestic United States financial institution and do not have an authorized payment agent are waived from the requirement to be paid by EFT, upon submission of a certification (see paragraph (b) of the EFT clauses at 52.232–33 and 52.232–34).

(b) Non-EFT System. (1) If the Government office making payment under the contract is not capable of making payment through EFT, payment by other than EFT is authorized, subject to the requirements of 31 CFR 208.3(c) (see 32.1103–5).

(2) Except as provided in 32.1103–4(b), if the payment is to be received by or on behalf of the contractor, outside the United States and Puerto Rico, payment shall be made by other than EFT.

(3) Except as provided in 32.1103–4(b), if a contract is paid in other than United States currency, payment shall be made by other than EFT.

(4) If a contract is a classified contract (see 4.401), the contract shall provide for payment by other than EFT where payment by EFT could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations.

(5) If a contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or if a contract is awarded by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, the contract shall provide for payment by other than EFT where—

(i) EFT is not known to be possible; or

(ii) EFT payment would not support the objectives of the operation.

32.1103–2 Protection of EFT information.

The Government shall protect against improper disclosure of contractors' EFT information.

32.1103–3 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the ''Suspension of Payment'' paragraphs of the EFT clauses at 52.232–33 and 52.232–34.

32.1103–4 EFT mechanisms.

(a) *Domestic EFT.* The EFT clauses at 52.232–33 and 52.232–34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms of EFT (U.S. Automated Clearing House, and Federal Reserve Wire Transfer System). The head of the agency shall not authorize the use of any other EFT mechanism for domestic EFT without the prior concurrence of the office or agency responsible for making payments.

(b) *Non-Domestic EFT Mechanisms and Non-United States Currency.* For payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in non-United States currency, payment shall be made by other than EFT. However, if the head of an agency determines that a particular non-domestic EFT mechanism is appropriate and safe for use outside the domestic United States, or for payments of non-United States currency, the head of the agency may authorize appropriate use of EFT. Any such determination shall not be made effective without the prior concurrence of the office or agency responsible for making payments.

32.1103–5 Government inability to make EFT payment.

(a) If the Government payment office is not capable of making payment by EFT, the Government is relieved of the requirement to pay by EFT if the agency complies with 31 CFR 208.3(c), which requires written notice and submittal of an implementation plan to the Department of the Treasury, Financial Management Service.

(b) If the payment office does not have or loses the ability to release payment by EFT under a contract that requires payment by EFT, to the extent authorized by 31 CFR 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232–33 or 52.232–34 until such time as it can make EFT payments.

32.1103–6 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System.

32.1103–7 EFT for contracts awarded from solicitations issued prior to July 26, 1996.

(a) Prior to January 2, 1999, payment by EFT is not required on contracts resulting from solicitations issued prior to July 26, 1996. However, while not statutorily required, it is nevertheless Federal policy to maximize the use of EFT. For contracts to be paid by payment offices capable of making EFT payments, the contracting officer is encouraged to use EFT, whenever reasonable, in any contract resulting from a pre-July 26, 1996, solicitation for which the contractor is willing to accept payment by EFT. The contractor's willingness to accept payment by EFT constitutes sufficient consideration for modification of existing contracts to incorporate EFT.

(b) Regardless of the solicitation date of the contract, all payments to be made after January 1, 1999, shall be made by EFT, to the extent required by the implementing regulations of the Secretary of the Treasury, whether or not an EFT clause is included in the contract.

32.1104 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the Third Party (*e.g.*, financial institution) that issued the purchase card to make immediate payment to the contractor.

That payment is reimbursed at a later date by a subsequent payment by the Government to the Third Party.

(a) The clause at 52.232–X2, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the Third Party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the Third Party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603–3(b)) shall take action to remove the charge, such as by disputing the charge with the Third Party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause 52.232–X2, Payment by Third Party, as prescribed by 32.1105(d). However, payment by a purchase card may also be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232–X2, Payment by Third Party, requires that the Third Party and the particular purchase card to be used be identified elsewhere in the contract. The purchase card account number should not be included in the contract, but should be separately provided.

32.1105 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103–1(b)(2) through (5) applies—

(1) The contracting officer shall insert the clause at 52.232–33, Payment by Electronic Funds Transfer (CCR), in all solicitations and contracts if the payment office uses the CCR database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT.

(2)(i) The contracting officer shall insert the clause at 52.232–34, Payment by Electronic Funds Transfer (Non-CCR), in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (c)(1) of the clause, a particular time after award, such as a fixed number of days. However, in no event shall the time period be later than 15 days prior to submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (c)(1) of the clause shall be ''no later than 15 days prior to submission of the first request for payment.''

(b) If the head of the agency has made a determination in accordance with 32.1103–4(b) to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232–33 or 52.232–34 that clearly addresses the non-domestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232–X1, Designation of Office for Government Receipt of EFT Information, or a clause substantially the same as 52.232–X1 that clearly informs the contractor of where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232–X2, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232–X2, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides for a choice of payment methods for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232–X3, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232–33, Payment by Electronic Funds Transfer (CCR);

(2) 52.232–34, Payment by Electronic Funds Transfer (Non-CCR); and

(3) 52.232–X2, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232–34, Payment by Electronic Funds Transfer (Non-CCR), and an offeror is required to submit EFT information prior to award, the contracting officer shall insert in the solicitation the provision at 52.232–X4, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.212–4 is amended by revising the clause date and the third sentence in paragraph (i) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Date)

* * * * *

(i) *Payment.* * * * If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212–5 for the appropriate EFT clause. * * *

* * * * *

7. Section 52.212–5 is amended by revising the clause date; and in paragraph (b) by redesignating (b)(16) and (17) as (19) and (20), respectively, and by adding new paragraphs (16), (17), and (18) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

_____ (16) 52.232–33, Payment by Electronic Funds Transfer (CCR) (31 U.S.C. 3332).

_____ (17) 52.232–34, Payment by Electronic Funds Transfer (Non-CCR) (31 U.S.C. 3332).

_____ (18) 52.232–X2, Payment by Third Party (31 U.S.C. 3332).

* * * * *

8. Section 52.213–4 is amended by revising the clause date; by removingparagraph (a)(2)(vi) and redesignating paragraphs (a)(2)(vii) through (a)(2)(ix) as (a)(2)(vi) through

(a)(2)(viii); and by adding paragraphs (b)(1)(ix) and (b)(1)(x) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

Terms and Conditions—Simplified Acquisition (Other Than Commercial Items) (Date)

* * * * *

(b) * * *

(1) * * *

* * * * *

(ix) 52.232–33, Payment by Electronic Funds Transfer (CCR) (Date). (Applies when payment will be made by EFT and the payment office uses the Central Contractor Registration database as its source of EFT information.)

(x) 52.232–34, Payment by Electronic Funds Transfer (Non-CCR) (Date). (Applies when payment will be made by EFT and the payment office does not use the Central Contractor Registration database as its source of EFT information.)

* * * * *

9. Sections 52.232–33 and 52.232–34 are revised and new sections 52.232-X1 through 52.232–X4 are added to read as follows:

52.232–33 Payment by Electronic Funds Transfer (CCR).

As prescribed in 32.1105(a)(1), insert the following clause:

Payment by Electronic Funds Transfer (CCR) (Date)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (b) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (e) of this clause).

(b) *Alternative contractor certification.* If the Contractor certifies in writing, as part of its registration with the Central Contractor Registration (CCR) database (FAR 4.503), that it does not have an account with a financial institution and does not have an authorized payment agent, payment shall be made by check to the remittance address contained in the CCR database. All contractor certifications will expire on January 1, 1999.

(c) *Contractor's EFT information.* Except as provided in paragraph (b) of this clause, the Government shall make payment to the Contractor using the EFT information contained in the CCR database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(d) *Mechanisms for EFT payment.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System.

(e) *Suspension of Payment.* If the Contractor's EFT information in the CCR database is incorrect and the Contractor has not certified under paragraph (b) of this clause, then the Government need not make payment to the Contractor under this contract until correct EFT information or certification is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(f) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (*i.e.*, more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor's EFT information in the correct manner, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (e) shall apply.

(h) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(k) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Contractor has certified in accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of clause)

52.232–34 Payment by Electronic Funds Transfer (Non-CCR).

As prescribed in 32.1105(a)(2), insert the following clause:

Payment by Electronic Funds Transfer (Non-CCR) (Date)

(a) *Method of Payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (b) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due dates until such time as the Government makes payment by EFT (but see paragraph (e) of this clause).

(b) *Alternative Contractor Certification.* If the Contractor certifies in writing to the designated office (see paragraph (c)(1) of this clause) that is does not have an account with a financial institution and does not have an authorized payment agent, payment shall be made by check to the remittance address specified in this contract and the Contractor need not provide EFT information. All contractor certifications will expire on January 1, 1999. For any payments to be made after January 1, 1999, the Contractor

shall provide EFT information as described in paragraph (k) of this clause and payment shall be made by EFT.

(c) *Mandatory submission of Contractor's EFT information.* (1) Except as provided in paragraph (b) of this clause, the Contractor is required, as a condition to any invoice or contract financing payment under this contract, to provide the Government with the information required to make payment by EFT (see paragraph (k) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: ''designated office'') by [*Insert date, days after award, or days before first request as prescribed by Agency head; if not prescribed, insert ''no later than 15 days prior to submission of the first request for payment''*]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts which identify that designated office as the office to receive EFT information for that contract.

(d) *Mechanisms for EFT Payment.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System.

(e) *Suspension of Payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor or a certificate submitted in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information or certificate, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor's EFT information in the correct manner, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (e) shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (k) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Contractor has certified in accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(k) *EFT Information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (c) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT using the EFT methods described in paragraph (d) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) The Federal Reserve Wire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If the Contractor's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(End of clause)

52.232–X1 Designation of Office for Government Receipt of EFT Information.

As prescribed in 32.1105(c) insert the following clause:

Designation of Office for Government Receipt of EFT Information (Date)

(a) As provided for in paragraph (c) of the clause at 52.232–34, Payment by Electronic Funds Transfer (Non-CCR), the Government has designated the following office as the office to receive the Contractor's EFT information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes of EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name: _____

Mailing Address: _____

_____

_____

Telephone Number: _____

Person to Contact: _____

Electronic Address: _____

(End of clause)

52.232–X2 Payment by Third Party.

As prescribed in 32.1105(d), insert the following clause:

Payment by Third Party (Date)

(a) *General.* The Contractor agrees to accept payments due under this contract, through payment by a Third Party in lieu of payment directly from the Government, in accordance with the terms of this clause. The Third Party and the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) *Contractor payment request.* In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the Third Party, at the time and for the amount due in accordance with the terms of this contract.

(c) *Payment.* The Contractor and the Third Party shall agree that payments due under this contract shall be made upon submittal of payment requests to the Third Party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the Third Party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the Third Party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of Claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the Assignment of Claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) *Other Payment Terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided for in the Third Party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

53.232–X3 Multiple Payment Arrangements.

As prescribed in 32.1105(e), insert the following clause:

Multiple Payment Arrangements (Date)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232–X4 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1105(g), insert the following provision:

Submission of Electronic Funds Transfer Information With Offer (Date)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (c)(1) and (k) of the clause at 52.232–34, Payment By Electronic Funds Transfer (Non-CCR).

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, saving, or lockbox).

(6) The Federal Reserve Wire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If the offeror's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(End of provision)

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Monday
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Part IV

The President

Proclamation 7107—To Modify Duty-Free Treatment Under the Generalized System of Preferences

Federal Register
Vol. 63, No. 128
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Presidential Documents

Title 3—

The President

Proclamation 7107 of June 30, 1998

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501, 503(a)(1)(A), and 503(c)(1) of title V of the Trade Act of 1974, as amended (''the 1974 Act'') (19 U.S.C. 2461, 2463(a)(1)(A), and 2463(c)(1)), as amended, the President may designate or withdraw designation of specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Pursuant to section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)), a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), during the preceding calendar year.

4. Pursuant to section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)), the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article of any beneficiary developing country if certain conditions are met.

6. Section 507(2) of the 1974 Act (19 U.S.C. 2467(2)) provides that in the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may provide that all members of such association other than members which are barred from designation under section 502(b) of the 1974 Act (19 U.S.C. 2462(b)) shall be treated as one country for purposes of title V of the 1974 Act.

7. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the International Trade Commission in accordance with section 503(e), I have determined to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles from additional beneficiary developing countries. In order to do so, it is necessary to subdivide and amend the nomenclature of existing subheadings of the HTS.

For certain articles, I have decided that the effective date of designation shall be determined by the United States Trade Representative (USTR).

8. Pursuant to section 503(c)(1) of the 1974 Act, I have determined to limit the application of duty-free treatment accorded to certain articles from certain beneficiary developing countries.

9. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary developing countries should not receive preferential tariff treatment under the GSP with respect to certain eligible articles imported in quantities that exceed the applicable competitive need limitation.

10. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

11. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries. For certain articles, I have decided that the effective date of the waiver shall be determined by the USTR.

12. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States. For a certain article, I have decided that the effective date of the waiver shall be determined by the USTR.

13. Pursuant to section 507(2) of the 1974 Act, I have determined that members of the West African Economic and Monetary Union (WAEMU) should be treated as one country for purposes of title V of the 1974 Act.

14. Pursuant to section 507(2) of the 1974 Act, I have determined that members of the Southern African Development Community (SADC) should be treated as one country for purposes of title V of the 1974 Act. The USTR shall determine which specific members of the SADC are to be included in the designation under section 507(2) of the 1974 Act and shall determine the effective date or dates of the designation. The USTR shall announce by publication in the **Federal Register** the specific SADC members to be included in the designation and the effective date or dates.

15. Pursuant to section 507(2) of the 1974 Act, I have determined that members of the Tripartite Commission for East African Cooperation (EAC) should be treated as one country for purposes of title V of the 1974 Act. The USTR shall determine which specific members of the EAC are to be included in the designation under section 507(2) of the 1974 Act and shall determine the effective date or dates of the designation. The USTR shall announce by publication in the **Federal Register** the specific EAC members to be included in the designation and the effective date or dates.

16. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be designated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and that one or more countries should not be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4 to the HTS is modified as provided in section A of Annex I and section A of Annex IV to this proclamation.

(2) In order to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles from additional beneficiary developing countries, the HTS is modified by amending and subdividing the nomenclature of existing HTS subheadings as provided in section B of Annex I to this proclamation.

(3)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country, the Rates of Duty 1-Special subcolumn for certain HTS subheadings is modified as provided in section C(1) of Annex I and section B of Annex IV to this proclamation.

(b) In order to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles from additional beneficiary developing countries, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in section C(2) of Annex I to this proclamation is modified as provided in such section.

(c) In order to provide preferential tariff treatment under the GSP to beneficiary developing countries that have been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section C(3) of Annex I to this proclamation is modified as provided in such section.

(d) In order to provide that one or more countries should not be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section C(4) of Annex I to this proclamation is modified as provided in such section.

(4) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex II and in section C of Annex IV to this proclamation.

(5) In order to provide for the continuation of previously proclaimed staged reductions of duties in the Rates of Duty 1-General subcolumn for goods that fall in the HTS subheadings modified by section B of Annex I to this proclamation and that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in section A of Annex III to this proclamation, the rate of duty in the HTS set forth in such subcolumn for each of the HTS subheadings enumerated in section A of Annex III to this proclamation is deleted and the rate of duty provided in such section is inserted in lieu thereof.

(6) In order to provide for the continuation of previously proclaimed staged reductions of duties in the Rates of Duty 1-Special subcolumn for certain goods of Mexico that fall in the HTS subheadings modified by section B of Annex I to this proclamation and effective with respect to goods of Mexico under the terms of general note 12 to the HTS that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in section B of Annex III to this proclamation, the rate of duty in the HTS set forth in such subcolumn followed by the symbol ''MX'' in parentheses for each of the HTS subheadings enumerated in section B of Annex III to this proclamation is deleted and the rate of duty provided in such section is inserted in lieu thereof.

(7) In order to reflect in the HTS the decision that members of the WAEMU should be treated as one country for purposes of title V of the

1974 Act, and to enumerate the member countries, general note 4(a) to the HTS is modified as provided in Annex V to this proclamation.

(8) In order to reflect in the HTS the decision that members of the SADC should be treated as one country for purposes of title V of the 1974 Act, and to enumerate those member countries that should benefit from such designation, general note 4(a) to the HTS is to be modified as set forth in a notice or notices that the USTR shall cause to be published in the **Federal Register.** Such notice or notices should direct the insertion in general note 4(a) of the title of the association and the names of those member countries that should be treated as one country for purposes of title V of the 1974 Act, and should specify the effective date of such designation.

(9) In order to reflect in the HTS the decision that members of the EAC should be treated as one country for purposes of title V of the 1974 Act, and to enumerate those member countries that should benefit from such designation, general note 4(a) to the HTS is to be modified as set forth in a notice or notices that the USTR shall cause to be published in the **Federal Register.** Such notice or notices should direct the insertion in general note 4(a) of the title of the association and the names of those member countries that should be treated as one country for purposes of title V of the 1974 Act, and should specify the effective date of such designation.

(10) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(11)(a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1998.

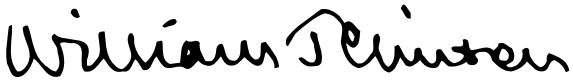
(b) The action taken in Annex II to this proclamation shall be effective on the date of signature of this proclamation.

(c) The modifications made by Annex III to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in such Annex.

(d) The modifications made by Annex IV to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the **Federal Register** by the USTR.

(e) The modification made by Annex V to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, 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.



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Annex I

Modifications to the Harmonized Tariff Schedule of the United States ("HTS")

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1998.

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States ("HTS") is modified, as provided in this section.

(1). deleting the following HTS subheadings and the country set out opposite such subheadings:

0711.40.00	India
0811.20.20	Chile
4411.19.40	Brazil
7103.99.10	Thailand
7615.19.10	Thailand
8108.90.60	Russia
8112.11.60	Kazakhstan
8409.99.99	Brazil

(2). by deleting the country set out opposite the following subheading:

2916.31.15	Estonia
8409.99.91	Brazil
9025.11.20	Brazil

(3). by adding, in numerical sequence, the following HTS provisions and countries set out opposite them:

0202.30.10	Argentina
0708.90.30	Ecuador
0710.29.30	Ecuador
0711.30.00	Turkey
0712.90.74	Turkey
0802.50.20	Turkey
0802.90.80	Guatemala
1006.30.10	India
1602.50.09	Argentina
1604.15.00	Chile
1701.91.42	Jamaica
2002.90.40	Turkey
2009.30.10	Honduras
2101.20.32	India
2106.90.06	Colombia
2208.90.05	Trinidad and Tobago
2401.20.57	Indonesia
2516.90.00	South Africa
3204.12.20	Argentina; India
3204.12.30	Argentina; India
3204.12.45	Argentina; India
3204.12.50	Argentina; India
3824.90.28	India
3920.62.00	India
4104.39.40	Argentina
4409.10.40	Chile
4412.22.50	Indonesia
4809.10.20	Guatemala
6501.00.60	Colombia
7113.19.29	India
7117.90.55	Peru
7202.50.00	Russia
7206.90.00	Trinidad and Tobago
7307.91.30	Brazil
7401.10.00	India
7407.22.30	Russia
7409.39.50	Hungary
7411.21.50	Trinidad and Tobago
7614.90.20	Venezuela
7904.00.00	South Africa
8525.20.05	Philippines
8528.12.16	Thailand
8534.00.00	Thailand
8606.30.00	India
8708.40.50	Brazil
9001.30.00	Indonesia
9614.20.60	Turkey

Annex I (continued)

Section A. (con.)

(4). by adding, in alphabetical order, the country or countries set out opposite the following HTS subheadings:

1604.14.50	Indonesia	2901.29.50	South Africa
1806.10.65	India	2907.29.25	South Africa
2825.30.00	South Africa	3817.10.50	Indonesia
2840.11.00	Turkey	4106.12.00	Pakistan
2840.19.00	Turkey	4412.29.45	Ecuador
2841.90.10	South Africa	7113.19.50	Turkey
2843.30.00	Colombia	8531.20.00	Philippines
2849.90.50	South Africa		

Section B. The Harmonized Tariff Schedule of the United States ("HTS") is modified, as provided in this section.

The following provisions supersedes matter now in the HTS. Bracketed matter is included to assist in the understanding of proclaimed modifications. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

(1). HTS subheading 0712.90.75 is superseded by:

	[Dried vegetables, whole, cut, sliced,...:]			
	[Other vegetables; mixtures of...:]			
	"Tomatoes:			
0712.90.74	In powder.....	10.1%	Free (A*,CA,E, IL,J,MX)	35%
0712.90.78	Other.....	10.1%	Free (A+,CA,E, IL,J,MX)	35%"

(2). HTS subheading 2002.90.00 is superseded by:

	[Tomatoes prepared or preserved...:]			
"2002.90	Other:			
2002.90.40	In powder.....	12.3%	Free (A*,CA,E IL,J) 5.7% (MX)	50%
2002.90.80	Other.....	12.3%	Free (A+,CA,E, IL,J) 5.7% (MX)	50%"

Section C. An article's preferential tariff treatment under the Generalized System of Preferences ("GSP") in the Harmonized Tariff Schedule of the United States ("HTS") is modified as provided in this section.

(1). For HTS subheading 0703.10.40, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+" in the parentheses following the "Free" rate and by inserting the symbol "A" in lieu thereof.

(2). For the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+" in the parentheses following the "Free" rate and by inserting the symbol "A*" in lieu thereof.

3204.12.20	3204.12.50
3204.12.30	3824.90.28
3204.12.45	

Annex I (continued)

Section A. (con.)

(3). For the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

0711.40.00	4411.19.40	7615.19.10	8112.11.60
0811.20.20	7103.99.10	8108.90.60	8409.99.99

(4). For the following HTS provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting an "A*" in lieu thereof:

0202.30.10	2009.30.10	4809.10.20	7411.21.50
0708.90.30	2101.20.32	6501.00.60	7614.90.20
0710.29.30	2106.90.06	7113.19.29	7904.00.00
0711.30.00	2208.90.05	7117.90.55	8525.20.05
0802.50.20	2401.20.57	7202.50.00	8528.12.16
0802.90.80	2516.90.00	7206.90.00	8534.00.00
1006.30.10	3920.62.00	7307.91.30	8606.30.00
1602.50.09	4104.39.40	7401.10.00	8708.40.50
1604.15.00	4409.10.40	7407.22.30	9001.30.00
1701.91.42	4412.22.50	7409.39.50	9614.20.60

Annex II

Harmonized Tariff Schedule of the United States ("HTS")
Subheadings and Countries Granted Waivers of the
Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
0811.20.20	Chile
1604.30.20	Russia
2933.71.00	Russia
8108.90.60	Russia

Annex III

Staged Rate Modifications to the Harmonized
Tariff Schedule of the United States ("HTS")

Section A. For the following HTS subheadings, the Rates of Duty 1-General subcolumn is modified on January 1 of each of the years indicated in the table below by deleting the existing rate of duty and inserting in lieu thereof the rate of duty specified for such year.

HTS Subheading	1999	2000
0712.90.74	9.4%	8.7%
0712.90.78	9.4%	8.7%
2002.90.40	11.9%	11.6%
2002.90.80	11.9%	11.6%

Annex IV (continued)

Section B. For the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified on January 1 of each of the dates in the table below by deleting the existing rate of duty preceding the symbol "MX" in parentheses in such subcolumn and inserting in lieu thereof the rate of duty specified below for such date.

HTS Subheading	1999	2000	2001	2002	2003
2002.90.40	4.6%	3.4%	2.3%	1.1%	Free
2002.90.80	4.6%	3.4%	2.3%	1.1%	Free

Annex IV

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the *Federal Register* by the United States Trade Representative, the following actions shall take effect.

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States ("HTS") is modified by deleting the country set out opposite the following HTS subheadings:

2825.30.00	South Africa	2849.90.50	South Africa
2841.90.10	South Africa	2907.29.25	South Africa

Section B. Modifications to the Harmonized Tariff Schedule of the United States ("HTS") of an article's preferential tariff treatment under the Generalized System of Preferences ("GSP").

For the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A+," in the parentheses following the "Free" rate and by inserting the symbol "A," in lieu thereof.

7108.12.50
7108.13.70
8704.10.50

Section C. A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to imports of eligible articles from South Africa that are provided for in HTS subheading 2849.90.50.

Annex V

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, general note 4(a) of the Harmonized Tariff Schedule of the United States is modified

Annex IV (continued)

by adding to the "Association of Countries (treated as one country)", the following:

"Member Countries of the West African Economic and Monetary Union (WAEMU)"

Consisting of:

Benin
Burkina Faso
Cote d'Ivoire
Guinea-Bissau
Mali
Niger
Senegal
Togo"

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Reader Aids

Federal Register

Vol. 63, No. 128

Monday, July 6, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

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Electronic and on-line services (voice)	**523–4534**
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FEDERAL REGISTER PAGES AND DATES, JULY

35787–36150 1
36151–36338 2
36339–36540 6

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7107 36531
Executive Orders:
11958 (Amended by EO 13091) 36153
12163 (Amended by EO 13091) 36153
13090 36151
13091 36153
Administrative Orders:
Presidential Orders:
No. 98–31 36149

5 CFR

Proposed Rules:
2420 35882
2421 35882
2422 35882
2423 35882
2470 35882
2472 35882

7 CFR

2 35787
301 36155
457 .....36156, 36157
1980 36157
Proposed Rules:
958 36194
1755 36377

14 CFR

39 .....35787, 35790, 35792, 35793, 35794, 35796, 36158
71 36161
97 .....36162, 36165, 36170
Proposed Rules:
39 .....35884, 36377

15 CFR

922 36339

16 CFR

0 36339
1 36339
3 36339
303 36171

17 CFR

Proposed Rules:
210 35886
229 35886
230 36136
240 .....35886, 36138
249 35886

19 CFR

162 35798
178 35798
Proposed Rules:
4 036379

21 CFR

172 .....36344, 36362
177 36175
178 .....35798, 36176, 36177
510 36178
520 36178
558 36179

22 CFR

40 36365
41 36365

26 CFR

1 36180
48 35799
145 35799
602 35799
648 36180
Proposed Rules:
48 35893

28 CFR

16 36295

30 CFR

901 35805

31 CFR

357 35807
501 35808
515 35808
538 35809
560 35808

33 CFR

Ch. I 36384
100 .....36181, 36182, 36183
117 35820
155 35822
Proposed Rules:
100 36197

34 CFR

74 36144
80 36144

36 CFR

327 35826
1220 35828
1222 35828
1228 35828
1230 35828
1234 35828
1238 35828

37 CFR

1 36184

38 CFR

21 35830

40 CFR

52 .....35837, 35839, 35842

180.....35844, 36366
Proposed Rules:
52.....35895, 35896

41 CFR

101–20.....35846

42 CFR

121.....35847
422.....36488

45 CFR

303.....36185

46 CFR

Proposed Rules:
502.....35896
503.....35896
510.....35896
514.....35896
540.....35896
572.....35896
585.....35896
587.....35896
588.....35896

47 CFR

1.....35847
64.....36191
73.....36191, 36192
Proposed Rules:
2.....35901
73.....36199, 36387

48 CFR

Ch. 1.....36128
1.....36120
12.....36120
15.....36120
19.....36120
52.....36120
53.....36120
Proposed Rules:
13.....36522
16.....36522
32.....36522
52.....36522

49 CFR

195.....36373
223.....36376

50 CFR

679.....36193

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 6, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions grown in—
- Texas; published 6-5-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish and king and tanner crab; published 6-4-98

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste:
- Identification and listing—
  - Recycled used oil management standards; published 5-6-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy] pyridine; published 7-6-98

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Employment discrimination:
- Age Discrimination in Employment Act—
  - Rights and claims waivers; published 6-5-98

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arizona; published 6-3-98
- Michigan; published 6-3-98
- Wisconsin and Minnesota; published 6-3-98

FEDERAL TRADE COMMISSION

Organization, procedures and practices:
- Small business regulatory enforcement fairness and equal access to justice; published 7-6-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Acesulfame potassium; use in nonalcoholic beverages; published 7-6-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Reduced FHA premium authority for properties located in central cities; published 5-4-98

INTERNATIONAL TRADE COMMISSION

Practice and procedure:
- Import investigations; antidumping and countervailing duties; published 6-5-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Refugees and asylees; status adjustment applications processing under direct mail program; published 6-3-98

STATE DEPARTMENT

Visas; nonimmigrant documentation:
- Aliens staying in U.S. longer than permitted; new visa accepted under extraordinary circumstances; place of application
  - Correction; published 7-6-98

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
- Harvard-Yale Regatta; published 6-5-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- de Havilland; published 6-1-98
- AlliedSignal, Inc.; published 6-19-98
- Boeing; published 6-18-98
- General Electric; published 5-6-98
- Saab; published 4-7-98
- Short Brothers; published 6-1-98

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety:
- Passenger train emergency preparedness plans; published 5-4-98
  - Correction; published 7-6-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:
- Hazardous liquid transportation—
  - Leak detection; industry standard; published 7-6-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—
- California; comments due by 7-17-98; published 6-17-98

Pork promotion, research, and consumer information order; comments due by 7-13-98; published 6-11-98

Potatoes (Irish) grown in—
- Southeastern States; comments due by 7-17-98; published 6-17-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- African horse sickness; disease status change—
  - Qatar; comments due by 7-13-98; published 5-12-98

AGRICULTURE DEPARTMENT

Forest Service

National Forest System:
- Cooperative funding; contributions for cooperative work, reimbursable payments by cooperators, and protection of Government's interest; comments due by 7-17-98; published 5-18-98

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:
- Tobacco
  - Correction; comments due by 7-13-98; published 5-14-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico Fishery Management Council; hearings; comments due by 7-17-98; published 6-4-98
  - South Atlantic Fishery Management Council; hearings; comments due by 7-15-98; published 6-3-98
  - South Atlantic golden crab; comments due by 7-13-98; published 6-26-98
- Northeastern United States fisheries—
  - New England Fishery Management Council; hearings; comments due by 7-15-98; published 6-24-98

COMMODITY FUTURES TRADING COMMISSION

Over-the-counter derivatives; concept release; comments due by 7-13-98; published 5-12-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:
- Alternative fueled vehicle acquisition requirements for private and local government fleets; comments due by 7-16-98; published 4-17-98

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):
- Natural gas pipeline facilities and services on Outer Continental Shelf; alternative regulatory methods; comments due by 7-16-98; published 6-5-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Municipal solid waste landfills; comments due by 7-16-98; published 6-16-98

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 7-13-98; published 6-12-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin; comments due by 7-13-98; published 5-12-98
Myclobutanil; comments due by 7-13-98; published 5-12-98
Radiation protection program:
Spent nuclear fuel, high-level and transuranic radioactive waste management and disposal; waste isolation pilot program compliance—
Certification decision; comments due by 7-17-98; published 5-18-98

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Pay telephone reclassification and compensation provisions; comments due by 7-13-98; published 7-2-98
Radio stations; table of assignments:
Iowa; comments due by 7-13-98; published 6-3-98
Vermont; comments due by 7-13-98; published 7-6-98
Washington; comments due by 7-13-98; published 6-3-98

FEDERAL ELECTION COMMISSION
Presidential primary and general election candidates; public financing:
Electronic filing of reports; comments due by 7-17-98; published 6-17-98

FEDERAL RESERVE SYSTEM
Collection of checks and other items by Federal Reserve Banks (Regulation J) and availability of funds and collection of checks (Regulation CC):
Same-day settlement rule; modifications; comments due by 7-17-98; published 3-16-98

GENERAL SERVICES ADMINISTRATION
Freedom of Information Act; implementation; comments due by 7-17-98; published 6-17-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Premarket approval applications; 30-day notices and 135-day PMA supplement review; comments due by 7-13-98; published 4-27-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Skilled nursing facilities; prospective payment system and consolidated billing; comments due by 7-13-98; published 5-12-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Manufactured home construction and safety standards:
Metal roofing requirements in high wind areas; comments due by 7-13-98; published 5-12-98
Mortgage and loan insurance programs:
Multifamily mortgagees; electronic reporting requirements; comments due by 7-13-98; published 5-13-98

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code
Correction; comments due by 7-15-98; published 6-15-98

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Sacramento splittail; comments due by 7-17-98; published 5-18-98

INTERIOR DEPARTMENT
Minerals Management Service
Outer Countinental Shelf; oil, gas, and sulphur operations:
Postlease operations safety; update and clarification; comments due by 7-17-98; published 5-7-98

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia; comments due by 7-15-98; published 6-15-98

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Asylum and removal withholding procedures—
Applicants who establish persecution or who may be able to avoid persecution in his or her home country by relocating to another area of that country; comments due by 7-13-98; published 6-11-98

JUSTICE DEPARTMENT
Executive Office for Immigration Review:
Aliens who are nationals of Guatemala, El Salvador, and former Soviet bloc countries; deportation suspension and removal cancellation; motion to open; comments due by 7-13-98; published 6-11-98

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Compact over-order price regulations—
Diverted or transferred milk and reserve fund for reimbursement to school food authorities; comments due by 7-15-98; published 6-11-98

PERSONNEL MANAGEMENT OFFICE
Employment:
Reduction in force—
Vacant position offers; retention regulations; comments due by 7-13-98; published 5-13-98

SECURITIES AND EXCHANGE COMMISSION
Securities:
Belgium; securities exemption for purposes of trading futures contracts; comments due by 7-15-98; published 6-15-98

SMALL BUSINESS ADMINISTRATION
Business loan policy:
Unguaranteed portions of loans; securitization, sales, and pledges; comments due by 7-17-98; published 5-18-98

SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors and disability insurance—
Endocrine system and obesity impairments; revised medical criteria for determining disability; comments due by 7-13-98; published 6-10-98

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Massachusetts; comments due by 7-17-98; published 5-18-98
New Jersey; comments due by 7-17-98; published 5-18-98
Merchant marine officers and seamen:
Maritime course approval procedures; comments due by 7-13-98; published 5-13-98
Ports and waterways safety:
Hackensack River, NJ; safety zone; comments due by 7-17-98; published 5-18-98
San Diego Bay, CA; security zone; comments due by 7-14-98; published 5-15-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; comments due by 7-16-98; published 6-16-98
Aerospatiale; comments due by 7-13-98; published 6-12-98
Alexander Schleicher Segelflugzeugbau; comments due by 7-13-98; published 6-9-98
Bell; comments due by 7-13-98; published 5-13-98
Boeing; comments due by 7-13-98; published 5-12-98
British Aerospace; comments due by 7-17-98; published 6-12-98
Cessna; comments due by 7-17-98; published 6-8-98
Glaser-Dirks Flugzeugbau GmbH; comments due by 7-17-98; published 6-9-98
McDonnell Douglas; comments due by 7-13-98; published 5-28-98
New Piper Aircraft, Inc.; comments due by 7-17-98; published 6-9-98
Pilatus Aircraft Ltd.; comments due by 7-13-98; published 5-18-98
Pilatus Britten-Norman Ltd.; comments due by 7-17-98; published 6-9-98
Pratt & Whitney; comments due by 7-14-98; published 5-15-98
Raytheon; comments due by 7-17-98; published 6-8-98
S.N. Centrair; comments due by 7-17-98; published 6-9-98
Airworthiness standards:
Special conditions—

Eurocopter model AS-355 E, F, F1, F2, N Ecureuil II/Twinstar helicopters; comments due by 7-13-98; published 5-13-98

Sikorsky Aircraft Corp. model S76C helicopter; comments due by 7-17-98; published 6-17-98

Class B and Class C airspace; comments due by 7-14-98; published 5-15-98

Class E airspace; comments due by 7-13-98; published 5-28-98

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Truck size and weight—

National Network for Commercial Vehicles; route addition in North Dakota; comments due by 7-17-98; published 5-18-98

Motor carrier safety standards:

Household goods transportation; consumer protection regulations; comments due by 7-14-98; published 5-15-98

Parts and accessories necessary for safe operation—

Trailers and semitrailers weighing 10,000 pounds or more and manufactured on or after January 26, 1998; rear impact guards and protection requirements; comments due by 7-13-98; published 5-14-98

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1847/P.L. 105–184

Telemarketing Fraud Prevention Act of 1998 (June 23, 1998; 112 Stat. 520)

S. 1150/P.L. 105–185

Agricultural Research, Extension, and Education Reform Act of 1998 (June 23, 1998; 112 Stat. 523)

S. 1900/P.L. 105–186

U.S. Holocaust Assets Commission Act of 1998 (June 23, 1998; 112 Stat. 611)

H.R. 3811/P.L. 105–187

Deadbeat Parents Punishment Act of 1998 (June 24, 1998; 112 Stat. 618)

Last List June 24, 1998

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
*240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
*1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
*400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
23	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
*200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
*500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
*1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
*§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
*§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
*§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
*300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
*600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
1-42	(869–032–00098–1)	36.00	July 1, 1997
43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
0–99	(869–032–00100–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–032–00102–2)	41.00	July 1, 1997
900–1899	(869–032–00103–1)	21.00	July 1, 1997
1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–032–00106–5)	19.00	July 1, 1997
1926	(869–032–00107–3)	31.00	July 1, 1997
1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
1–199	(869–032–00109–0)	33.00	July 1, 1997
200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–032–00131–6)	34.00	July 1, 1997
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
1–49	(869–032–00134–1)	31.00	July 1, 1997
50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
53–59	(869–032–00138–3)	14.00	July 1, 1997
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
87-135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–032–00156–1)	14.00	July 1, 1997
101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998

Title	Stock Number	Price	Revision Date
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.