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Wednesday
July 8, 1998

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–123–AD; Amendment 39–10645; AD 98–14–12]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the nose landing gear (NLG), and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to correct cracking in the axle adapter of the shock absorber of the NLG, which could result in failure of the NLG and consequent damage to the airplane structure.

DATES: Effective August 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on May 12, 1998 (63 FR 26112). That action proposed to require a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the nose landing gear (NLG), and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–14–12 Dornier Luftfahrt GMBH: Amendment 39–10645. Docket 98–NM–123–AD.

Applicability: Model 328–100 series airplanes, equipped with nose landing gear (NLG) having serial numbers below IL113; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To correct cracking in the axle adapter of the shock absorber of the NLG, which could cause failure of the NLG and consequent damage to the airplane structure, accomplish the following:

(a) Within 300 flight hours after the effective date of this AD, perform a one-time visual inspection to detect cracking in the axle adapter of the NLG shock absorber, in accordance with Dornier Service Bulletin SB–328–32–213, dated April 16, 1997.

(1) If no cracking is detected, no further action is required by this AD.

(2) If any cracking is detected, prior to further flight, remove the NLG shock absorber and replace it with a new or serviceable part, in accordance with the service bulletin.

Note 2: Dornier Service Bulletin SB–328–32–213, dated April 16, 1997, references Messier-Dowty Service Bulletin 800–32–027, dated May 7, 1997, as an additional source of service information to accomplish the inspection, removal, and repair.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–32–213, dated April 16, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20401.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–142, dated May 22, 1997.

(e) This amendment becomes effective on August 12, 1998.

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17913 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–132–AD; Amendment 39–10646; AD 98–14–13]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes. This amendment requires a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. This amendment also requires eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

DATES: Effective August 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1998.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on May 14, 1998 (63 FR 26742). That action proposed to require a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. That action also proposed to require eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 24 Model A300 series airplanes, 41 Model A310 series airplanes, and 61 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required operational test on U.S. operators is estimated to be $22,680, or $180 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required functional test on U.S. operators is estimated to be $15,120, or $120 per airplane, per test cycle.

It will take approximately 26 work hours per airplane to accomplish the required modification on the Model A300 and A300–600 series airplanes, at an average labor rate of $60 per work hour. Required parts will cost

approximately $2,630 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators of Model A300 or A300–600 series airplanes is estimated to be $356,150, or $4,190 per airplane.

It will take approximately 28 work hours per airplane to accomplish the required modification on the Model A310 series airplanes, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,710 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators of Model A310 series airplanes is estimated to be $220,990, or $5,390 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–14–13 Airbus Industrie: Amendment 39–10646. Docket 98–NM–132–AD.

Applicability: Model A300, A310, and A300–600 series airplanes; on which Airbus Industrie Modification 02781 has been accomplished, and on which Airbus Industrie Modification 03433 or 04443 has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the main landing gear (MLG) in the event of failure of the hydraulic extension system, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a one-time operational test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie All Operator Telex (AOT) 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. If any discrepancy is detected in the functioning of the free fall control mechanism of the landing gear, prior to further flight, readjust the mechanism, and repeat the operational test in accordance with the AOT. If any discrepancy is detected in the second operational test, prior to further flight, rerig the free fall control mechanism in accordance with the AOT, and accomplish the actions required by paragraph (b) of this AD.

(b) Within 10 months after the effective date of this AD, perform a functional test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie AOT 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. Thereafter, repeat the functional test of the free fall control mechanism of the landing gear at intervals not to exceed 12 months, until the modification required by paragraph (c) of this AD has been accomplished. During any test performed in accordance with paragraph (b) of this AD, if the free fall control mechanism of the landing gear fails to fully extend the MLG, prior to further flight, readjust or rerig the mechanism in accordance with the AOT.

(c) Within 66 months after the effective date of this AD, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service Bulletin A300–32–0425, Revision 01 (for Model A300 series airplanes); A310–32–2111, Revision 01 (for Model A310 series airplanes); or A300–32–6072, Revision 01 (for Model A300–600 series airplanes); all dated October 10, 1997; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

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

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

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

(f) The actions shall be done in accordance with the following Airbus Industrie service information, as applicable:

- All Operator Telex (AOT) 32–14, dated February 3, 1997;
- All Operator Telex (AOT) 32–14, Revision 01, dated March 13, 1997;
- Service Bulletin A300–32–0425, Revision 01, dated October 10, 1997;
- Service Bulletin A310–32–2111, Revision 01, dated October 10, 1997; or
- Service Bulletin A300–32–6072, Revision 01, dated October 10, 1997.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–113–221(B)R1, dated December 3, 1997.

(g) This amendment becomes effective on August 12, 1998.

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17912 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–93–AD; Amendment 39–10644; AD 98–14–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A319, A320, and A321 series airplanes, that requires repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the MLG during landing.

DATES: Effective August 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1998.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on May 12, 1998 (63 FR 26111). That action proposed to require repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary.

Comments

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

The commenters support the proposed rule.

Explanation of Changes Made to This Final Rule

In the proposal, the FAA inadvertently omitted reference to Revision 1, dated June 13, 1994, of Airbus Service Bulletin A320–32–1119. Therefore, the FAA has revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator or increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $7,200, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–14–11 Airbus Industrie: Amendment 39–10644. Docket 98–NM–93–AD.

Applicability: All Model A319, A320, and A321 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the main landing gear (MLG) during landing, accomplish the following:

(a) Perform a detailed visual inspection to detect discrepancies (rotation, damage, and absence) of the lock bolt for the pintle pin on the MLG, in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3), of this AD. If any discrepancy is detected, prior to further flight, perform corrective actions, as applicable, in accordance with the AOT. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 15 months, whichever occurs first.

(1) Within 30 months since the airplane's date of manufacture or prior to the accumulation of 2,000 total flight cycles, whichever occurs first.

(2) Within 15 months or 1,000 flight cycles after the last gear replacement or accomplishment of Airbus Service Bulletin A320–32–1119, Revision 1, dated June 13, 1994, whichever occurs first.

(3) Within 500 flight cycles after the effective date of this AD.

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

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

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

(d) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–385–112(B), dated December 17, 1997.

(e) This amendment becomes effective on August 12, 1998.

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17911 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–95–AD; Amendment 39–10448; AD 98–07–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors that appeared in airworthiness directive (AD) 98–07–26, which was published in the **Federal Register** on April 6, 1998 (63 FR 16681). The typographical errors resulted in a reference to an incorrect part number and incorrect section of the referenced service information. This AD is applicable to certain Boeing Model 767 series airplanes. This AD requires detailed visual inspection(s) for damage or chafing of certain electrical wire bundles and for clearance between the wire bundles and adjacent forward galley air chiller; and follow-on corrective actions.

DATES: Effective April 21, 1998.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of April 21, 1998 (63 FR 16681, April 6, 1998).

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 98–07–26, amendment 39–10448, applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on April 6, 1998 (63 FR 16681). That AD requires detailed visual inspection(s) for damage or chafing of certain electrical wire bundles and for clearance between the wire bundles and adjacent forward galley air chiller; and follow-on corrective actions.

As published, that AD contained two typographical errors in paragraphs (a)(1)(ii), (a)(2), (a)(3)(ii), and (a)(4). First, those paragraphs identified ''Section 20–00–11'' of the Boeing Standard Wiring Practices Manual as the appropriate source of service information for accomplishment of the actions. However, the correct section should have been identified as ''Section 20–10–11.'' Second, those paragraphs identified ''TFX–2X standard wall thickness (sleeve)'' as one of the appropriate materials to protect the bundles. However, part number (P/N) ''TFX–2X'' was indicated inadvertently in those paragraphs instead of the correct P/N ''TFE–2X.'' (In fact, P/N ''TFX–2X'' does not exist.)

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains April 21, 1998.

In final rule, FR Doc. 98–8705, published on April 6, 1998 (63 FR 16681), make the following corrections:

§ 39.13 [Corrected]

1. On page 16683, in the first column, paragraph (a)(1)(ii) of AD 98–07–26 is corrected to read as follows:

* * * * *

(a) * * *

(1) * * *

(ii) Prior to further flight, install protective tape or sleeve over the wire bundles, in accordance with Section 20–10–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFE–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

* * * * *

2. On page 16683, in the first column, paragraph (a)(2) of AD 98–07–26 is corrected to read as follows:

* * * * *

(a) * * *

(2) If no damage or chafing is detected and inadequate clearance exists, prior to further flight, modify the routing of the wire bundles in accordance with the Boeing message, and install protective tape or sleeve over the wire bundles in accordance with Section 20–10–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFE–2X

standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

* * * * *

3. On page 16683, in the first column, paragraph (a)(3)(ii) of AD 98–07–26 is corrected to read as follows:

* * * * *

(a) * * *

(3) * * *

(ii) Prior to further flight, install protective tape or sleeve over the wire bundles in accordance with Section 20–10–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFE–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

* * * * *

4. On page 16683, in the first and second columns, paragraph (a)(4) of AD 98–07–26 is corrected to read as follows:

* * * * *

(a) * * *

(4) If damage or chafing is detected and inadequate clearance exists, prior to further flight, repair and modify the routing of the wire bundles in accordance with the Boeing message, and install protective tape or sleeve over the wire bundles in accordance with Section 20–10–11 of the Boeing Standard Wiring Practices Manual. Operators shall use one of the following materials to protect the bundles: RT876 (sleeve), TFE–2X standard wall thickness (sleeve), P–440 (tape), Scotch 70 (tape), or CHR–A–2005 (tape).

* * * * *

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17910 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–145–AD; Amendment 39–10650; AD 98–14–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires disconnection of the electrical connector to the scavenge pump of the center wing tank. That AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new or serviceable pump, if necessary. This amendment requires a one-time inspection to identify the part number of the scavenge pump motor-impeller unit; and corrective action, if necessary. This amendment is prompted by a report of damage to the internal wiring of a scavenge pump that had been replaced in accordance with the existing AD. The actions specified in this AD are intended to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor; these conditions could result in a fuel fire in the wheel well.

DATES: Effective July 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 26, 1997, the FAA issued AD 97–25–06, amendment 39–10230 (62 FR 63622, December 1, 1997), applicable to certain Boeing Model 747 series airplanes. [A correction of the rule was published in the **Federal Register** on January 2, 1998 (63 FR 4).] That action requires disconnection of the electrical connector to the scavenge pump of the center wing tank; a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new or serviceable pump, if necessary. That action was prompted by findings from a design review and analysis of scavenge pumps installed on certain Boeing Model 747 series airplanes that was undertaken as part of an accident investigation. The actions required by that AD are intended to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor; these conditions could result in a fuel fire in the wheel well.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received a report of damage to the internal wiring of a scavenge pump; the connector of that scavenge pump had been replaced with a Lear Romec-supplied connector, in accordance with the requirements of the existing AD. The damage to the wiring has been attributed to that replacement connector's longer backshell, which provides insufficient clearance for the attachment screw of the internal ground wire of the scavenge pump motor, and can cause interference between the screw and the connector. Such wiring damage, if not corrected, could cause short circuiting and failures within the electrical motor assembly; such failures could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor, and consequent fuel fire in the wheel well.

Explanation of Relevant Service Information

As a result of this recent finding, Boeing has issued Alert Service Bulletin 747–28A2215, dated May 14, 1998, which describes procedures for a one-time inspection to identify the part number for the installed scavenge pump motor-impeller unit; and corrective action, if necessary. The alert service bulletin provides operators a choice of three corrective actions. First, operators may replace the scavenge pump with a different model scavenge pump. Second, operators may replace the scavenge pump with a scavenge pump that has been modified in accordance with Lear Romec Service Bulletin RR24680 28–002, dated May 4, 1998.

(Lear Romec is the manufacturer of the subject scavenge pump.) This modification involves removal of the connector ground jumper lead wire and its attachment screw. Accomplishment of the modification will provide additional room for, and will prevent short circuit damage to, the wires inside the scavenge pump motor. Third, operators may deactivate the scavenge pump. The FAA has reviewed and approved the Boeing and Lear Romec service bulletins.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 97–25–06 to require a one-time inspection to identify the part number for the installed scavenge pump motor-impeller unit; and corrective action, if necessary.

Differences Between This AD and the Relevant Service Information

This AD differs from Boeing Alert Service Bulletin 747–28A2215, dated May 14, 1998. The alert service bulletin specifies that the scavenge pump may be replaced with a scavenge pump having ''a different part number.'' However, this AD specifically requires that the replacement scavenge pump be either a scavenge pump having part number 60B92403–12, –13, or –18 (Intertechnique); or a scavenge pump that has been modified in accordance with Lear Romec Service Bulletin RR24680 28–002, dated May 4, 1998.

Also, the Boeing alert service bulletin specifies that a modified pump may be reidentified as having one of two given part numbers. However, this AD requires that the pump modified in accordance with Lear Romec Service Bulletin RR24680 28–002 be reidentified as Boeing P/N 60B92403–51.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–145–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10230 (63 FR 4, January 2, 1998), and by adding a new airworthiness directive (AD), amendment 39–10650, to read as follows:

98–14–17 Boeing: Amendment 39–10650. Docket 98–NM–145–AD. Supersedes AD 97–25–06, Amendment 39–10230.

Applicability: Model 747 series airplanes, line positions 001 through 971 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in leakage of fuel from the electrical connector into the main landing gear wheel well, electrical arcing within the scavenge pump motor, or a fuel fire in the wheel well; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to determine the part number (P/N) of the installed scavenge pump motor-impeller unit, in accordance with Boeing Alert Service Bulletin 747–28A2215, dated May 14, 1998.

(1) If the P/N is neither Boeing P/N 60B92403–5 nor Lear Romec P/N RR24680, no further action is required by this AD.

(2) If the P/N is either Boeing P/N 60B92403–5 or Lear Romec P/N RR24680, prior to further flight, accomplish paragraph either (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the scavenge pump with a new or serviceable scavenge pump having P/N 60B92403–12, –13, or –18 (Intertechnique); or with a new or serviceable scavenge pump having P/N 60B92403–51 (Lear Romec).

(ii) Deactivate the scavenge pump. The airplane may be operated with the scavenge pump deactivated, in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List.

Note 2: Boeing Alert Service Bulletin 747–28A2215, dated May 14, 1998, refers to the 747 Dispatch Deviation Guide as another source of service information for deactivation of the scavenge pump.

(b) As of the effective date of this AD, no person shall install on any airplane a scavenge pump having either Boeing P/N 60B92403–5 or Lear Romec P/N RR24680.

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

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

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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2215, dated May 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 23, 1998.

Issued in Renton, Washington, on June 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17951 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–35]

Revision of Class D Airspace; San Antonio, Kelly AFB, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class D airspace at San Antonio, Kelly AFB, TX. The closure of Standard Airport, San Antonio, TX, and the relocation of the Kelly AFB tactical air navigation (TACAN) have made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Kelly AFB, San Antonio, TX.

DATES: Effective 0901 UTC, October 8, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–35, Fort Worth, TX 76193–0520.

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

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D airspace at San Antonio, Kelly AFB, TX. The closure of Standard Airport, San Antonio, TX, and the relocation of the Kelly AFB TACAN have made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Kelly AFB, San Antonio, TX.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

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

Comments Invited

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

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

concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–35.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas.

* * * * *

ASW TX D San Antonio, Kelly AFB, TX [Revised]

San Antonio, Kelly AFB, TX
(lat. 29°22′49″N., long. 98°35′03″W.)
Kelly TACAN
(lat. 29°23′30″N., long. 98°34′52″W.)
San Antonio, Stinson Municipal Airport, TX
(lat. 29°20′13″N., long. 98°28′16″W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.5-mile radius of Kelly AFB and within 1.5 miles each side of the 339° radial of the Kelly TACAN extending from the 4.5-mile radius to 4.8 miles northwest of the airport excluding that airspace southeast of a line between the intersection of the 4.5-mile radius of Kelly AFB and the 4.1-mile radius of Stinson Municipal Airport and excluding that airspace within the San Antonio International Airport, TX Class C airspace area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18102 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–39]

Establishment of Class E Airspace; Theodore, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Theodore, AL. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP), helicopter point-in-space approach, to a heliport in the Theodore, AL, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, October 8, 1998.

Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–39, Fort Worth, TX 76193–0520.

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

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Theodore, AL. The development of a GPS SIAP, helicopter point-in-space approach, to a heliport in the Theodore, AL, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliport.

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

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will

publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–39.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Theodore, AL [New]

Point In Space Coordinates
(Lat. 30°25′06″ N., long. 88°10′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the point in space in Theodore, AL.

* * * * *

Issued in Forth Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18106 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–38]

Revision of Class E Airspace; Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Pascagoula, MS. The development of a global positioning system (GPS) standard instrument approach procedures (SIAP), helicopter point-in-space approach, to a heliport in the Pascagoula, MS, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, October 8, 1998.

Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–38, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 revises the Class E airspace at

Pascagoula, MS. The development of a GPS SIAP, helicopter point-in-space approach, to a heliport in the Pascagoula, MS, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliport.

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

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–38.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air), Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 Pascagoula, MS [Revised]

Pascagoula, Trent Lott International Airport, MS
(Lat. 30°27′46″ N., long. 88°31′45″ W.)
Point In Space Coordinates
Lat. 30°19′22″ N., long. 88°29′49″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Trent Lott International Airport and that airspace within a 6-mile radius of the point in space in Pascagoula, MS.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18105 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–37]

Revision of Class E Airspace; Cameron, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Cameron, LA. The development of global positioning system (GPS) standard instrument approach procedures (SIAP), helicopter point-in-space approaches, to heliports in the Cameron, LA, area has made this

rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliports.

DATES: Effective 0901 UTC, October 8, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–37, Forth Worth, TX 76193–0520.

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

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

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 revises the Class E airspace at Cameron, LA. The development of GPS SIAP, helicopter point-in-space approaches, to heliports in the Cameron, LA, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliports.

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

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW –37.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Cameron, LA [Revised]

Point in Space Coordinates
(lat. 29°47′30″ N., long. 98°18′40″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius

of the point in space in Cameron, LA, excluding that airspace within the Grand Chenier, LA, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18104 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–36]

Revision of Class E Airspace; Morgan City, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Morgan City, LA. The development of global positioning system (GPS) standard instrument approach procedures (SIAP), helicopter point-in-space approaches, to heliports in the Morgan City, LA, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliports.

DATES: Effective 0901 UTC, October 8, 1998.

Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–36, Fort Worth, TX 76193–0520.

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

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Morgan City, LA. The development of GPS SIAP, helicopter point-in-space approaches, to heliports in the Morgan City, LA, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliports.

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

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–36.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Morgan City, LA [Revised]

Point In Space Coordinates
(lat. 29°40′00″N., long. 91°07′17″W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the point in space in Morgan City, LA, excluding that airspace within the Patterson, LA, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18103 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–34]

Revision of Class E Airspace; Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Refugio, TX. The development of two global positioning system (GPS) standard instrument approach procedures (SIAP) to the Mellon Ranch Airport at Refugio, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the Mellon Ranch Airport, Refugio, TX.

DATES: Effective 0901 UTC, October 8, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–34, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Refugio, TX. The development of two GPS SIAP's to the Mellon Ranch Airport, Refugio, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the Mellon Ranch Airport, Refugio, TX.

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

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–34.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9563, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Refugio, TX [Revised]

Refugio, Mellon Ranch Airport, TX
(lat. 28°16′51″N., long. 97°12′41″W.)
Mellon Ranch NDB
(lat. 28°16′48″N., long. 97°12′21″W.)
Refugio, Rooke Field, TX
(lat. 28°17′37″N., long. 97°19′23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Mellon Ranch Airport and within 2.7 miles each side of the 345° bearing from the Mellon Ranch NDB extending from the 6.8-mile radius to 7.4 miles north of the airport and within 2.7 miles each side of the 145° bearing from the Mellon Ranch NDB extending from the 6.8-mile radius to 7.4 miles south of the airport, excluding that airspace within a ½ mile radius of Refugio, Rooke Field, TX, and excluding that airspace within the Rockport, TX, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18101 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–21]

Revocation of Class E Airspace; Spofford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revokes the Class E airspace at Spofford, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 16888 is effective 0901 UTC, August 13, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 7, 1998 (63 FR 16888). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 13, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18100 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–33]

Establishment of Class E Airspace; Johnson City, TX.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Johnson City, TX. The development of two global positioning system (GPS) standard instrument approach procedures (SIAP) to the Harris Ranch Airport at Johnson City, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the Harris Ranch Airport, Johnson City, TX.

DATES: Effective 0901 UTC, October 8, 1998. Comments must be received on or before August 24, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–33, Fort Worth, TX 76193–0520.

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

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes the Class E airspace at Johnson City, TX. The development of two GPS SIAP's to the Harris Ranch Airport, Johnson City, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the Harris Ranch Airport, Johnson City, TX.

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

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–33.'' The postcard will be date stamped and returned to the commenter.

Ageny Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Johnson City, TX [New]

Johnson City, Harris Ranch Airport, TX
(lat. 30°13′11″ N., long. 98°18′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Harris Ranch Airport.

* * * * *

Issued in Fort Worth, TX, on June 30, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–18099 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 2167–98]

Office of the Inspector General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule sets forth the organization, authority, and functions of the Office of the Inspector General, U.S. Department of Justice (OIG). The OIG is an independent entity within the Department of Justice under the general supervision of the Attorney General that conducts investigations, audits, inspections, and management reviews of Department personnel, programs, and operations. Investigations may concern alleged criminal, civil, and/or administrative wrongdoing by certain

Department employees, entities doing business with the Department, and third parties seeking to improperly influence Department employees. Audits, inspections, and management reviews are designed to determine the efficiency and effectiveness of Department programs; to prevent, detect, and eliminate fraud, waste, and abuse; and to recommend, where appropriate, improvements in operations.

EFFECTIVE DATE: June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Howard L. Sribnick, General Counsel, Office of the Inspector General, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4261, Washington, D.C. 20530, telephone (202) 616–0646.

SUPPLEMENTARY INFORMATION: This section was not published for public comment because it pertains to a matter of internal Department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities and does not have an effect beyond the internal operating procedures of the Department or the OIG. This rule is not considered to be a rule within the meaning of section 3(d) of Executive Order 12866, nor does this rule have federalism implications warranting the preparation of a federalism assessment in accordance with section 6 of Executive Order 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organizations and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, Part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

Authority: 5 U.S.C. 302; 28 U.S.C. 509, 510, 515–519.

2. A new subpart E–4 is added to read as follows:

Subpart E–4—Office of the Inspector General

Sec.

0.29 Organization.
0.29a General functions.
0.29b Reporting allegations of waste, fraud, or abuse.
0.29c Reporting allegations of employee misconduct.
0.29d Whistleblower protection for FBI employees.
0.29e Relationship to other departmental units.
0.29f Confidentiality.
0.29g Reprisals.
0.29h Specific authorities of the Inspector General.
0.29i Audit, inspection, and review authority.
0.29j Law enforcement authority.

Subpart E–4—Office of the Inspector General

§ 0.29 Organization.

(a) The Office of the Inspector General (OIG) is composed of the Inspector General; the Deputy Inspector General; the Audit, Inspections, Investigations, and Management and Planning Divisions; the Special Investigations and Review Unit; and the Office of General Counsel.

(b) The OIG is headquartered in Washington, DC. Investigations Field Offices and Audit Regional Offices are located in Washington, DC and throughout the United States. For a listing of specific office locations, see the OIG Internet Website at http://www.usdoj.gov/oig.

§ 0.29a General functions.

(a) The OIG is a statutorily created independent entity within the Department of Justice subject to the general supervision of the Attorney General that conducts and supervises audits, inspections, and investigations relating to the programs and operations of the Department; recommends policies to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse in Departmental programs and operations; and keeps the Attorney General and Congress informed about the problems and deficiencies relating to the administration of the Department and the necessity for and progress of corrective action.

(b) In order to carry out its responsibilities the OIG:

(1) Audits and inspects Department programs and operations as well as non-Department entities contracting with or receiving benefits from the Department;

(2) Investigates allegations of criminal wrongdoing and administrative misconduct on the part of Department employees, as provided in § 0.29c of this subpart;

(3) Investigates allegations that individuals and entities outside of the Department have engaged in activity that adversely affects the Department's programs and operations;

(4) Undertakes sensitive investigations of Department operations and/or personnel, often at the request of senior Department officials or Congress.

§ 0.29b Reporting allegations of waste, fraud, or abuse.

Employees shall report evidence and non-frivolous allegations of waste, fraud, or abuse relating to the programs and operations of the Department to the OIG or to a supervisor for referral to the OIG.

§ 0.29c Reporting allegations of employee misconduct.

(a) *Reporting to the OIG.* Evidence and non-frivolous allegations of serious misconduct by Department employees shall be reported to the OIG except as provided in § 0.29c(b) through (d) of this section.

(b) *Reporting to the Department's Office of Professional Responsibility (DOJ–OPR).* Employees shall report to DOJ–OPR evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice. Employees shall also report to DOJ–OPR evidence and non-frivolous allegations of serious misconduct by Department law enforcement personnel that are related to allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate, or provide legal advice.

(c) *Reporting to the Drug Enforcement Administration Office of Professional Responsibility (DEA–OPR).* Evidence and non-frivolous allegations of serious misconduct by employees of the Drug Enforcement Administration (DEA) shall be reported to the Drug Enforcement Administration Office of Professional Responsibility (DEA–OPR) or to the Deputy Attorney General.

(d) *Reporting to the Federal Bureau of Investigation Office of Professional Responsibility (FBI–OPR).* Evidence and non-frivolous allegations of serious misconduct by employees of the Federal Bureau of Investigation (FBI) shall be reported to the FBI–OPR except as provided in § 0.29d of this subpart, or to the Deputy Attorney General.

§ 0.29d Whistleblower protection for FBI employees.

(a) *Protected disclosures by FBI employees.* Disclosures of information by an FBI employee that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety are protected disclosures and may be reported to the OIG, DOJ–OPR, or FBI–OPR. The OIG

and DOJ–OPR shall refer such allegations to FBI–OPR for investigation unless the Deputy Attorney General determines that such referral shall not be made.

(b) *Allegations of retaliation against FBI employees.* Allegations of retaliation against an employee of the FBI who makes a protected disclosure shall be reported to the OIG, DOJ–OPR, or the Deputy Attorney General.

§ 0.29e Relationship to other departmental units.

(a) The OIG works cooperatively with other Department components to assure that allegations of employee misconduct are investigated by the appropriate entity:

(1) The OIG refers to DOJ–OPR, FBI–OPR, or DEA–OPR allegations of misconduct within their respective jurisdiction and may refer to another component the investigation of an allegation of that component;

(2) DOJ–OPR refers to the OIG, FBI–OPR, or DEA–OPR allegations involving misconduct by Department attorneys or investigators that do not relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice;

(3) The FBI and DEA provide contemporaneous notice to the OIG of all allegations of serious criminal conduct and serious administrative misconduct regarding their respective senior employees (grade 15 and above) and all work-related serious criminal conduct (except travel voucher fraud or false statements) regarding their other employees;

(4) The OIG and the FBI notify each other of the existence of criminal investigations that fall within their joint jurisdiction to investigate crimes involving the operations of the Department, except where such notification could compromise the integrity of an investigation;

(5) Other Department components report to the OIG all allegations of serious misconduct involving any of their employees except allegations involving Department attorneys and investigators that relate to an attorney's authority to litigate, investigate, or provide legal advice;

(6) At the request of the Inspector General, the Deputy Attorney General may assign to the OIG a matter within the investigative jurisdiction of another internal investigative component. In such instances, the OIG shall either:

(i) Notify the component of its request to the Deputy Attorney General or

(ii) Request that the Deputy Attorney General determine that such notification would undermine the integrity of the investigation nor jeopardize the interests of the complainant.

(7) While an issue of investigative jurisdiction or assignment is pending before the Deputy Attorney General, neither the OIG nor the other investigative component shall undertake any investigative activity without authorization from the Deputy Attorney General.

(b) OIG investigations that result in findings of potential criminal misconduct or civil liability are referred to the appropriate prosecutorial or litigative office.

(c) The OIG advises DOJ–OPR of the existence and results of any investigation that reflects upon the ethics, competence, or integrity of a Department attorney for appropriate action by DOJ–OPR.

(d) OIG investigations that result in findings of administrative misconduct are reported to management for appropriate disposition.

§ 0.29f Confidentiality.

The Inspector General shall not, during the pendency of an investigation, disclose the identity of an employee who submits a complaint to the OIG without the employee's consent, unless the Inspector General determines that such disclosure is unavoidable in the course of the investigation.

§ 0.29g Reprisals.

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for the employee making a complaint or disclosing information to the OIG unless the complaint was made or the information was disclosed with knowledge that it was false or with willful disregard for its truth or falsity.

§ 0.29h Specific authorities of the Inspector General.

The Inspector General is authorized to:

(a) Conduct investigations and issue reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable;

(b) Receive and investigate complaints or information from an employee of the Department concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health and safety;

(c) Have direct and prompt access to the Attorney General when necessary for any purpose pertaining to the performance of the functions and responsibilities of the OIG;

(d) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department and its components that relate to programs and operations with respect to which the OIG has responsibilities unless the Attorney General notifies the Inspector General, in writing, that such access shall not be available because it is necessary to prevent the disclosure of

(1) Sensitive information concerning ongoing civil or criminal investigations or proceedings;

(2) Undercover operations;

(3) The identity of confidential sources, including protected witnesses;

(4) Intelligence or counterintelligence matters; or

(5) Other matters the disclosure of which would constitute a serious threat to national security or significantly impair the national interests of the United States;

(e) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the OIG from any office, board, division, or component of the Department, and any Federal, State, or local governmental agency or unit thereof;

(f) Issue subpoenas to individuals, and entities, other than Federal government agencies, for the production of information, records, data, and other documentary evidence necessary to carry out the functions of the OIG;

(g) Obtain information from Federal government agencies by means other than subpoena and advise the head of such agency whenever information is unreasonably refused or not provided;

(h) Select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OIG;

(i) Employ on a temporary basis such experts and consultants as may be necessary to carry out the duties of the OIG;

(j) Enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the duties of the OIG;

(k) Take from any person an oath, affirmation, or affidavit whenever necessary in the performance of the functions of the OIG.

§ 0.29i Audit, inspection, and review authority.

The OIG is authorized to perform audits, inspections, and reviews of the programs and operations of the Department of Justice and of entities contracting with or obtaining benefits from the Department.

§ 0.29j Law enforcement authority.

Special Agents of the OIG are deputized on an annual basis as Deputy United States Marshals at the direction of the Deputy Attorney General and are authorized to:

(a) Detect and assist in the prosecution of crimes in violation of the laws of the United States and to conduct such other investigations regarding matters that are within the jurisdiction of the Inspector General;

(b) Carry firearms;

(c) Seek and execute search and arrest warrants;

(d) Arrest without warrant any person committing any offense in the presence of an OIG Special Agent or whom the Agent has reasonable grounds to believe has committed or is committing a felony;

(e) Serve legal writs, summons, complaints, and subpoenas issued by the Inspector General or by a Federal grand jury;

(f) Receive, transport, and provide safekeeping of arrestees and other persons in the custody of the Attorney General, or detained aliens.

Dated: June 25, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–17770 Filed 7–7–98; 8:45 am]

BILLING CODE 4410–BD–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–046]

RIN 2115–AE46

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.501 during the start of Rendezvous Mile Market Zero, a marine event to be held on September 5, 1998. These special local regulations are necessary to control vessel traffic in the vicinity of Norfolk Harbor due to the confined nature of the waterway and expected vessel congestion during the start of the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectator craft and other vessels transiting the event area.

EFFECTIVE DATE: 33 CFR 100.501 is effective from 10 a.m. to 2 p.m. on September 5, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (757) 483–8568.

SUPPLEMENTARY INFORMATION: Ports Events, Inc., will sponsor the Rendezvous, Mile Marker Zero, marine event on September 5, 1998. The event will consist of 100 powerboats, ranging in length from 20′ to 60′. The participants will be divided into 4 groups of 25 boats, with each group starting at 10 minute intervals from the Portsmouth seawall area of the Elizabeth River. They will run to Hampton Roads and return. A large spectator fleet is anticipated. Therefore, to ensure the safety of the racers, spectators and transiting vessels, 33 CFR 100.501 will be in effect during the start of the event. Under provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: June 23, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–18118 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–045]

RIN 2115–AE46

Special Local Regulations for Marine Events; Virginia is for Lovers Cup Unlimited Hydroplane Races, Willoughby Bay, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Virginia is for Lovers Cup Unlimited Hydroplane Races to be held in Willoughby Bay, Norfolk, Virginia. The event will be held from 8 a.m. to 4 p.m. EDT (Eastern Daylight Time) July 18 & 19, 1998. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: This regulation is effective from 8 a.m. to 4 p.m. EDT on July 18 & 19, 1998.

FOR FURTHER INFORMATION CONTACT: CWO D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8521.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not submitted until May 26, 1998. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

Discussion of Regulations

On July 18 & 19, 1998, the City of Norfolk will sponsor the Virginia is for Lovers Cup Unlimited Hydroplane Races in Willoughby Bay. The event will consist of hydroplanes, hydrolights, Grand Prix and Jersey Speed Skiffs racing at high speeds along a 2-mile oval course. Except for participants in the Virginia is for Lovers Cup Unlimited Hydroplane Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander. The Patrol Commander will allow non-participating vessel to transit the event area between races. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review

by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Since vessels will be allowed to transit the event area between heats, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not impose any new restrictions on vessel traffic, but merely changes effective dates of a regulation. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMSTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35–T05–045 is added to read as follows:

§ 100.35–T05–045 Willoughby Bay, Norfolk, Virginia.

(a) *Definitions:*

(1) *Regulated area.* The waters of Willoughby Bay from shoreline to shoreline, and the approaches to Willoughby Bay bounded by a line drawn westerly from the northern corner of Willoughby Spit located at latitude 36°58′06″ North, longitude 76°17′58″ West, to Willoughby Bay Channel Light 7 (LLNR 10595) located at latitude 36°58′06″ North, longitude 76°18′18″ West; thence southwesterly to the shoreline at the Norfolk Naval Base located at latitude 36°57′21″ North, longitude 76°18′27″ West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations:*

(1) Except for participants in the Virginia is for Lovers Cup Unlimited Hydroplane Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The Patrol Commander will allow vessel traffic to transit the event area between races.

(c) *Effective dates:* This section is effective from 8 a.m. to 4 p.m. EDT on July 18 and July 19, 1998.

Dated: June 23, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–18116 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–047]

RIN 2115–AE46

Special Location Regulations for Marine Events; Dragon Boat Races, Inner Harbor, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for Dragon Boat Races to be held in the Inner Harbor, Baltimore, Maryland. The event will be held from 7 a.m. to 6 p.m. on September 19, 1998. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of event participants.

EFFECTIVE DATE: This regulation is effective from 7 a.m. to 6 p.m. on September 19, 1998.

FOR FURTHER INFORMATION CONTACT: CWO R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland 21226–1761, (410) 576–2674.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation because following normal rulemaking procedures would have been impractical. The request to hold the event was not submitted until June 6, 1998, and there is not sufficient time remaining for a notice and comment period before the event. Therefore, publishing a notice of proposed rulemaking would be contrary to safety interests, since immediate action is needed to minimize potential danger to the participants in this event

Discussion of Regulations

On September 19, 1998, Associated Catholic Charities, Inc., will sponsor the Dragon Boat Races in the Inner Harbor. The event will consist of 36 teams rowing Chinese Dragon Boats in heats of 2 to 4 boats for a distance of 400 meters. Except for participants in the Dragon

Boat Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander. The Patrol Commander will allow vessel traffic to transit the event area between races. These regulations are necessary to control other vessels transiting the event area and provide for the safety of life and property on navigable waters during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under the order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the Dragon Boats are actually competing. Since vessels will be allowed to transit the event area between heats, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary Section 100.35–T05–047 is added to read as follows:

§ 100.35–T05–047 Inner Harbor, Baltimore, Maryland.

(a) *Definitions:*

(1) *Regulated area:* The waters of the Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 76°36′30″ West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:*

(1) Except for participants in the Dragon Boat Races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The Patrol Commander will allow vessel traffic to transit the event area between races.

(c) *Effective dates:* This section is effective from 7 a.m. to 6 p.m. on September 19, 1998.

Dated: June 23, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–18115 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans, LA 98–009]

RIN 2115–AA97

Safety Zone Regulations; Baptiste Collette Bayou Channel, Mile 11.5, Left Descending Bank, Lower Mississippi River, Above Head of Passes

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Baptiste Collette Bayou Channel, Mile 11.5, Left Descending Bank, Lower Mississippi River, Above Head of Passes, extending the entire width of the channel. The safety zone has been established to protect vessels transiting the area from hazardous conditions associated with severe shoaling and the concurrent U.S. Army Corps of Engineers dredging operations.

EFFECTIVE DATES: This regulation becomes effective on May 9, 1998, commencing at 5:00 p.m. local time. It will be terminated when the U.S. Corps of Engineers dredging operations are complete on August 2, 1998.

FOR FURTHER INFORMATION CONTACT: LT Zachary Pickett (504) 589–4222. U.S. Coast Guard Marine Safety Office, 1615 Poydras St., New Orleans, LA 70112–1254.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking will not be published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards to local marine traffic involved.

Drafting Information: The drafter of this regulation is LT Zachary Pickett, Project Manager for the Captain of the

Port, and LT(jg) M.A. Woodruff, Project Counsel, Eighth Coast Guard District Legal Office.

Background and Purpose

The hazardous condition requiring this regulation is a result of severe shoaling within the Baptiste Collette Bayou Channel. The U.S. Army Corps of Engineers is currently dredging this channel thereby restricting navigation. A safety zone is needed to protect vessels transiting the area. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This temporary rule is not a significant regulatory evaluation under Section 3(f) of Executive Order 12866 and is not significant under the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for several hours and the impacts on small entities are expected to be minimal.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Vessels, Waterways.

Regulation: In consideration of the foregoing, Subpart F of Part 165 of Chapter 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T08–024 is added to read as follows:

§ 165.T08–024 Safety Zone:

(a) *Location.* The following area is a safety zone: Baptiste Collette Bayou Channel, Lower Mississippi River, Mile 11.5, Left Descending Bank, Above Head of Passes in the vicinity of Venice, Louisiana extending the entire width of the channel.

(b) *Effective date.* This section becomes effective on May 9, 1998, commencing at 5:00 p.m. local time. It will be terminated when the U.S. Army Corps of Engineers completes dredging operations on August 2, 1998.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, no vessel may operate within the safety zone contrary to this regulation.

(2) The Baptiste Collette Channel is restricted to vessels with drafts of five feet or less. All vessels shall comply with this draft restriction unless otherwise directed in Marine Information Broadcasts.

(3) A one way traffic pattern is in effect and being regulated by the U.S. Army Corps of Engineers M/V BRETON or as directed in Marine Information Broadcasts.

(4) All vessels shall observe a no meeting or passing zone while transiting Baptiste Collette or as directed in Marine Information Broadcasts.

(5) The west side (red) of the channel is closed from marker #6 to the sea buoy/entrance buoy. Passing will only be allowed on the east side (green) of the channel and only at the top of each hour or as directed by the U.S. Army Corps of Engineers M/V BRETON.

Dated: May 8, 1998.

G.D. Marsh,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 98–18117 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 049–1049a; FRL–6118–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves revised Missouri rule 10 CSR 10–6.030 as a revision to the Missouri State Implementation Plan (SIP). This rule revision was submitted by the state of Missouri to incorporate the most current EPA guidance on capture efficiency methods for volatile organic compound emission control systems.

DATES: This direct final rule is effective on September 8, 1998 without further notice, unless the EPA receives adverse comment by August 7, 1998. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: This revision to Missouri rule 10 CSR 10–6.030 incorporates capture efficiency methods as identified in the EPA's February 7, 1995, memorandum entitled, ''Revised Capture Efficiency Guidance for Control of Volatile Organic

Compound Emissions,'' and the EPA's January 9, 1994, technical document entitled, ''Guidelines for Determining Capture Efficiency.'' Capture efficiency is the measure of the fraction of all organic vapors generated by a process that are directed to an abatement or recovery device. Capture efficiency and destruction efficiency need to be determined in order to calculate the overall control efficiency of any control device.

The EPA's Revised Capture Efficiency Guidance Document is the result of a 12-month EPA study of alternatives with potential to reduce capture efficiency testing costs. This guidance document reduces costs by recommending protocols, presenting criteria by which alternative procedures can be approved, and establishing the reporting requirements for using alternative procedures. Guidelines are also included for selecting and testing representative process lines at a facility and for testing multiple lines in combination.

This rule amendment also incorporates specific methods to determine capture efficiency for automobile and light-duty truck topcoat operations entitled, ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' as amended by Section 23–Determining Spraybooth VOC Capture Efficiency dated March 8, 1996.

I. Final Action

The EPA is taking final action to approve as a revision to the SIP the amendment to rule 10 CSR 10–6.030, ''Sampling Methods for Air Pollution Sources,'' submitted by the state of Missouri on December 17, 1996.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 8, 1998 without further notice unless the Agency receives relevant adverse comments by August 7, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 1998 and no further action will be taken on the proposed rule.

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

II. Administrative Requirements

A. Executive Orders 12866 and 13045

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

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 1998.

William Rice,

Acting Regional Administrator, Region VII.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(106) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(106) On December 17, 1996, the Missouri Department of Natural Resources submitted a revised rule pertaining to capture efficiency.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.030 entitled, ''Sampling Methods for Air Pollution Sources,'' effective November 30, 1996.

[FR Doc. 98–17973 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC038–2009a, MD058–3026a, VA083–5035a; FRL–6120–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Virginia, Maryland; 1990 Base Year Emission Inventory for the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the District of Columbia (the District), the State of Maryland and the Commonwealth of Virginia State Implementation Plans (SIP) which pertain to the 1990 base year ozone emission inventory for the Washington, DC–MD–VA Consolidated Metropolitan Statistical Area (CMSA). This area, commonly referred to as the Metropolitan Washington, D.C. area, is classified as a serious ozone nonattainment area. These SIP revisions were prepared by the District, the Commonwealth of Virginia and the State of Maryland with the assistance of the Metropolitan Washington Council of Governments and were submitted for the purpose of revising the 1990 baseline of volatile organic compound (VOC) and nitrogen oxides (NOx) emissions that contribute to ozone nonattainment problems in the Metropolitan Washington, D.C. area. The intended effect of this action is to approve amendments to the 1990 base year ozone emission inventory for the Metropolitan Washington, D.C. area in accordance with the Clean Air Act.

DATES: This direct final rule is effective on September 8, 1998 without further notice, unless EPA receives adverse comment by August 7, 1998. If adverse comment is received, EPA will publish a timely document withdrawing this rule.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the District of Columbia Department of Health, Air Quality Division, 2100 Martin Luther King Ave., S.E., Washington, DC 20020; the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at EPA Region III address, or via e-mail at cripps.christopher@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act (the Act), States have the responsibility to inventory emissions contributing to national ambient air quality standard nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the rate-of-progress (ROP) target level and projection inventories, and the modeling inventory are derived. The Act requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990 (15% ROP plan). The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year VOC inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15% plan. The Act further requires ozone nonattainment areas designated as serious, severe, and extreme to submit a plan within four years of 1990 to reduce VOC emissions by a further nine percent in the period between six and nine years after 1990 (post-1996 ROP plan). The Act allows reductions in NOx emissions after 1990 to be substituted for VOC reductions in the post-96 ROP plan. When NOx reductions are substituted, the baseline level of emissions, from which the NOx reduction percentage is calculated, is determined by adjusting the base year NOx inventory to exclude certain emission reductions not creditable towards the 15% plan. Further information on these inventories and their purpose can be found in the following documents issued by EPA:

Emission Inventory Requirements for Ozone State Implementation Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991

Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate of Progress Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, October 1992.

Guidance on the Post '96 Rate-of-Progress Plan (RPP) and Attainment Demonstration (Corrected version of February 18, 1994), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, February 18, 1994.

The 1990 base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The 1990 base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above that are located outside transport regions. The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of Title I of the Act. The EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the Act, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502 April 16, 1992; and 57 FR 18070 April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I and its supporting rationale. In today's rulemaking action on the Metropolitan Washington, DC ozone nonattainment area's 1990 base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the Act to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of VOC, NO_X, and carbon monoxide (CO) emissions. The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All emissions from stationary point and area sources, as well as highway and non-road mobile sources, and biogenic emissions within the nonattainment area, are to be included in the compilation.

Air quality planning in the Washington, DC ozone nonattainment area is done jointly by the District of Columbia, Maryland, Virginia and the Metropolitan Washington Air Quality Committee (MWAQC). The MWAQC, composed of state and local elected officials, state air quality and transportation planning directors and the Chair of the National Capital Region Transportation Planning Board, ensures interstate air quality planning consultation requirements of sections 182(j) and 174 are fulfilled and has been certified under section 174 as the air quality planning organization for the Washington, DC ozone nonattainment area by the Governors of Maryland and Virginia and the Mayor of the District of Columbia. The MWAQC recommends air quality planning measures and approves ROP plans both of which the states adopt as SIP revisions. The MWAQC relies upon the three air planning agencies including the District of Columbia's Air Quality Division, Environmental Health Division, Department of Health (formerly the Air Resources Management Division of the Department of Consumer and Regulatory Affairs) and upon the Metropolitan Washington Council of Governments (MWCOG) for technical support. Each jurisdiction adopts the MWAQC-approved plan as a revision to its SIP.

In July 1996 the MWAQC and the Washington, DC ozone nonattainment area states began revisions to their 15% ROP plans in conjunction with the post-1996 ROP plans. At this time certain portions of the 1990 base year inventory were refined to utilize better information such as that relating to traffic demand modeling, updated information on point source emissions, and to correct certain errors in the inventory found while the states were auditing the inventory in preparation for the attainment demonstration modeling.

The update to the point source inventory reflects changes in emission factors, replacement of emission factors with actual stack testing results, correction of coding errors in boiler firing type and correction in the associated emission factor, and improved reporting by sources. The changes in area source emissions estimates are attributable to changes in several categories, including, ''coal consumption,'' which includes residential, commercial/institutional, and industrial consumption. These changes resulted from the use of a corrected emissions factor for under-fired stokers in the commercial/institutional and industrial categories and a corrected emissions factor for the residential category. In addition, the spatial allocation approach for commercial, institutional and non-point source industrial fossil-fuel combustion categories was changed to use employment as the activity surrogate, instead of population. Other revisions in area source emissions result from use of better 1990 information available for the military airports, structure fires and certain industrial surface coating categories.

The changes in area source emissions estimates are attributable to changes in estimates of activity split between the weekend and weekday use of recreational boating and lawn and garden equipment and in the Reid vapor pressure (RVP) of gasoline used in the area in 1990. The 1990 inventory was based upon an EPA supplied inventory that did not accurately reflect the 1990 summer RVP of 8.3 psi nor the proper activity split between the weekend and weekday use of recreational boating and lawn and garden equipment.

The mobile source inventory was developed by using a network-based travel demand model which is the same network used for transportation conformity purposes. The refinements to the 1990 mobile source emissions inventory are attributable to refinements implemented in the traffic modeling process. These refinements are designed to provide a better feedback relationship between congested traffic speeds on the network and the gravity model. Additionally, updated land use assumptions, actual 1990 census data for households and population data and the Regional Employment Census for employment data were used in the refinements. These updated assumptions are slightly lower than the ''projected'' 1990 assumptions used for the initial 1990 inventory submittals.

II. Criteria for Approval

There are general and specific components of an acceptable emission inventory. In general, a state must meet the minimum requirements for reporting by source category. Specifically, the source requirements are detailed below.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document; ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G.T. Helms to the Regions ''1990 O_3/CO SIP Emission Inventory Level III Acceptance Criteria,'' October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.

The Levels I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state and assesses whether the emissions were developed according to current EPA guidance. The data quality

is also evaluated. The Level III review process, as outlined here, consists of 10 criteria. For a base year emission inventory to be acceptable it must pass all of the following acceptable criteria:

A. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.

B. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

C. The point source inventory must be complete.

D. Point source emissions must be prepared or calculated according to the current EPA guidance.

E. The area source inventory must be complete.

F. The area source emissions must be prepared or calculated according to the current EPA guidance.

G. Biogenic emissions must be prepared according to current EPA guidance or another approved technique.

H. The method (e.g., a network transportation planning model) used to develop vehicle miles traveled (VMT) estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,'' Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

I. The EPA's MOBILE emission factor model must be correctly used to produce emission factors for each of the vehicle classes.

J. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

III. The District's, Virginia's and Maryland's Submittals

On November 3, 1997, the Department of Consumer and Regulatory Affairs (DCRA) for the District of Columbia submitted the revised 1990 base year emission inventories as a formal revision to the District's State Implementation Plan (SIP). On December 24, 1997 the Maryland Department of the Environment submitted the revised 1990 base year emission inventories as a formal revision to the Maryland SIP, and on December 17, 1997 the Virginia Department of Environmental Quality submitted the revised 1990 base year emission inventories as a formal revision to the Virginia SIP. EPA reviewed this submittal to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittals were determined to be complete on December 10, 1997, January 13, 1998 and January 12, 1998 for the District's, Maryland's and Virginia's submittals, respectively.

IV. EPA Analysis of the SIP Revisions

Based on EPA's Level I, II, and III review findings, the District, Maryland and Virginia have satisfied all of EPA's requirements for providing a comprehensive and accurate 1990 base year inventory of actual emissions for the Metropolitan Washington, D.C. ozone nonattainment area.

There were no deficiencies found during the Level I and II review. The Level I and II checklists are contained in the TSD prepared for this action.

A summary of EPA's Level III findings is given below:

A. The Inventory Preparation Plan (IPP) and Quality Assurance (QA) program have been approved and implemented. These were approved on March 27, 1992, August 11, 1992 and August 27, 1992 for the District, Maryland and Virginia, respectively.

B. The documentation was adequate for all emission types (stationary point, area, highway mobile, on-road mobile and biogenic sources) for the reviewer to determine the estimation procedures and data sources used to develop the inventory.

C. The point source inventory was found to be complete.

D. The point source emissions were estimated according to EPA guidance.

E. The area source inventory was found to be complete.

F. The area source emissions were estimated according to EPA guidance.

G. The biogenic source emissions were estimated using the Biogenic Emission Inventory System (PC–BEIS) in accordance with EPA guidance.

H. The method used to develop VMT estimates was adequately described and documented.

I. The mobile model was used correctly.

J. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, EPA has determined that the District's, the State of Maryland's and the Commonwealth of Virginia's submittals meet the essential reporting and documentation requirements for a 1990 base year emission inventory.

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources is presented for VOC, NO_X, and CO emissions in the tables below.

METROPOLITAN WASHINGTON, DC OZONE SEASON EMISSIONS IN TONS PER DAY BY JURISDICTION

[1990 Base-Year VOC Inventory]

	District of Columbia	Maryland	Virginia	Area total
Point Source Emissions	1.0	5.5	8.1	14.6
Area Source Emissions	20.0	94.2	77.0	191.2
Non-Road Mobile Emissions	5.5	32.1	32.8	70.4
On-Road Mobile Emissions	32.6	108.4	110.1	251.1
Biogenic Emissions	3.2	225.9	147.4	376.5
Total	62.3	466.1	375.4	903.8

METROPOLITAN WASHINGTON, DC OZONE SEASON EMISSIONS IN TONS PER DAY BY JURISDICTION

[1990 Base-Year NO_X Inventory]

	District of Columbia	Maryland	Virginia	Total
Point Source Emissions	7.6	267.4	59.8	334.8

METROPOLITAN WASHINGTON, DC OZONE SEASON EMISSIONS IN TONS PER DAY BY JURISDICTION—Continued

[1990 Base-Year NO_X Inventory]

	District of Columbia	Maryland	Virginia	Total
Area Source Emissions	3.4	15.8	28.1	47.3
Non-Road Mobile Emissions	5.5	43.5	36.0	85.0
On-Road Mobile Emissions	25.8	129.1	106.8	261.7
Biogenic Emissions	NA	NA	NA	NA
Total	42.3	455.8	230.7	728.8

METROPOLITAN WASHINGTON, DC OZONE SEASON EMISSIONS IN TONS PER DAY BY JURISDICTION

[1990 Base-Year Carbon Monoxide (CO) Inventory]

	District of Columbia	Maryland	Virginia	Total
Point Source Emissions	4.3	51.8	3.6	59.7
Area Source Emissions	2.7	9.8	49.6	62.1
Non-Road Mobile Emissions	145	427.4	365	937.4
On-Road Mobile Emissions	248.3	901.5	909.1	2058.9
Biogenic Emissions	NA	NA	NA	NA
Total	400.3	1390.5	1327.3	3118.1

EPA has determined that the submittals made by the District, Maryland and Virginia satisfy the relevant requirements of the Act. EPA's detailed review of the emission inventories is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section above.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective September 8, 1998 without further notice unless the Agency receives adverse comments by August 7, 1998.

Should EPA receive such comments, then EPA will publish a document informing the public that this rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 1998 and no further action will be taken on the proposed rule.

If adverse comments are received that do not pertain to all paragraphs in this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs which receive adverse comments will be withdrawn in the manner described here.

V. Final Action

EPA is approving the revised 1990 base year ozone emission inventory for VOC and NO_X submitted by the District of Columbia, State of Maryland and the Commonwealth of Virginia for the Metropolitan Washington, D.C. ozone nonattainment area. The inventory revisions concern VOC, and NO_X emissions from point, area, highway mobile, and non-road mobile biogenic emissions.

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

VI. Administrative Requirements

A. Executive Order 12866

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

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205,

EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1998. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, regarding the 1990 emission inventory for the Washington, DC ozone nonattainment area submitted by the District of Columbia, State of Maryland and Commonwealth of Virginia, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, and SIP requirements.

Dated: June 23, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart J—District of Columbia

2. Section 52.474 is amended by adding paragraph (c) to read as follows:

§ 52.474 1990 Base Year Emission Inventory.

* * * * *

(c) EPA approves as a revision to the District of Columbia State Implementation Plan an amendment to the 1990 base year emission inventories for the District's portion of the Metropolitan Washington, D.C. ozone nonattainment area submitted by the Director, Department of Consumer and Regulatory Affairs, on November 3, 1997. This submittal consists of amendments to the 1990 base year point, area, highway mobile, and non-road source emission inventories in the area for the following pollutants: volatile organic compounds (VOC), and oxides of nitrogen (NO_X).

Subpart V—Maryland

3. Section 52.1075 is amended by adding paragraph (f) to read as follows:

§ 52.1075 1990 Base Year Emission Inventory.

* * * * *

(f) EPA approves as a revision to the Maryland State Implementation Plan an amendment to the 1990 base year emission inventories for the Maryland portion of the Metropolitan Washington DC ozone nonattainment area submitted by the Secretary of Maryland of the Department Environment on December 24, 1997. This submittal consists of amendments to the 1990 base year point, area, highway mobile, and non-road mobile source emission inventories in the area for the following pollutants: Volatile organic compounds (VOC), and oxides of nitrogen (NO_X).

Subpart VV—Virginia

4. Section 52.2425 is amended by adding paragraph (d) to read as follows:

§ 52.2425 1990 Base Year Emission Inventory.

* * * * *

(d) EPA approves as a revision to the Virginia State Implementation Plan amendments to the 1990 base year emission inventories for the Northern Virginia ozone nonattainment area submitted by the Director, Virginia Department Environmental Quality, on December 17, 1997. This submittal consists of amendments to the 1990 base year point, area, non-road mobile, and on-road mobile source emission inventories for the following pollutants: volatile organic compounds (VOC), and oxides of nitrogen (NO_X).

[FR Doc. 98–17971 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MT–001–0004a; FRL–6122–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Montana plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on July 2, 1997 in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The State's plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that Montana's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This direct final rule is effective on September 8 1998 without further notice, unless EPA receives adverse comment by August 7, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final

rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action may be mailed to Vicki Stamper, 8P2–A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c–60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750–60.759). (See 61 FR 9905–29.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either (1) submit a plan for the control of the designated pollutant to which the EG applies or (2) submit a negative declaration if there were no designated facilities in the State, within nine months after publication of the EG, or by December 12, 1996.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner*, et. al., No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32783–4, 32743–53. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998 direct final amendments to the EG. In addition, as stated in the June 16, 1998 preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996 was used as a basis for EPA's review of Montana's submittal.

II. Analysis of State's Submittal

On July 2, 1997, the State of Montana submitted its plan and regulations (hereafter referred to as the ''State Plan'') for implementing EPA's MSW landfill EG. The Montana State Plan includes the ''Section 111(d) Plan for Municipal Solid Waste Landfills'' and the State's implementing regulations in Sections 17.8.302(1)(j) and 17.8.340 of the Administrative Rules of Montana (ARM).

Montana has incorporated by reference the EG of 40 CFR part 60, subpart Cc, at ARM 17.8.302(1)(j). In addition, ARM 17.8.340(4) provides that designated MSW landfill facilities under 40 CFR part 60, subpart Cc, shall comply with the requirements in 40 CFR 60.33c, 60.34c, and 60.35c that are applicable to designated facilities and that must be included in a State plan for approval. Montana has also adopted compliance deadlines in ARM 17.8.340(4)(b) to comply with the compliance timelines of the EG and the increments of progress requirements of 40 CFR part 60, subpart B. Thus, the State's regulations adequately address the requirements of the EG, including the required applicability, emission limitations, test methods and procedures, reporting and recordkeeping requirements, and compliance times. Specifically, Montana's regulation requires that existing MSW landfills that: (1) Accepted waste since November 8, 1987; (2) have a design capacity equal to or greater than 2.5 million megagrams (Mg) or 2.5 million m^3; and (3) have a NMOC emission rate, calculated in accordance with the procedures of 40 CFR 60.754, equal to or greater than 50 Mg/year to complete installation of a gas collection and control system meeting the requirements of 40 CFR 60.752 within twenty-seven months from the date of EPA approval of the State Plan (or, for those existing MSW landfills whose NMOC emission rate is less than 50 Mg/yr on the date EPA approves the State Plan, within twenty-seven months after submittal of an NMOC emission rate report showing NMOC emissions equal to or greater than 50 Mg/yr).

The State Plan also includes documentation showing that all requirements of 40 CFR part 60, subpart B have been met. Specifically, the State Plan includes a demonstration of legal authority to adopt and implement the plan, an emissions inventory, increments of progress compliance deadlines, a commitment to submit to EPA annual State progress reports on

plan implementation and enforcement, and documentation that the State addressed the public participation requirements of 40 CFR 60.23. In addition, as stated above, the State has adopted emission standards and compliance schedules into an enforceable State regulation that is no less stringent than the EG.

Consequently, EPA finds that the State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this State Plan as it relates to those sources.

More detailed information on the requirements for an approvable plan and Montana's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Montana's section 111(d) plan and its implementing regulations in ARM 17.8.302(1)(j) and ARM 17.8.340, as submitted on July 2, 1997, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to Montana's State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective September 8, 1998 without further notice unless the Agency receives adverse comments by August 7, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review,'' review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Montana's audit privilege and penalty immunity law [The Voluntary Environmental Audit Act, 75–1–101 *et seq.*, M.C.A. (H.B. 293, effective October 1, 1997)] or its impact upon any approved provision in the State Plan, including the submittal at issue here.

The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Montana's audit privilege and penalty immunity law. A State audit privilege and penalty immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the State Plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege and penalty immunity law.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

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

Dated; June 29, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 62, subpart BB, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. Subpart BB is added to read as follows:

Subpart BB—Montana

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

Sec.
62.6600 Identification of plan.
62.6601 Identification of sources.
62.6602 Effective date.

Subpart BB—Montana

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.6600 Identification of plan.

''Section 111(d) Plan for Municipal Solid Waste Landfills'' and the associated State regulations in sections 17.8.302(1)(j) and 17.8.340 of the Administrative Rules of Montana, submitted by the State on July 2, 1997.

§ 62.6601 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.6602 Effective date.

The effective date of the plan for municipal solid waste landfills is September 8, 1998.

[FR Doc. 98–18082 Filed 7–7–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6119–6]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Hanford 100-Area (USDOE) Superfund site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 10 announces the deletion of portions of the Hanford 100-Area (USDOE) Superfund Site. The portions deleted are waste areas located in the 100–IU–1 and 100–IU–3 Operable Units. The 100–IU–1 and IU–3 Operable Units are part of the Hanford 100 Area NPL Site located at the U.S. Department of Energy (DOE) Hanford Site, located in southeastern Washington State. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion pertains to all known waste areas located in the 100–IU–1 and 100–IU–3 Operable Units. EPA and the Washington State Department of Ecology have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Faulk, Superfund Site Manager, USEPA, 712 Swift #5, Richland, Washington 99352; (509) 376–8631.

SUPPLEMENTARY INFORMATION: The partial deletion of the Hanford 100-Area (USDOE) NPL Site applies specifically to the 100–IU–1 and 100–IU–3 Operable Unit waste areas located at the U.S. Department of Energy (DOE) Hanford Site, located in southeastern Washington State. The waste areas in the 100–IU–1 and 100–IU–3 Operable Units were cleaned up by the DOE between 1992 and 1994 using expedited response actions (ERA). At the Hanford Site, the term ERA is used to describe actions taken under CERCLA removal authority as described in 40 CFR 300.415. In February 1996, a no further action record of decision was signed documenting that previous ERA's had removed all contaminants from the waste areas in the 100–IU–1 and 100–IU–3 Operable Units to below cleanup levels for residential use established under the Washington State Model Toxics Control Act (MTCA). It should be noted, cleanup activities are continuing at other operable units of the Hanford 100 Area NPL Site.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, (60 FR 55466 (Nov. 1, 1995)).

A Notice of Intent to Delete for Partial Deletion was published on May 22, 1998 (63 FR 28317). The closing date for comments on the Notice of Intent to Delete was June 20, 1998. EPA received no comments.

EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of the waste areas from the NPL does not itself

create, alter, or revoke any individual rights or obligations.

List of Subjects in 40 CFR Part 300

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

Dated: June 24, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

2. Table 2 of appendix B to part 300 is amended by adding a ''P'' in the Notes column for the ''Hanford 100-Area (USDOE) in Benton County, WA'' to read as follows:

Appendix B to Part 300—National Priorities List

Table 2.—Federal Facilities Section

St	Site name	City/County	Notes (a)
*	*	*	*
WA	Hanford 100-Area (USDOE)	Benton County	P
*	*	*	*

(a) * * *

P = Sites with partial deletion(s).

[FR Doc. 98–17684 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 97–D002]

Defense Federal Acquisition Regulation Supplement; Streamlined Research and Development Contracting; Correction

AGENCY: Department of Defense (DOD).

ACTION: Correction to interim rule.

SUMMARY: The Department of Defense is issuing a correction to the preamble to the interim rule published at 63 FR 34605, June 25, 1998, pertaining to streamlined research and development contracting.

EFFECTIVE DATE: June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, (703) 602–0131.

Correction

In the issue of Thursday, June 25, 1998, on page 34605, in the second column, the last sentence of the **Background** section is corrected to read as follows: ''This interim rule supersedes the interim rule published under DFARS Case 96–D028 on April 4, 1997 (62 FR 16099).''

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–18098 Filed 7–7–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS–128; Amendment 199–15]

RIN 2137–AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: On March 17, 1998, RSPA published a final rule in the **Federal Register** (63 FR 12998) titled ''Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use.'' This final rule modified procedures in its drug testing regulations by requiring a face-to-face evaluation by substance abuse professionals (SAP) for pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. It also revised the word ''employee'' to ''covered employee'' and added the definition of ''covered function.'' This document makes minor corrections to restore text that was in the original version of the regulations, but was inadvertently left out of the Final Rule.

DATES: Effective on July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–6199, Fax: (202) 366–4566, e-mail: catrina.pavlik@RSPA.dot.gov.

SUPPLEMENTARY INFORMATION:

Correction of Publication

When RSPA published the final rule in the **Federal Register**, it inadvertently left out text that was stated in the original version of the regulations. This text was in the original version of the regulations and was inadvertently left out of the final rule text, so RSPA does not need further rulemaking action to correct the text. This final rule corrects the text. RSPA regrets any confusion the omission may have caused. Accordingly, the publication on March 17, 1998, of the final rule, **Federal Register** Doc. 98–6859 (63 FR 12998), is corrected as follows:

§ 199.7 [Corrected]

1. On page 13000, in the second column, add amendatory instruction 2a and an amendment to § 199.79(a)(3) to read as follows:

2a. Section 199.7 is amended by revising paragraph (a)(3) to read as follows:

§ 199.7 Anti-drug plan.

* * * * *

(a) * * *

(3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and

* * * * *

2. On page 13000, in the second column, in § 199.11, paragraph (e) is correctly revised as follows:

§ 199.11 Drug tests required.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has been evaluated face-to-face by a SAP, has properly followed any prescribed assistance, has passed a return-to-duty drug test administered under this part, and the SAP has determined that the employee may return to duty.

* * * * *

§ 199.15 [Corrected]

3. On page 13000, in the second column, add amendatory instruction 3a and an amendment to § 199.15 to read as follows:

3a. Section 199.15 is amended by removing paragraphs (c)(3) and (c)(4) and by redesignating paragraph (c)(5) as (c)(3).

Issued in Washington, DC, on June 29, 1998.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 98–17720 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 070298A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1998 TAC of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) as 1,810 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,610 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18119 Filed 7–2–98; 4:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 130
Wednesday, July 8, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–14–16, which currently requires repetitively inspecting the flap aft roller bearings and flap attachment brackets for indications of contact (wear), inspecting for elongation of the holes in the flap attachment brackets, repairing or replacing any part showing wear, and replacing any bracket with elongated holes on Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes. The proposed AD would retain the actions required in AD 97–14–16, and would increase the number of repetitive inspections by reducing the number of ground-air-ground (GAG) cycles allowed between inspections. The proposed AD would also lower the total GAG cycles accumulated before the required initial inspection. The actions specified by the proposed AD are intended to prevent asymmetric flaps, jammed flaps, and/or possible interference between the flap and the aileron, which could inhibit aileron travel and result in possible loss of roll control of the airplane.

DATES: Comments must be received on or before September 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications 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 that summarizes 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. 98–CE–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 97–14–16, Amendment 39–10074, (62 FR 37128, July 11, 1997) currently requires repetitively inspecting the flap aft roller bearings and flap attachment brackets for indications of contact (wear), inspecting for elongation of the holes in the flap attachment brackets, repairing or replacing any part showing wear, and replacing any bracket found with elongated holes on Raytheon Models 1900, 1900C, and 1900D airplanes.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–14–16, the manufacturer has reported to the FAA that another incident of flap roll bearings wearing on the flap attachment brackets has occurred on a Raytheon 1900 series airplane. This makes a total of five incidents of aileron interference on these airplanes. Because the most recent incident occurred at a much lower number of GAG cycles than the preceding incidents, the FAA believes the number of flights accumulated before the initial and repetitive inspections required in AD 97–14–16 should be reduced.

Relevant Service Information

Raytheon has issued Safety Communiqué No. 137, dated May, 1997, which specifies procedures for inspecting the flap attachment brackets for signs of wear, and inspecting the aft roller bearing attachment holes for elongation. If wear from contact is visible or the roller bearing attachment holes are elongated, the Safety Communiqué specifies procedures for repairing or replacing the part. The new service information issued, Raytheon Aircraft Mandatory Service Bulletin No. SB 27–3158, Issued: June, 1998, is basically the same action as the information referenced above, except for a change in the initial and repetitive compliance times.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to preclude interference between the flap and the aileron, which could help prevent aileron travel.

This condition, if not corrected, could result in loss of directional control of the airplane during critical phases of flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes of the same type design, the proposed AD would supersede AD 97–14–16 with a new AD. The proposed AD would require the same actions required in AD 97–14–16, which are:

—Repetitively inspecting the outboard flap attachment brackets and aft roller bearings for wear;
—Inspecting for elongation of the holes in the flap attachment brackets;
—Repairing or replacing any part showing wear; and
—Replacing any bracket found with elongated holes.

In addition, the proposed AD would change the compliance time by reducing the required number of GAG cycles accumulated prior to the initial inspection and the number of GAG cycles required between the repetitive inspections.

Differences Between the Service Bulletin and the Proposed AD

The Raytheon Aircraft Mandatory Service Bulletin No. SB 27–3158, Issued: June, 1998, specifies that the initial inspection be accomplished at the accumulation of 1,200 GAG cycles, with the repetitive inspections occurring every 1,200 GAG cycles. The FAA is proposing that the GAG cycles be reduced to 600 for the initial inspections and 600 GAG cycles between the repetitive inspections. The FAA is using GAG cycles while the Raytheon service information is using flap cycles, which varies by a factor of two.

The FAA's reason for reducing the GAG cycles by half is that the unsafe condition could occur during critical phases of flight. The FAA must also consider that an unsafe condition on commuter aircraft warrants additional caution.

Justification of Compliance Time and Determination of the Effective Date of This AD

Wear of the flap aft roller bearings and flap attachment brackets and elongation of the flap attachment bracket holes occur over time. Examination of the most recent referenced incident and all information available to the FAA indicates that this problem has the potential of becoming detectable at around 1,200 flap cycles. To ensure that this unsafe condition does not occur during flight, the FAA is using 2 flap cycles per ground-air-ground cycle; therefore the proposed initial inspection would be required at a total accumulation of 600 GAG cycles. The repetitive inspection would be required every 600 GAG cycles.

These airplanes are utilized primarily in commuter service. Operators of these airplanes average anywhere from 8 GAG cycles per day to 14 GAG cycles per day. Based on these averages, operators of Raytheon 1900 series airplanes would reach the above thresholds between 42 days to 75 days from the initial service date of the airplane, and every 42 to 75 days after each repetitive inspection.

For these reasons, the FAA has determined that the inspections required by the proposed AD should occur ''Upon the accumulation of 600 total GAG cycles, or within the next 100 GAG cycles after the effective date of this AD, whichever occurs later, or within 600 GAG cycles from the date of the last inspection required by AD 97–14–16, unless already accomplished, and thereafter at intervals not to exceed 600 GAG cycles.'' The 100 GAG cycles for the initial compliance time is utilized to allow a grace period for those airplanes already over the 600 GAG cycle time, so as not to inadvertently ground the affected airplanes.

Cost Impact

The FAA estimates that 527 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, that it would take approximately 8 workhours to accomplish the proposed repair, and that the average labor rate is approximately $60 an hour. Parts cost approximately $440 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $63,240, or $120 per airplane

These figures are calculated on the basis that the proposed inspection would be the only cost required. The proposed repair would be on the condition that damage would be found as a result of the inspection.

The cost impact to the owner/operators of the affected airplanes could possibly double since the FAA is proposing a reduction of the number of required GAG cycles between the proposed inspections. The FAA is not able to determine the number of repetitive inspections that would occur over the life of the airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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 14 CFR part 39 of the Federal Aviation Regulations 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 removing Airworthiness Directive (AD) 97–14–16, Amendment 39–10074 (62 FR 37128, July 11, 1997), and by adding a new AD to read as follows:

Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Docket No. 98–CE–23–AD; Supersedes AD 97–14–16, Amendment 39–10074.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
1900	UA–1 and UA–3.

Model	Serial Nos.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through all serial numbers.

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

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

Note 2: The compliance time of this AD takes precedence over the compliance time set out in the Raytheon Aircraft Mandatory Service Bulletin No. SB 27-3158, Issued: June, 1998.

Note 3: If the owners/operators of the affected airplane have not kept track of GAG cycles, hours time-in-service (TIS) may be substituted by multiplying each hour TIS by 2, to calculate the number of GAG cycles. For example, 1,300 hours TIS would equal 2,600 GAG cycles.

To prevent asymmetric flaps, jammed flaps, and/or possible interference between the flap and the aileron, which could inhibit aileron travel and result in possible loss of roll control of the airplane, accomplish the following:

(a) Upon the accumulation of 600 total ground-air-ground (GAG) cycles, or within 600 GAG cycles from the date of the last inspection required by AD 97–14–16, or within the next 100 GAG cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 600 GAG cycles, inspect the outboard flap attachment brackets and aft roller bearings on both wings for visible wear and elongation of the bracket holes in accordance with instructions 1 through 17 in Raytheon Aircraft (Raytheon) Mandatory Service Bulletin No. SB 27–3158, Issued: June, 1998.

(b) Prior to further flight, repair or replace any worn or damaged part in accordance with Temporary Revision No. 57–1 to the Raytheon Aircraft Beech 1900 Airliner Series Structural Repair Manual P/N 114–590021–9B, dated May 16, 1997; Reissued June 30, 1992.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager. Wichita ACO.

(2) Alternative methods of compliance approved for AD 97–14–16 are not considered approved as alternative methods of compliance for this AD.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, 9709 E. Central, P. O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 97–14–16, Amendment 39–10074.

Issued in Kansas City, Missouri, on June 29, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–18008 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076–AD89

Preparation of Rolls of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is amending its regulations governing the compilation of rolls of Indians in order to reopen the enrollment application process for the Sisseton and Wahpeton Mississippi Sioux Tribe. The amendment reopens the enrollment period to comply with a directive of the Eighth Circuit of Appeals.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments are to be mailed to Daisy West, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4603–MIB, Washington, DC 20240; or, hand delivered to Room 4603 at the same address.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs (202) 208–2475.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Indian Affairs must reopen the enrollment application process authorized under 25 U.S.C. 1300d–3(b) to give individuals another opportunity to file applications to share in the Sisseton and Wahpeton Mississippi Sioux judgment fund distribution. The Eighth Circuit of Appeals decision in *Loudner v. U.S.*, 108 (f). 3d 896 (8th Cir. 1997), held that the Bureau of Indian Affairs did not give proper notice of the application period, and that 5 months was not a sufficient time period within which to file applications, in light of the long delay in distribution of the fund. The proposed rule is intended to reopen the enrollment period in order to allow sufficient time for eligible persons to enroll.

Additional Notice and Public Meetings

The Bureau of Indian Affairs is taking several steps to ensure that all potential applicants are informed of the reopening of the comment period. We will notify all BIA Area Directors and Agency Superintendents and require them to post notices in area offices, agency offices, community centers on and near reservations, and in Indian Health Clinics. We will also notify tribal newspapers and newspapers of general circulation in major communities in Montana, North Dakota, South Dakota, Nebraska, and Minnesota.

Additionally, we will hold community meetings on Indian reservations identified from the 1909 roll, including: Cheyenne River, Crow Creek, Upper Sioux, Sisseton-Wahpeton, Spirit Lake, Fort Peck, Standing Rock, Lower Brule, Yankton, Rosebud, and Pine Ridge. At each meeting we will:

(1) Inform potential beneficiaries of the reopening of the enrollment process for this judgment fund;

(2) Inform potential beneficiaries of eligibility criteria; and

(3) Help applicants to prepare and file applications.

Previously Submitted Applications

We have on file applications submitted under § 61.4(s) that we denied because we received them after November 1, 1973. We will now process these applications. If you previously filed an application that we denied, you may wish to confirm that we have it and are processing it. To do this, please call Daisy West at (202) 208–2475.

Application Deadline

We have not established an application deadline in this proposed rule. In order to allow adequate time for

submitting and processing applications, we will establish a deadline using the following three steps.

Step 1. On day 180 after the final rule becomes effective, we will count all applications that we have received.

Step 2. We will note the date on which we complete processing of 90 percent of the applications that we receive by the date in step 1.

Step 3. The application deadline will be 90 days after the date in step 2.

For example, if we receive 10 applications by the date in step 1, the final application deadline date will be 90 days after we process 9 applications. Similarly, if we receive 10,000 applications by the date in step 1, the final application deadline date will be 90 days after we process 9,000 applications.

After we establish the application deadline, we will notify the same area directors, agency superintendents, and local newspapers that we notify after publishing this rule. This notice will include application/enrollment criteria.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because it makes technical changes that do not affect the substance of the rules there is no economic effect at all, other than to improve the utility of the rules for users.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 USC 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires collection of information from many enrollees. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of the application to the Office of Management and Budget (OMB) for its review.

1. Information Collection Request

We are seeking your comments on the following Information Collection Request.

Type of review: New.

Title: Application to Share in the Mississippi Sioux Judgment Funds as a Lineal Descendant of the Sisseton and Wahpeton Mississippi Sioux Tribes Pursuant to the Act of October 25, 1972, 25 U.S.C. 1300d–3(b).

Effected Entities: Individual Indians.

Abstract: Subsection 1300d–3(b) requires the Secretary of the Interior to prepare a roll of the lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe, that were living on October 25, 1972, and are not enrolled with the Spirit Lake Tribe of North Dakota (formerly Devils Lake Sioux Tribe), the Sisseton-Wahpeton Sioux of South Dakota, or the Assiniboine and Sioux Tribe of the Fort Peck Reservation. We previously published enrollment regulations in 25 CFR 61.4(s)(2) that established a 5-month period for accepting enrollment applications. In 1994, 14 plaintiffs sued seeking to enjoin the per capita distribution payment, and to require us to accept additional applications for enrollment to share in the distribution of the judgment funds. The Court found that publication notice and an approximate 5-month notice period to apply as a lineal descendant beneficiary under the 1972 Distribution Act was insufficient notice and is therefore void. *Loudner, et arm's-length contract v. U.S.*, 108 F. 3d 896 (8th Cir. 1997). As a result of the decision in this case, we are reopening the enrollment application period. We will establish and publicize the ending date of the enrollment period after we have processed most of the applications.

Burden Statement: The estimated hour burden of the collection of information is 5,000 hours. We expect the enrollment application period to last 2 to 3 years, with 5,000 applications filed the first year and 5,000 additional applications filed during the following 2 years. The applicants are required to file only once during the estimated 3-year enrollment application process.

We will not conduct or require individuals to respond to a collection of information until we obtain a valid Office of Management and Budget control number. We will print the approval number on the form.

2. Request for Comments

We need your comments to:

(a) 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.

(b) Evaluate the accuracy of our estimated burden for the proposed collection of information, including the methodology and assumptions we used.

(c) Enhance the quality, utility, and clarity of the information that we want to collect.

(d) Minimize the burden of the collection of information on those who are to respond. This includes possibly using automated or electronic collection techniques or information technology.

OMB must approve or disapprove this collection of information between 30 and 60 days after this document appears in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for sending comments to us on the proposed regulations.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects in 25 CFR Part 61

Indians, Indians—claims.

For the reasons set out in the preamble, Part 61 of Chapter 1 of Title 25 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 61—PREPARATION OF ROLLS OF INDIANS

1. The authority citation for 25 CFR Part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9, 1300d–3(b), 1401 *et seq.*

2. In § 61.4, paragraph (s) is revised to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(s) *Sisseton and Wahpeton Mississippi Sioux Tribe.* (1) Persons meeting the criteria in this paragraph are entitled to enroll under 25 U.S.C. 1300d–3(b) to share in the distribution of certain funds derived from a judgment awarded to the Mississippi Sioux Indians. To be eligible a person must:

(i) Be a lineal descendent of the Sisseton and Wahpeton Mississippi Sioux Tribe;

(ii) Be born on or before October 25, 1972;

(iii) Be living on October 25, 1972;

(iv) Appear in records and rolls acceptable to the Secretary or have a lineal ancestor whose name appears in these records; and

(v) Not be a member of any of the following tribes:

(A) The Spirit Lake Tribe (formerly known as the Devils Lake Sioux Tribe of South Dakota);

(B) The Sisseton and Wahpeton Sioux Tribe of South Dakota; or

(C) The Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(2) The initial enrollment application period that closed on November 1, 1973, is reopened as of the date on which this rule is published in final. The application period will remain open until further notice.

* * * * *

Dated: April 23, 1998.

Kevin Gover,

Assistant Secretary for Indian Affairs.

[FR Doc. 98–17984 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of reopening the public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is reopening the public comment period on a second supplementary proposed rulemaking, which was published in the **Federal Register** on February 6, 1998, (63 FR 6113). The proposed rule amends the royalty valuation regulations for crude oil produced from Federal leases. In response to issues raised on the February 6, 1998, second supplementary proposed rulemaking, MMS will reopen the comment period from July 9, 1998, to July 24, 1998.

DATE: Comments must be submitted on or before July 24, 1998.

ADDRESSES: Mail comments, suggestions, or objections about this supplementary proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone number (303) 231–3432, fax (303) 231–3385, e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: MMS is reopening the comment period for the February 6 second supplementary proposed rulemaking for a two-week period from July 9 to July 24. All comments received during this comment period will be posted on MMS's web site at http://www.rmp.mms.gov/ library/readroom/readrm.htm. It is unnecessary to resubmit comments previously submitted regarding this rulemaking.

Dated: July 2, 1998.

Phillip D. Sykora,

Acting Associate Director for Royalty Management.

[FR Doc. 98–18051 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–039–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Utah regulatory program (the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah's amendment proposes changes in requirements for coal mine permit application approval in section 40–10–11 of the Utah Code Annotated (UCA) (hereafter, also the ''Utah Code''). The State proposes the changes to update language used to describe the approval process and information documented during that process. In addition, Utah proposes a change to subsection (f) of UCA 40–10–11(2) to clarify limitations on authority of the Division and to the Board of Oil, Gas and Mining with respect to property right disputes. Utah also proposes to revise provisions applicable to a permit applicant's list of violations of air and water protection at subsection (3) of section 40–10–11 in response to an amendment required by OSM and described at 30 CFR 944.16(f)(2).

The amendment is intended to revise the Utah program to be consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulations and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. August 7, 1998. If requested, a public hearing on the proposed amendment will be held on August 2, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on July 23, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733, Telephone: (303) 844–1424.

Lowell P. Braxton, Acting Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114–5801, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, Telephone: (303) 844–1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated June 8, 1998, (administrative record No. UT–1117) Utah submitted a proposed amendment (SPATS No. UT–039–FOR, administrative record No. 1117) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment at its own initiative and in response to a requirement imposed by the Director resulting from OSM's review of a previous amendment to the Utah Code.

The proposed amendment consists of revisions to UCA 40–10–11. This section of the Utah Code pertains to actions by the Division of Oil, Gas and Mining (the Division) to approve or deny coal mine permit applications. It also includes provisions for considering, in the permit approval/denial process, an applicant's violations of air and water protection provisions and whether an area proposed for mining includes prime farmlands.

Most of Utah's proposed changes reword existing provisions of UCA 40–10–11 in current writing style and break-up existing provisions into subsections. In that context, specific changes Utah proposes include: Revising existing UCA 40–10–11(1) to include new subsections (1)(a)(i) and (ii), (1)(b), (1)(c), and (1)(c)(i) and (ii); revising UCA 40–10–11(2)(d) to include new subsections 2(d)(i) and 2(d)(ii); adding new subsections (e)(i)(A) and (B) to UCA 40–10–11(2)(e)(i); revising UCA 40–10–11(2)(f)(i) to include (f)(i)(A) and (B); changing UCA 40–10–11(3) to include new subsections (3)(a)(i), (ii) and (3)(b) and (c); and breaking-up existing UCA 40–10–11(4)(a)(i) and (ii). Utah also proposes to update language under several parts of UCA 40–10–11(1), (2), (3), (4) and (5).

In two cases, the State's proposed changes add new provisions to the Utah Code. At UCA 40–10–11((2)(f)(i)(B), Utah proposes to add a statement to the effect that nothing in UCA 40–10–11(2) shall be construed ''* * * to authorize the board or division to adjudicate property right disputes * * *'' in cases where permit applications involve lands on which the mineral estate has been severed from the private surface estate. Second, in new subsection (c) of UCA 40–10–11(3), Utah proposes to preclude permit issuance in cases in which the Board finds that an applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of SMCRA, the implementing regulations, or of any state or federal programs enacted under SMCRA or under other provisions of the approved Utah program, in addition to violations of the Utah Code. The State proposes this new provision in response to the requirement described at 30 CFR 944.16(f)(2) that the Utah Code's provision for denying permits on the basis of patterns of violations be no less stringent than the Federal counterpart provision at section 510(c) of SMCRA. The required amendment resulted from OSM's review of a previous amendment to the Utah Code (UT–024–FOR; 60 FR 37002, July 19, 1995; administrative record No. UT–1066). OSM later reiterated the need for Utah to amend UCA 40–10–11(3) in its review of Code amendment UT–035–FOR (62 FR 41845, August 4, 1997; administrative record No. UT–1098).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If OSM finds the amendment adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. OSM will not necessarily consider comments in the final rulemaking that it receives after the time indicated under ''DATES'' or that it receives at locations other than the Denver Field Division. OSM will not necessarily include such comments in the admininstrative record, either.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on July 23, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. OSM will arrange the location and time of the hearing with those persons requesting the hearing. OSM will not hold a public hearing if no one requests an opportunity to testify at a hearing.

OSM requests that commenters file a written statement at the time of the hearing because doing so will greatly assist the transcriber. If commenters submit written statements in advance of the hearing, OSM will be able to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

OSM may hold a public meeting if only one person requests an opportunity to testify at a public hearing. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible OSM will post notices of meetings at the locations listed under **ADDRESSES**. OSM will make a written

summary of each meeting part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that his rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementating Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 29, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–18096 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[049–1049b; FRL–6118–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revised Missouri rule 10 CSR 10–6.030 as a revision to the State Implementation Plan (SIP). This revision, submitted by the state on December 17, 1996, incorporates into the rule the most current EPA guidance on capture efficiency methods for volatile organic compound emission control systems.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to that rule. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on the direct final rule. Any parties interested in commenting on the rule should do so at this time.

DATES: Comments must be received in writing by August 7, 1998.

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

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

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

Dated: May 26, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–17974 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC038–2009b, MD058–3026b, VA083–5035b; FRL–6120–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Virginia, Maryland—1990 Base Year Emission Inventory for the Metropolitan Washington DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the District of Columbia, State of Maryland and Commonwealth of Virginia for the purpose of establishing purpose of revising the 1990 ozone base year emission inventories for the Metropolitan Washington, D.C. ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving these States' SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to that rule. If EPA receives adverse comments, the direct final rule

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on the direct final rule. Any parties interested in commenting on that rule should do so at this time.

DATES: Comments must be received in writing by August 7, 1998.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Ave, S.E., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at EPA Region III address above, or via e-mail at cripps.christopher@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to the approval of the 1990 emission inventory for the Washington, DC ozone nonattainment area submitted by the District of Columbia, State of Maryland and Commonwealth of Virginia provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 23, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–17970 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MT–001–0004b; FRL–6122–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Montana plan and its associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan, which was submitted to EPA on July 2, 1997, establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's submittal in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before August 7, 1998.

ADDRESSES: Written comments on this action may be mailed to Vicki Stamper, 8P2–A, at the EPA Region VIII Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this proposed rule are available for public inspection at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Dated: June 29, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 98–18081 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 130
Wednesday, July 8, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Foreign Currencies Available for the Development of Foreign Markets

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service (''FAS'') invites proposals from interested parties to use Tunisian or Moroccan currencies acquired by the United States government for market development projects and technical assistance activities in those countries. These currencies were acquired pursuant to agreements under title I of the Agricultural Trade Development and Assistance Act of 1954, (P.L. 480).

FOR FURTHER INFORMATION CONTACT: Evans Browne, Program Development Division, Export Credits, Foreign Agricultural Service, Room 4506, South Building, Stop 1034, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, D.C. 20250–1034. Telephone: (202) 720–4228.

SUPPLEMENTARY INFORMATION: Title I, P.L. 480 authorizes the United States to finance the sale and exportation of agricultural commodities to foreign governments on concessional terms. Between 1986 and 1991, the United States entered into various title I, P.L. 480 agreements with foreign governments, including Tunisia and Morocco, on terms which required repayment to the United States in local currencies. These agreements were commonly referred to as constituting the ''section 108 program.'' Most of the foreign currency received under the section 108 program was loaned by the United States to financial institutions in the host country which would, in turn, loan the funds to local businesses in order to foster economic development. After the local financial institutions repaid the United States, the funds could be made available for the development of markets for United States agricultural commodities. In addition, other local currency repaid to the United States could be used for agricultural technical assistance to foster and encourage the development of private enterprise institutions and infrastructure as the base for the production of food and related goods and services. Currently, Tunisian and Moroccan local currencies acquired under the section 108 program are available for the development of markets for United States agricultural commodities and for agricultural technical assistance activities.

Application Process

Responsibility for administering Departmental programs concerned with developing foreign markets for United States agricultural commodities and technical cooperation has been delegated to FAS. Parties interested in using Tunisian or Moroccan currency to develop markets for agricultural commodities, or to undertake technical assistance activities, in those countries should submit a proposal to: Evans Browne, Program Development Division, Export Credits, Foreign Agricultural Service, Room 4506, South Building, Stop 1034, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, D.C. 20250–1034. Telephone: (202) 720–4228. Interested parties must submit Standard Form 424 (SF–424) in conjunction with their proposal. This form is available from the above address. FAS will review all proposals in accordance with the standards in this notice. Those organizations which requested section 108 funding as part of their 1998 Unified Export Strategy (UES) application should review this notice to determine if all information requested herein has been furnished. If so, such organizations need not re-apply in response to this announcement. FAS will accept additional and supplemental information supporting proposals already submitted in the UES application.

Proposals should outline, to the extent applicable, the following points:

- A description of the project to develop or expand a commercial market for a U.S. agricultural commodity or product, or a description of the technical assistance activity;
- An indication of funding sources and amounts to be contributed by the applicant to implement the project or technical assistance activity in addition to the local currency provided by FAS. This may include amounts contributed by private industry entities or host governments. Contributed resources may include cash, goods, and services;
- The average value of U.S. exports of the commodity or product promoted by the applicant for the years 1995–97;
- The average total value of world trade of the commodity or product promoted by the applicant during the years 1995–97;
- The total dollar value of projected U.S. exports of the commodity or product promoted by the applicant during 1998;
- A results-oriented means of measuring the success of the project or technical assistance activity and a plan for reporting progress to FAS. For example, the proposals should identify the constraints or barriers to trade faced by a particular product in a particular market; describe the strategy and activity(ies) that will be implemented to overcome such impediments; and finally, identify the goals and performance indicators which will be used to measure the effectiveness of the strategy and activities in achieving those goals;
- The administrative capabilities of the participant to implement the project or technical assistance activity;
- Proposals for technical assistance activities should also describe how the technical assistance will enhance the local market's food and rural business systems, and impact on transformation of the host country's economy to a free market system.

Review Process

FAS will review the proposals to identify projects that could contribute to the effective creation, expansion, or maintenance of foreign markets for U.S. agricultural commodities and products. When reviewing proposals to undertake generic activities, FAS will give priority to organizations that are industry-wide or nationwide in membership and scope. For such activities, U.S. agricultural trade associations will be used to the maximum extent possible. Recipients must demonstrate an ability to provide U.S.-based staff capable of developing, supervising, and carrying out projects overseas, and be willing

and able to contribute resources to a joint project. FAS will also consider the likelihood of these activities influencing conditions affecting the level of U.S. exports; the size, in both budget and scope, of the proposed project; and, the likelihood of the market becoming a commercial market for U.S. agricultural commodities and products. FAS considers evaluation critical to the success of a market development project. In determining whether to approve a market development or technical assistance project, FAS will place great emphasis on the performance measures in the proposal and upon the plan for reporting progress to FAS.

Upon approval of a proposal, FAS will enter into an agreement with the entity submitting the proposal pursuant to which FAS will provide local currencies for carrying out the market development or technical assistance project. Agreements will incorporate, by reference, the proposal as approved by FAS.

General administrative requirements for implementation of any resultant agreement with non-profit institutions are found at 7 CFR part 3019, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations'' except as may be necessitated by the use of foreign currencies or host country laws. Interested parties should familiarize themselves with these regulations.

FAS may announce in the future the availability of other local currencies in other countries for market development and technical assistance.

Signed at Washington D.C. on June 26, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–18000 Filed 7–7–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1999 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1999 tariff-rate quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $158.00 per license.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.36 provides for the issuance of licenses to import certain dairy articles which are subject to tariff-rate quotas (TRQs) set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture and the U.S. Customs Service.

The Regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this Regulation.

The Regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the Federal Register. Accordingly, this notice sets out the fee for the licenses to be issued for the 1999 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1998 has been determined to be $404,318 and the estimated number of licenses expected to be issued is 2,563. Of the total cost, $243,748 represent staff and supervisory costs directly to administering the licensing system during 1998; $50,320 represents the total computer costs to monitor and issue import licenses during 1998; and $110,250 represents other miscellaneous costs, including travel, postage, publications, forms, and an ADP system contractor.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1999 calendar year, in accordance with 7 CFR 6.33, will be $158.00 per license.

Issued at Washington, D.C., June 23, 1998.

David J. Williams,

Licensing Authority.

[FR Doc. 98–18001 Filed 7–7–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Skipping Cow Environmental Impact Statement

AGENCY: Forset Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) for the proposed Skipping Cow Timber Sale. The timber sale is located in the Tongass National Forest, Stikine Area, Wrangell Ranger District, on Zarembo Island, within Value Comparison Units (VCU's) 458 and 459. The Tongass Land and Resource Management Plan (1997) provides the overall guidance (land use designations, goals, objectives, management prescriptions, standards and guidelines) to achieve the desired future condition for the area in which this project is proposed. This Forest Plan allocates portions of the project area into three management prescriptions: Timber Production, Modified Landscape, and Scenic Viewshed.

The purpose and need for the project is to respond to the goals and objectives identified by the Forest Plan for the timber and move Skipping Cow Project Area toward the desired future condition. The Forest Plan identified the following goals and objectives: (1) manage the timber resource for production of saw timber and other wood products from suitable timber lands made available for timber harvest, on an even-flow, long-term sustained yield basis and in an economically efficient manner (Forest Plan page 2–4); (2) seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber, and the demand for the planning cycle (page 2–4); and (3) maintain and

promote industrial wood production from suitable timber lands, providing a continuous supply of wood to meet society's needs (page 3–144). The Skipping Cow Timber Sale will be designed to produce desired resource values, products, and conditions in ways that also sustain the diversity and productivity of ecosystems (page 2–1).

The Skipping Cow Timber Sale is expected to provide a range of volume to the timber industry from 20 to 30 million board feet. The range of alternatives to be considered in the EIS will be determined during analysis and reflect issues raised during scoping.

The Proposed Action provides for: (1) construction of approximately 15.5 miles of specified road and additional temporary road; and (2) harvest between 900–1300 acres. The existing log transfer facility at Deep Bay Harbor will be used to transfer volume to the water. A variety of systems would be used for yarding, including helicopter, cable, skyline and shovel yarding systems.

A number of public comments have been received on this project. Based on comments from the public and other agencies during the preliminary scoping effort, the following issues have been identified. How will the design of the sale affect: harvest economics, access road management, Wind ecology (large scale blowdown), and winter deer habitat? These issues and other issues discovered during further scoping will be used to design alternatives to the proposed action and to identify the potential environmental effects of the proposed action and alternatives.

DATES: Comments concerning the scope of this project should be received by August 24, 1998.

ADDRESSES: Comments concerning the scope of this project should be sent to Jerry Jordan, ID Team Leader, Wrangell Ranger District, Tongass National Forest, Stikine Area; Attn: Skipping Cow EIS; P.O. Box 51, Wrangell, Alaska, 99929, phone (907) 874–2323.

SUPPLEMENTARY INFORMATION:

Public Participation

Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of significant issues: (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. For the Forest Service to best use the scoping input, comments should be received by August 24, 1998.

Based on results of scoping and the resource capabilities within the project areas, alternatives including a ''no action'' alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in January 1999. Public comment on the Draft EIS will be solicited for a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The Final EIS is anticipated by June 1999.

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

In addition, Federal Court decisions have established that reviewers of Draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could be raised at the draft environmental impact stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022, (9th Cir. 1986); and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338, (E.D. Wis. 1980). The reason for this is to ensure that comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Draft EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed project and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d) any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as protected trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Responsible Official

Carol J. Jorgensen, Assistant Forest Supervisor, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833, is the responsible official. The responsible official will consider comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision and stating the rationale in the Record of Decision.

Dated: June 24, 1998.

Carol J. Jorgensen,

Assistant Forest Supervisor.

[FR Doc. 98–17986 Filed 7–7–98; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the explosion at the Sierra Chemical Company in Sparks, Nevada, on January 7, 1998, the U.S. Chemical Safety and Hazard Investigation Board announces, pursuant to the Government in the Sunshine Act, that it will convene a Board Meeting beginning at 10:00 a.m. local time on Wednesday, July 29, 1998, at the George Washington University Marvin Center, 800 21st Street, N.W., Washington, DC. This meeting will be open to the public. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, telephone number (202) 261–

7600, or visit our web site at www.chemsafety.gov.

Phillip Cogan,

Special Assistant for External Relations.

[FR Doc. 98–18284 Filed 7–6–98; 2:45 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–98]

Proposed Foreign-Trade Zone—Santa Maria, California Area Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Santa Maria Public Airport District, to establish a general-purpose foreign-trade zone in the Santa Maria, California area, adjacent to the Port San Luis, California, port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 30, 1998. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed new zone would consist of 2 sites (2,787 acres) in Santa Barbara County: *Site 1* (2,728 acres)—within and adjacent to the Santa Maria Public Airport, 3217 Terminal Drive, Santa Maria; and, *Site 2* (59 acres)—within the Vandenberg Air Force Base complex, approximately 20 miles southwest of the Santa Maria Airport. Site 1 is primarily owned by the applicant. Site 2 is owned by the Department of the Air Force but has been leased by Astrotech Space Operations, Inc., for a period of 20 years. Vandenberg Air Force Base has been designated the primary launch site for commercial space activity from the West Coast and pre-launch payload assembly activities would be conducted at proposed Site 2.

The application indicates a need for foreign-trade zone services in the Santa Maria area. Several firms have indicated an interest in using zone procedures for warehousing, airport related activities and the preparation of space flight hardware for launches into outer space. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on August 5, 1998, 11:00 a.m., at the Santa Maria Hilton, 3455 Skyway Drive, Santa Maria, California 93455.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 8, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 21, 1998).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Santa Maria Public Airport District, 3217 Terminal Drive, Santa Maria, CA 93455.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 30, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–18111 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: The Special American Business Internship Training (SABIT) Program Applications and Questionnaires.

Agency Form Number: N/A.

OMB Number: 0625–0225.

Type of Request: Regular Submission.

Burden: 2,137 hours.

Number of Respondents: 1,300.

Avg. Hours Per Response: Range from 15 minutes to 6 hours.

Needs and Uses: The Special American Business Internship Training (SABIT) programs of the Department of Commerce's International Trade Administration (ITA), is a key element in the U.S. Government's efforts to support the economic transition of the Newly Independent States (NIS) of the former Soviet Union. SABIT places business executives and scientists from the Independent States in U.S. firms for one-to-six month internships to gain firsthand experiences working in a market economy. This unique private sector-U.S. Government partnership was created in order to tap the U.S. private sector's expertise in assisting the NIS's transition to a market economy while boosting U.S.-NIS long-term trade.

Under the ''regular'' (grants) SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. The information collected by the Application is needed by the SABIT staff to recruit and screen respondents and provide U.S. firms with a pool of eligible candidates from which to select interns. Intern applications are required to determine the suitability of candidates for SABIT internships. Feedback surveys and end-of-internship reports are needed to enable SABIT to track the success of the program as regards trade between the U.S. and NIS, as well as to improve the content and administration of the programs.

The closing date for applications and supplemental materials is approximately 120 days after date of publication in the **Federal Register**. Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the ''Act'') funding for the program will be provided by the Agency for International Development (A.I.D.).

Affected Public: Businesses or other for-profit, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 1, 1998.

Linda Engelmeier,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 98–18043 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings From Canada: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: July 8, 1998.

SUMMARY: In response to the April 30, 1998 request by the Municipal Castings Fair Trade Council, the petitioner in this case, the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing an intent to revoke in part the antidumping duty order on iron construction castings from Canada. The scope of the order currently includes valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, which are considered light castings. The petitioner has expressed no further interest in the relief provided by the antidumping duty order with respect to the importation and sale of valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, considered light castings. Accordingly, we have preliminarily determined to revoke the order on iron construction castings from Canada with respect to light castings.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Irene Darzenta, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4697 or (202) 482–6320.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On March 5, 1986, the Department published the antidumping duty order on iron construction castings from Canada (51 FR 7600). Subsequently, on September 25, 1986, the Department published an amendment to the final determination in the less-than-fair-value (LTFV) investigation and to the antidumping duty order on iron construction castings from Canada (51 FR 34110). On April 30, 1998, the Municipal Castings Fair Trade Council (the petitioner), requested that the Department revoke, in part, the antidumping duty order with respect to light iron construction castings based on its lack of further interest.

Scope of the Order

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item numbers 8306.29.0000 and 8310.00.0000. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Scope of the Changed Circumstances Administrative Review

Imports covered by this changed circumstances administrative review are shipments of light castings from Canada, as described above.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke in Part

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole or in part, if it determines that the producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, sections 351.221(c)(3)(ii) and 351.222(f)(2)(iv) of the regulations permit the Department to combine the notices of initiation and preliminary results. Therefore, in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222, based on an affirmative statement of no interest by the petitioner in continuing the order with respect to light iron construction castings, as described above, we are initiating this changed circumstances administrative review. Based on the fact that no other interested parties have objected to the position taken by the petitioner, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant partial revocation of the antidumping duty order on iron construction castings from Canada. Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of light iron construction castings.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to end the suspension of liquidation of iron construction castings subject to this changed circumstances review on the effective date of the final notice of partial revocation, and to refund any estimated antidumping duties collected, for all unliquidated entries of such merchandise made on or after March 1, 1997. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Interested parties may request a hearing and/or may submit case briefs and/or written comments no later than 30 days after the date of publication of these results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35

days after the date of publication of these results. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis of any issues raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results.

This notice is in accordance with section 751(b) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18112 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate from Sweden: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on stainless steel plate from Sweden. The review covers two manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997. We preliminarily determine that sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price (''EP'') and NV.

Interested parties are invited to comment on these preliminary results. Parties which submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3019 (Osborne), 482–0649 (Kugelman).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references 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 references to the provisions codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). The Department of Commerce published a notice of ''Opportunity To Request Administrative Review'' of the antidumping finding for the 1996/1997 review period on June 11, 1997 (62 FR 31786). On June 28, 1997, the petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Washington Steel Corporation filed a request for review of Uddeholms AB (Uddeholm) and Avesta Sheffield AB (Avesta). We initiated the review on August 1, 1997 (62 FR 41339).

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 1209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 8219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

On November 21, 1997, Avesta and Avesta Sheffield NAD, Inc. requested clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the antidumping finding. On December 22, 1997, the Department determined that British slabs rolled into hot bands in Sweden are within the scope of the finding. The review covers the period June 1, 1996 through May 31, 1997. The Department is conducting this review in accordance within section 751 of the Act, as amended.

The Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. (*See* 19 C.F.R. 351.2139(g)(2).) On February 24, 1998, the Department extended the time limit for these preliminary results to June 30, 1998. *See Stainless Steel Plate from Sweden; Extension of Time Limits for Antidumping Duty Administrative Review* (63 FR 10590, March 4, 1998).

United States Price (USP)

In calculating USP, the Department treated sales as constructed export price (CEP) sales, as defined in section 772(b) of the Act, because the merchandise was first sold to unaffiliated U.S. purchasers, before or after importation, by an affiliated seller in the United states. There were no export price sales during the period of review.

We based CEP on the delivered price to unaffiliated customers in the United States. We made adjustments, where applicable, for ocean freight, U.S. inland freight, U.S. brokerage and handling expenses, U.S. customs duties, early payment discounts, and rebates. In accordance with section 772(d)(1) of the Act, we made deductions for warranty expenses, royalties, slitting and cutting expenses, credit expenses, and indirect selling expenses associated with economic activity in the United States.

With respect to merchandise to which value was added in the United States by Avesta prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act. To arrive at the CEP, the gross unit price was further reduced for both Avesta and Uddeholm by an amount for profit pursuant to section 772(d)(3) of the Act.

Normal Value

In order to determine whether there were sufficient sales of stainless steel plate in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Avesta's aggregate volume of HM sales of the

foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, for Avesta, we have based NV on HM sales. Uddeholm's aggregate volume of HM sales, on the other hand, was less than five percent of its U.S. sales of the subject merchandise. Therefore, we did not base NV for Uddeholm in its HM sales. Rather, because Canada constituted Uddeholm's largest third-country market, we based NV for Uddeholm on sales to that market.

Avesta made HM sales to both affiliated and unaffiliated distributors during the period of review. We included sales to affiliated distributors when we determined those sales to be at arms-length (i.e., at average prices that were 99.5 percent of more of prices to unaffiliated distributors). When prices to an affiliated distributor were, on average, less than 99.5 percent of the price to unaffiliated distributors, we excluded those sales to affiliated distributors from our calculation of NV. The Department's current policy is to consider transactions between affiliated parties as arm's-length if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. *See e.g., Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review* (63 FR 30185, June 3, 1998).

For Avesta we made adjustments to NV for HM inland freight, quantity discounts, distributor discounts, credit expenses, and warranties.

For Uddeholm we made adjustments to NV for international freight, third-country inland freight, third-country inland insurance, third-country customs duties, early payment discounts, warehousing expenses, and credit expenses.

Level of Trade

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine the stages in the marketing process and selling functions along with the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We requested information concerning the selling functions associated with each phase of marketing, or the equivalent, in each of Uddeholm's and Avesta's markets. For Avesta, we determined that one LOT existed in the home market. Avesta offered the same selling terms and conditions, and provided the same level of marketing assistance, customer service, and technical service to all of its home market customers. We also determined that one LOT exists for Uddeholm's third-country sales. Uddeholm offered the same level of inventory maintenance. technical advice, and after-sale servicing to all of its Canadian customers.

To determine whether Avesta and Uddeholm's CEP and NV sales were at the same LOT, we reviewed information submitted in their questionnaire responses regarding selling functions and marketing processes associated with both categories of sales.

The U.S. subsidiaries of both Uddeholm and Avesta performed selling functions such as inventory maintenance, after-sales servicing, technical advice, advertising, freight and delivery arrangement, and warranties. Although Avesta's actual sales in the home market and Uddeholm's actual sales in Canada were made at a marketing stage similar to that in the United States, and entailed essentially the same functions as described above, our comparison of LOTs does not include these selling functions because, as explained above, we are using the CEP methodology in making price comparisons. Thus, in determining the LOT for the U.S. sales, we only considered the selling activities reflected in the price after making the appropriate adjustments under section 772(d) of the Act. (*Sec, e.g., Certain Stainless Wire Rods from France: Final Results of Antidumping Duty Administrative Review* (61 FR 47874, September 11, 1996.)

Based on a comparison of the home market (or third-country market) and this CEP LOT, we find significantly different selling functions for both Avesta and Uddeholm. Avesta's and Uddeholm's CEP sales involve no sales administration beyond the processing of incoming production orders, no forward warehousing, no marketing calls to customers, no advertising or sales promotion, and no technical assistance or after-sale warranty expenses. We therefore determine that Avesta's and Uddeholm's CEP sales are at different LOTs than their respective home market or third-country sales.

As stated above, section 773(a)(7)(B) of the Act directs us to make an adjustment for differences in LOTs where such differences affect price comparability. However, because there is only a single LOT in the HM or third country market, we were unable to determine from information on the record whether differences in LOTs affected price comparability, Therefore, we did not make a LOT adjustment for Avesta and Uddeholm. Next, we examined whether a CEP offset is warranted in this case for Avesta and Uddeholm. As indicated above, in accordance with Section 773(a)(7)(B) of the Act, a CEP offset is warranted where NV is established at a LOT which constitutes a more advanced stage of distribution (or the equivalent) than the LOT or the CEP sale and the data available does not provide an appropriate basis to determine a LOT adjustment. We made a CEP offset pursuant to Section 773(a)(7)(B) of the Act because (1) we have determined that Avesta's and Uddeholm's respective home market or third-country LOT is different from the CEP LOT, but the data necessary to calculate the LOT adjustment is unavailable, and (2) for each company, NV has been established at a LOT which constitutes a more advanced state of distribution (or the equivalent) than its CEP LOT.

Sales Comparisons

To determine whether sales of stainless steel plate in the United States were made at less than NV, we compared USP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777(A) of the Act, we calculated monthly weighted-

average prices for NV and compared these to individual U.S. transactions.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1996 through May 31, 1997:

Avesta	21.84 percent
Uddeholm	11.17 percent

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific *ad valorem* assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for reviewed firms will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 353.106, in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 4.46%.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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 determination is issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18113 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–004R. Applicant: University of California at Los Angeles, Plasma Physics Laboratory, 405 Hilgard Avenue, P.O. Box 951547, Los Angeles, CA 90095–1547. Instrument: YAG Pumped Dye Laser. Manufacturer: Spectron Laser Systems, United Kingdom. Intended Use: Original notice of this resubmitted application was published in the **Federal Register** of February 18, 1998.

Docket Number: 98–032. Applicant: Massachusetts Institute of Technology, Center for Cancer Research, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Fish Tank System. Manufacturer: Klaus-Jurgen Schwarz, Germany. Intended Use: The instrument will be used for the study of the early development of the zebrafish embryo in order to identify genes that are required for a fish egg to develop normally into a perfect living fish embryo and ultimately into an adult fish. It is expected that the genes identified will help in understanding what goes wrong in human development that can lead to birth defects. Application accepted by Commissioner of Customs: June 19, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–18109 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–024. Applicant: University of Michigan, Ann Arbor, MI 48109–2150. Instrument: (3) Sensor Sets, Model ODIN 4. Manufacturer: A.D.C. GmbH, Germany. Intended Use:

See notice at 63 FR 27562, May 19, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides long and short range infrared sensors, a control algorithm and a driver interface for an ''intelligent'' cruise control system for automobiles. A private highway safety research organization advised August 1, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–18110 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, US Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from noon to 3:00 PM on July 21, 1998. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

DATE AND PLACE: July 21, 1998. The meeting will take place in Room 1863 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will review the objectives and agendas of its five subcommittee working groups: Market Access, Trade Impediments, Government Resources, Finance, and Outreach. There will also be an update on the APEC trade liberalization process.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sage Chandler, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–1500.

Dated: July 1, 1998.

Carlos Montoulieu,

Director, Office of Environmental Technologies Exports.

[FR Doc. 98–17978 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Monitoring of the Gulf of Mexico Shrimp Vessels

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Edward E. Burgess, 9721 Executive Center Drive North, St. Petersburg, FL, 33702, 813–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) NOAA is responsible for management of the Nation's marine fisheries. As part of its efforts to enforce fishery regulations, NOAA has included in some of those regulations requirements for monitoring shrimp vessels in the Gulf of Mexico. The ability to monitor shrimping effort is necessary for the protection of red snapper in the Gulf of Mexico. The shrimp trawl fishery has a bycatch of juvenile red snapper and is a source of mortality of red snapper. Monitoring the shrimp fishery is necessary to determine management measures to reduce overfishing of red snapper. NOAA has previously received emergency Paperwork Reduction Act clearance for this collection under the Office of Management and Budget (OMB) control number, 0648–0343.

II. Method of Collection

The owner or operator of a vessel in the shrimp fishery in the Gulf of Mexico, if selected, must notify NMFS in advance of each trip so that a NMFS-approved observer may be embarked or have a Vessel Monitoring Device installed and in use when at sea.

III. Data

OMB Number: 0648–0343.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time Per Response: .08 for notification 6.0 for vessel monitoring.

Estimated Total Annual Burden Hours: 308.

Estimated Total Annual Cost to Public: $150.00.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 1, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–17980 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Seafood Inspection Services

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rita Creitz, 1315 East-West Highway, Silver Spring, MD, 301–713–2355.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and Reorganization Plan No. 4 of 1970. The regulations for the Program are contained in 50 CFR Part 260. The program offers inspection grading, and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. In addition, the NMFS inspection program is the only Federal entity which establishes quality grade standards for seafood marketed in the United States. Qualified participants are permitted to use the program's official quality grade marks on their products to facilitate trade of fishery products.

Participants in the inspection program are requested to submit specific information pertaining to the type of inspection service requested [§ 260.15]. In all cases, applicants provide the program information regarding the type of products to be inspected, the quantity, and location of the product. There are also application requirements if there is an appeal on previous inspection results [§ 260.36]. Participants requesting regular inspection services on a contractual basis also submit a contract [§ 260.96]. Participants interested in using official grade marks are required to submit product labels and specifications for review and approval to ensure compliance with mandatory labeling regulations established by the U.S. Food and Drug Administration as well as proper use of the Program's marks [§ 260.97(c)(12) and (13)].

Current regulations state requirements for approval of drawings and specifications prior to approval of facilities [§ 260.96(b) and (c)]. There are no respondents under this section. The Program will amend this part of the regulations in a future action.

In July 1992, NMFS announced new inspection services, which were fully based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP). The information collection requirements fall under § 260.15 of the regulations. These guidelines required that a facility's quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. HACCP requires continuing monitoring and recordkeeping by the facility's personnel.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based program is not a self-certification program. It relies on unannounced system audits by NMFS. The frequency of audits is determined by the ability of the firm to monitor its operation. By means of these audits, NMFS reviews the records produced through the program participant's self-monitoring. The audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential consume risk associated with the product and/or the firm's history of compliance with the program's criteria.

The information collected is used to determine a participant's compliance with the program. The reported information, a HACCP plan, is needed only once. Other information is collected and kept by the participant as part of its routine monitoring activities. NMFS audits the participant's records on unannounced frequencies to further determine compliance.

The U.S. Food and Drug Administration (FDA) implemented mandatory HACCP seafood safety requirements in December 1997. The burden hours identified are those beyond the FDA's mandatory HACCP requirements. HACCP-related burden hours are identified separately below and are based on an estimate of 30 new HACCP facilities a year and include annual monitoring and recordkeeping estimates for 100 facilities already in the Program.

II. Method of Collection

Information will be obtained via telephone, fax, or hard-copy submission or audit conducted by NMFS personnel.

III. Data

OMB Number: 0648–0266.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Business and other for-profit organizations (participants in the NMFS voluntary seafood inspection program).
Estimated Number of Respondents, Response Times, and Total Burden:

Section 260.15 Application for Inspection Services

Estimated Number of Respondents: 6,952.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 571.
Estimated Total Annual Cost to Public: $0.

Section 260.36 Application for Appeal

Estimated Number of Respondents: 75.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 6.
Estimated Total Annual Cost to Public: $0.

Section 260.96 Contract Completion

Estimated Number of Respondents: 35.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 3.
Estimated Total Annual Cost to Public: $0.

Section 260.96 (b) and (c) Drawing and Floor Plan Approval

Estimated Number of Respondents: 0.
Estimated Time Per Response: 0 minutes.

Estimated Total Annual Burden Hours: 0.

Estimated Total Annual Cost to Public: $0.

Section 260.97(c) (12) and (13) Label and Specification Submission

Estimated Number of Respondents: 2,624.

Estimated Time Per Response: 16 minutes.

Estimated Total Annual Burden Hours: 700.

Estimated Total Annual Cost to Public: $0.

HACCP Participants

New Respondents

Estimated Number of Respondents: 30.

Estimated Time Per Response: 105 hours.

Estimated Total Annual Burden Hours: 3,150.

Estimated Total Annual Cost to Public: $0.

Current Respondents

Estimated Number of Respondents: 100.

Estimated Time Per Response: 80 hours.

Estimated Total Annual Burden Hours: 8,000.

Estimated Total Annual Cost to Public: $0.

Total Respondents: 7,082.

Total Burden Hours: 12,430.

Total Cost: $0—no capita expenditures required.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 1, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–17981 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051398B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, Honolulu Laboratory, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822–2396, has been issued a permit to ''take'' Hawaiian monk seals (*Monachus* schauinslandi) for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Program Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On April 15, 1998, notice was published in the **Federal Register** (63 FR 18377) that an amendment of Permit No. 848–1335, issued June 10, 1997 (62 FR 32586), had been requested by the above-named organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 30, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–18120 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062998A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Moana Productions, Inc., 311 Portlock Road, Honolulu, Hawaii 96825, has been issued an amendment to Permit No. 867–1388 to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Protected Species Program Manager, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987);

Regional Administrator, Alaska Region, NMFS 709 W. 9th Street, Federal Building, Room 461, Box 21668, Juneau, Alaska 99802 (907/586–7012); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 28, 1998, notice was published in the **Federal Register** (63 FR 29181), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et*

seq.), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: July 1, 1998.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–18121 Filed 7–7–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND PLACE: 10:30 a.m., Tuesday, July 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–18250 Filed 7–6–98; 2:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND PLACE: 2:00 p.m., Wednesday, July 29, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 98–18249 Filed 7–6–98; 2:22 p.m.]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

[DFARS Case 97–D035]

DD Form 2631, Performance Evaluation (Architect-Engineer)

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision of DD Form 2631.

SUMMARY: The Director of Defense Procurement is proposing to revise the form used for preparation of contractor performance evaluations under architect-engineer (A–E) contracts. Additions are made to the form to provide a more complete listing of the disciplines and attributes to be evaluated under A–E contracts, and the descriptive rating terms are changed for consistency with the terms used in evaluating contractor performance under supply and service contracts.

DATES: Comments on the proposed revision should be submitted in writing to the address shown below on or before September 8, 1998.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D035 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D035 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses DD Form 2631, Performance Evaluation (Architect-Engineer), to prepare contractor performance evaluations under A–E contracts. DD Form 2631 was developed primarily for conventional design work relating to construction of buildings and other structures. Changes to the form are needed to add disciplines and attributes associated with other types of work performed under A–E contracts, and to address small business subcontracting plan requirements. This proposed revision of the form adds the following to the list of disciplines and attributes to be evaluated under A–E contracts when applicable: Geospatial Information Services; Chemistry; Risk Assessment; Safety/Occupational Health; Hydrographic Surveying; Field Analysis; Innovative Approaches/Technologies; and Implementation of Small Business Subcontracting Plan.

In addition, the proposed revision changes the five overall rating terms in Block 12 of the form, for consistency with the terms used in evaluating contractor performance under supply and service contracts, as follows:

From/To

Excellent—Exceptional

Above Average—Very Good

Average—Satisfactory

Below Average—Marginal

Poor—Unsatisfactory

The proposed revision also removes the three descriptive terms (Outstanding, Satisfactory, and Unsatisfactory) used to rate the disciplines and attributes listed in Blocks 16, 17, and 19 of the form, and replaces these terms with the five terms proposed for use in the overall rating category.

B. Regulatory Flexibility Act

The proposed revision is not expected to 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 proposed changes to the form are not expected to significantly alter the manner in which contractor performance is evaluated under A–E contracts. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Please cite DFARS Case 98–D035 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed form does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

BILLING CODE 5000–04–M

Proposed Revision of DD Form 2631, Performance Evaluation (Architect-Engineer)

PERFORMANCE EVALUATION (ARCHITECT-ENGINEER)

A-E CONTRACTOR I.D. NUMBER *(For ACASS use only)*

1. A-E CONTRACT NUMBER

2. CONSTRUCTION CONTRACT NUMBER

IMPORTANT: Be sure to complete Performance section on back If additional space is necessary for any item, use Remarks section on back.

3. TYPE OF EVALUATION

a. PHASE OF COMPLETION: ☐ INTERIM (_____ %) ☐ FINAL

b. COMPLETION *(X one)*: ☐ DESIGN ☐ ENGINEERING SERVICES ☐ CONSTRUCTION

c. X IF APPLICABLE: ☐ TERMINATION *(Explain in Remarks)*

4. PROJECT NUMBER

5. DELIVERY ORDER NO.(S) *(if applicable)*

6. NAME AND ADDRESS OF A-E CONTRACTOR

7a. PROJECT TITLE AND LOCATION

7b. DESCRIPTION OF PROJECT IF NOT EXPLAINED BY TITLE

8. NAME, ADDRESS AND PHONE NUMBER OF OFFICE RESPONSIBLE FOR:

a. SELECTION OF A-E CONTRACTOR

b. NEGOTIATION/AWARD OF A-E CONTRACT

c. ADMINISTRATION OF A-E CONTRACT

d. ADMINISTRATION OF CONSTRUCTION CONTRACT

DRAFT

9. A-E CONTRACT DATA *(Items 9d thru 9g are not applicable during construction unless there are modifications to the A-E contract - See Instructions.)*

a. TYPE OF WORK PERFORMED BY A-E *(Design, study, etc.)*

b. TYPE OF A-E CONTRACT: ☐ FIRM FIXED-PRICE ☐ INDEFINITE DELIVERY/INDEFINITE QUANTITY ☐ COST-REIMBURSEMENT ☐ OTHER *(Specify)*

c. PROJECT COMPLEXITY: ☐ DIFFICULT ☐ ROUTINE

d. PROFESSIONAL SERVICES CONTRACT

(1) INITIAL A-E FEE	(2) A-E CONTRACT MODIFICATIONS		(3) TOTAL A-E FEE
	NO.	AMOUNT	
$		$	$

e. A-E CONTRACT AWARD DATE	f. NEGOTIATED A-E CONTRACT COMPLETION DATE *(or number of days) (Including extensions)*		g. ACTUAL A-E CONTRACT COMPLETION DATE *(or number of days)*	
(1) DELIVERY ORDER AWARD DATE	(1) COMPLETION DATE	(2) NUMBER OF DAYS	(1) COMPLETION DATE	(2) NUMBER OF DAYS

10. CONSTRUCTION CONTRACT DATA *(Not applicable at completion of design or engineering services not involving construction.)*

a. CONSTRUCTION COSTS	(1) AUTHORIIZED CONSTRUCTION COST	(2) A-E ESTIMATE FOR BID ITEMS AWARDED	(3) AWARD AMOUNT
	$	$	$

b. DATA AT TIME OF CONSTRUCTION COMPLETION *(Completion date _____)*	NUMBER	TOTAL COST
(1) CONSTRUCTION MODIFICATIONS		$
(2) CONSTRUCTION MODIFICATIONS ARISING FROM DESIGN DEFICIENCIES		$

11. A-E LIABILITY ☐ NONE ☐ UNDETERMINED ☐ PENDING $ ☐ SETTLEMENT $

12. OVERALL RATING: ☐ EXCEPTIONAL ☐ SATISFACTORY ☐ UNSATISFACTORY ☐ VERY GOOD ☐ MARGINAL

13. RECOMMENDED FOR FUTURE CONTRACTS?: ☐ YES ☐ CONDITIONALLY ☐ NO *(Explain "No" or "Conditionally" in Remarks.)*

14a. NAME, TITLE AND OFFICE OF RATING OFFICIAL

TELEPHONE NUMBER:

b. SIGNATURE

c. DATE

15a. NAME, TITLE AND OFFICE OF REVIEWING OFFICIAL

TELEPHONE NUMBER:

b. SIGNATURE

c. DATE *(Official Report date)*

AGENCY USE: *(Distribution, etc.)*

DD FORM 2631, 980302 DRAFT PREVIOUS EDITION IS OBSOLETE. Exception to SF 1421 Approved by GSA/IRMS 11-92. Designed using Perform Pro, WHS/DIOR

16. QUALITY OF A-E SERVICES BY DISCIPLINE *(Completion mandatory for both DESIGN and CONSTRUCTION phases and Engineering Services)*

a. DISCIPLINES *(If applicable)*	DESIGN/SERVICES					CONSTRUCTION				
	EXCEP-TIONAL	VERY GOOD	SATIS-FACTORY	MARGINAL	UNSATIS-FACTORY	EXCEP-TIONAL	VERY GOOD	SATIS-FACTORY	MARGINAL	UNSATIS-FACTORY
Architectural										
Structural										
Civil										
Mechanical										
Electrical										
Fire Protection										
Surveying, Mapping, & Geospatial Information Svcs.										
Cost Estimating										
Value Engineering										
Environmental Engineering										
Geotechnical Engineering										
Master Planning										
Hydrology										
Chemical Engineering										
Geology										
Chemistry										
Risk Assessment										
Safety/Occupational Health										
Hydrographic Surveying										

17. DESIGN PHASE OR ENGINEERING SERVICES *(Quality of A-E Services Evaluation)*

ATTRIBUTES *(If applicable)*	EXCEP-TIONAL	VERY GOOD	SATIS-FACTORY	MARGINAL	UNSATIS-FACTORY
Thoroughness of Site Investigation/Field Analysis					
Quality Control Procedures and Execution					
Plans/Specs Accurate and Coordinated					
Plans Clear and Detailed Sufficiently					
Management and Adherence to Schedules					
Meeting Cost Limitations					
Suitability of Design or Study Results					
Solution Environmentally Suitable					
Cooperativeness and Responsiveness					
Quality of Briefing and Presentations					
Innovative Approaches/Technologies					
Implementation of Sm. Business Subcontracting Plan					

16b. DISCIPLINE, NAME AND ADDRESS OF KEY CONSULTANT(S) *(If applicable)*

DRAFT

18. HOW MANY 100% FINAL RESUBMITTALS WERE REQUIRED BECAUSE OF POOR A-E PERFORMANCE?

19. CONSTRUCTION PHASE *(Quality of A-E Services Evaluation)*

ATTRIBUTES *(If applicable)*	EXCEP-TIONAL	VERY GOOD	SATIS-FACTORY	MARGINAL	UNSATIS-FACTORY
Plans Clear and Detailed Sufficiently					
Drawings Reflect True Conditions					
Plans/Specs Accurate and Coordinated					
Design Constructibility					
Cooperativeness and Responsiveness					
Timeliness and Quality of Processing Submittals					
Product & Equipment Selections Readily Available					
Timeliness of Answers to Design Questions					
Field Consultation and Investigations					
Quality of Construction Support Services					

20. REMARKS *(Attach additional sheet(s) or documentation if necessary)*

DD FORM 2631 (BACK), 980302 DRAFT

[FR Doc. 98–17982 Filed 7–7–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment for BRAC 95 Disposal and Reuse of Fort Missoula, MT

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Fort Missoula, Montana.

The Final Environmental Assessment (EA) evaluates the environmental impacts of the disposal and subsequent reuse of the 52 acres. Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

While disposal of Fort Missoula is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of Fort Missoula property is encumbered disposal, with encumbrances pertaining to the possible presence of lead-based paint and asbestos-containing material, and the requirement for a right of reentry for environmental clean-up.

A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of Fort Missoula was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

DATES: Comments must be submitted on August 7, 1998. Comments received on this EA will be considered by the Army prior to initiating action.

COPIES: The Final EA is available for review at the Fort Missoula Public Library. A copy of the Final EA may be obtained by writing to Mr. Ken Brunner, U.S. Army Corps of Engineers, Seattle District (ATTN: CENWS–ED–TB–ER), 4735 East Marginal Way South, Seattle, Washington 98124–2255, or by facsimile at (206) 764–4470.

Dated: July 1, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–18014 Filed 7–7–98; 8:45 am]

BILLING CODE 6712–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Notification of the U.S. Army Freedom of Information Act (FOIA) Citizen Guide for Accessing Army Information

AGENCY: U.S. Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army Freedom of Information and Privacy Acts Office has prepared a Citizens Guide for public use in obtaining information from the Army. The Guide is a short, simple explanation of what the Freedom of Information Act is designed to do, and how a member of the public can use the document to access Army information.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Freedom of Information Act Citizens Guide should be addressed to Rose Marie Christensen, phone (703) 806–5698, Chief, Department of the Army Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Suite 205, Springfield, VA 22150–3166.

SUPPLEMENTARY INFORMATION: The Citizens Guide provides addresses and telephone numbers of each functional area within the Army. Electronic access of the guide can be obtained through the Internet using the following address: http://www.rmd.belvoir.army.mil/clickher.htm Additionally, limited paper copies of the document are also available. They can be obtained by contacting the Army Freedom of Information and Privacy Acts Office at the above address or telephone number.

Eric E. Tolbert,

Chief, Records Management Program Services.

[FR Doc. 98–18029 Filed 7–7–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Implementation of the Defense Table of Official Distances (DTOD) for Passenger Transportation and Travel Services

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice (Request for Comments).

SUMMARY: The Military Traffic Management Command (MTMC), as the Program Director for the Department of Defense (DoD), intends to utilize a new automated distance calculation product known as the Defense Table of Distances (DTOD) as part of the Groups Operational Passenger System (GOPAX). The DTOD will replace existing distance calculation products used within the DoD, such as DoD Official Table of Distances. The DTOD will become the DoD standard source for distance information worldwide. Commercially, DTOD is known as PC*MILER by ALK Associates, Inc. Carriers may continue to use other mileage sources for preparation of Offers of Service, and for their own business purposes. However, the DTOD/PC*MILER will be the DoD Standard for all distance calculations, analysis or audits for transportation services billed on a per mile (mileage) basis. Carriers and passenger service providers participating in the DoD passenger transportation and travel services programs must agree to be bound by the DTOD/PC*MILER distance calculations for payment and audit purposes.

DATES: Comments must be submitted on or before September 8, 1998.

ADDRESSES: Comments may be mailed to: Headquarters, Military Traffic Management Command, ATTN: MTOP–T, Room 617, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the DTOD for MTMC Passenger Transportation and Travel Services Programs can be provided by contacting Ms. Beverly Cox at (703) 681–9444. Information regarding DTOD compliant commercial software and other technical information can be provided by contacting ALK Associates, Inc. at 1 (800) 377–MILE or on the Internet at www.pcmiler.com.

SUPPLEMENTARY INFORMATION:

1. The proposed effective date for use of the DTOD in DoD Passenger Transportation and Travel Services programs is 1 June 1999.

2. Existing Groups Operational Passenger System (GOPAX) mileage tables will be replaced by DTOD/PC*MILER software.

3. ALK Associates, Inc., will provide all interested parties the capability to license PC*MILER, to ensure the ability to consistently determine the exact mileage that the DOD uses for entitlement determination and audit purposes.

4. It is anticipated that transition to DTOD will have no significant impact upon passenger carriers since rates are not obtained or paid on a mileage basis, but rather on a per seat or per trip basis. While per seat cost and trip costs must consider distance, offerors will be free to establish their costs based on the distance calculation methods of their choice.

5. The DTOD/PC*MILER products will calculate both ''shortest'' and ''practical'' mileage. It will contain Standford Point Location Codes, military locations and other worldwide locations required by DoD. Updates and version control DTOD and PC*MILER will be consistent with industry practices. Carriers and/or other parties who choose to use PC*MILER will have opportunities to provide feedback to ALK Associates, Inc., the provider of DTOD software, regarding routings, database suggestions such as distance differences, road preference suggestions, road re-classifications, new locations, etc.

6. Interested parties are invited to provide comments concerning the use of the DTOD to the address provided above. Comments will be accepted for a period of 60 days from the publication date of this notice.

7. Regulatory Flexibility Act. This change is related to public contracts and is designed to standardize distance calculation for line-haul transportation. This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

8. Paperwork Reduction Act. The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection requirement or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Francis A. Galluzzo,

ADCSOPS Transportation Services.

[FR Doc. 98–18021 Filed 7–7–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Termination of Preparation of an Environmental Impact Statement (EIS) for the Red River Chloride Control Project (RRCCP), Texas and Oklahoma

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the termination of work toward preparation of an EIS for the RRCCP. A Draft Supplement to the Final EIS for the project was filed with the Environmental Protection Agency and published in the **Federal Register** on May 5, 1995 (EIS No. 950177). The final Supplement was scheduled for release on January 8, 1996, but was delayed until May 13, 1996, and again until August 1996 so that additional information received during the review process could be considered and incorporated into the document.

As a result of public review comments, opposition from natural resource agencies, and Washington level review, it has been determined that the final Supplement will *not* be released and filed.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. David L. Combs, Chief, Environmental Analysis and Compliance Branch, Tulsa District, U.S. Army Corps of Engineers, P.O. Box 61, Tulsa, Oklahoma 74121, telephone 918–669–7188.

SUPPLEMENTARY INFORMATION: During the National Environmental Policy Act process for the Supplement to the Final Environmental Impact Statement (SFEIS), several issues were identified as concerns by the public and commenting natural resource agencies. The major concerns were categorized into the following components: (1) hydrological, biological, and water quality issues concerning fish, aquatic invertebrates, algae/biofilm, aquatic macrophytes, wetland/riparian ecosystem components, along with continued function and integrity of the upper Red River ecosystem; (2) the Lake Texoma component, including chloride/turbidity relationships, chloride/fish reproduction issues, chloride/plankton community issues, chloride/nutrient dynamics issues, and impacts on lake sport fisheries, aesthetics, and recreational values; (3) a selenium component addressing selenium concentrations and impacts on biota; (4) changes in land use at the Area VI brine storage reservoir; (5) impacts on the potential to designate the upper Red River as a wild and scenic river; (6) man-made brines and associated reduction; (7) Section 401 water quality issues; (8) mitigation as it relates to indirect habitat losses resulting from irrigated cropland and direct impacts from construction of project components; (9) impacts on the commercial bait minnow fishery of the upper Red River; (10) Federally-listed threatened and endangered species; and (11) unquantifiable/undefined impacts.

In an attempt to resolve environmental concerns, the District participated in an Environmental Issue Resolution Process (EIRP) along with the project sponsor and the natural resource agencies. A steering committee was developed to oversee technical workgroups formed to address the major areas of concern which were identified as selenium accumulation, Lake Texoma productivity, and the upper Red River ecosystem. The ultimate goal was to develop an Environmental Operational Plan (EOP) acceptable to all agencies for inclusion into the SFEIS. The overall objective of the EOP was to protect against unacceptable environmental changes with the project.

Despite the efforts of all the agencies through the EIRP, areas of controversy regarding the potential for and/or the relative significance of impacts of the project remain for nearly every issue addressed during the process. Controversy remains regarding: (1) the amount of chloride loads being contributed by man-made sources; (2) the levels of significance of impacts to biota, specifically fishes, of the upper Red River due to reduction of chlorides and flow; (3) the use of surface storage impoundments and the potential for selenium accumulation; (4) the significance of chloride impact on lake turbidity in Lake Texoma and potential impacts on the lake fishery, and (5) the amount of mitigation lands required to mitigate project impacts.

Natural resource agency concerns for potential impacts associated with the RRCCP are warranted. However, the degree and severity of impacts are speculative and difficult to ascertain as many potential impacts are indirect and may or may not occur over the life of the project. Also, many of the impacts to the upper Red River ecosystem and Lake Texoma are difficult to address because of the complexity of these issues. Furthermore, many impacts may not be quantifiable prior to completion of extensive baseline data collection and long-term project monitoring. Adding to this difficulty is the fact that few long-term trend analyses have been conducted within the upper Red River Basin.

During the EIRP process, the District funded additional studies to more adequately address natural resource agency concerns and the severity of impacts. However, most study findings were unable to definitively quantify the magnitude of impacts, if any, attributable to the project. Consequently, there are still several unresolved issues that may only be resolved following long-term collection

of baseline data, construction of the project, and long-term monitoring.

The project was recoordinated with the resource agencies in accordance with the Fish and Wildlife Coordination Act (FWCA), and the U.S. Fish and Wildlife Service (USFWS) issued a Draft FWCA Report for the project dated August 1994. The Service's position is, ''The project not proceed as formulated due to unmitigable impacts to important fish and wildlife resources. Other alternatives, such as desalinization, effluent reclamation, and water blending, should be evaluated and incorporated into a limited project that meets the water requirements of the basin. Control of chlorides at Areas IV, XIII, and XIV should not be pursued as proposed due to their anticipated significant contribution to impacts to: (1) the Red River aquatic community; (2) the Lake Texoma sport fishery; (3) the Sandy Sanders Wildlife Management Area; (4) Federally-listed species; and (5) migratory birds and other resources from selenium contamination at the proposed brine storage sites. In July 1996, the USFWS furnished an Interim Final Supplemental FWCA report for the project. The Service's position with respect to the project remains unchanged.

Timothy L. Sanford,

Colonel, U.S. Army District Engineer.

[FR Doc. 98–18020 Filed 7–7–98; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the South River, Raritan River Basin, Combined Flood Control and Environmental Restoration Project, Middlesex County, New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS) for proposed measures to provide flood control protection and environmental restoration in the South River, Raritan River Basin, New Jersey. For this Notice of Intent, the Corps is considering protection measures to reduce damages caused by flooding and coastal storms. The EIS will be prepared according to the U.S. Army Corps of Engineers procedures for implementing the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), and consistent with the U.S. Army Corps of Engineer's policy to facilitate public understanding and scrutiny of agency proposals. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

FOR FURTHER INFORMATION CONTACT: Questions regarding the action can be addressed to Mark H. Burlas, Project Environmental Manager, phone (212) 264–4663, U.S. Army Corps of Engineers, New York District, Planning Division, 26 Federal Plaza New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION:

1. Authorization

This study is authorized by a U.S. House of Representatives resolution dated May 13, 1993. The reconnaissance report, completed in May 1995, identified a potential plan of improvement that consists of two levees, each approximately 10,000 feet long along opposite banks of the South River. The levees would protect the communities of South River and Sayerville from a 100-year flood.

For environmental restoration, we identified a plan of improvement to restore the quality of the salt marsh near the Washington Canal. The plan would involve the replacement of low quality vegetation in 250 acres of wetlands to restore an important habitat.

2. Location of the Proposed Action

This study area is located within the lower Raritan River Basin in Middlesex County, New Jersey. The South River is the first major tributary of the Raritan River, located approximately 8.3 miles upstream of the Raritan River's mouth at the Raritan Bay.

The South River is formed by the confluence of Matchaponix and Manalapan Brooks, just above Duhernal Lake, and flows northward from Duhernal Lake Dam for a distance of approximately seven miles, at which point it splits into the old South River and the Washington Canal. It flows through the Townships of East Brunswick and Old Bridge, and the Boroughs of South River and Sayerville.

3. Reasonable Alternative Actions

In addition to the ''No Action'' alternative, the flood control component of the feasibility study will evaluate alternatives such as buy-outs, storm gates and flood walls to avoid and minimize impacts to coastal wetlands, as well as various levee layouts and heights. The environmental restoration component will analyze alternatives to restore degraded coastal marshes and tidal ecosystems.

4. Significant Issues Requiring In-Depth Analysis

1. Coastal Wetlands Impacts; 2. Impacts to Aquatic Resources; 3. Archaeological and Cultural Resources Impacts; 4. Hydrology Impacts; 5. Economic Impacts.

5. Environmental Review and Consultation

Review will be conducted as outlined in the Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and U.S. Army Corps of Engineer regulation ER 200–2–2 dated March 4, 1988.

6. Public Scoping Meeting

A public scoping meeting is tentatively scheduled for July 16, 1998, at the South River Public Library, (55 Appleby Avenue, South River, New Jersey 08816) from 5:30 p.m. to 8:00 p.m.

7. Estimated Date of DEIS Availability

February 2000.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–18027 Filed 7–7–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Raritan Bay and Sandy Hook Bay, Combined Flood Control and Shore Protection Project, Union Beach, Monmouth County, New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS) for proposed measures to provide flood control and storm damage protection in Union Beach, New Jersey. For this Notice of Intent, the Corps is considering protection measures to reduce damages caused by flooding and coastal storms. The EIS will be prepared according to the U.S. Army Corps of Engineers procedures for implementing the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), and consistent with the U.S. Army Corps of Engineer's policy to facilitate

public understanding and scrutiny of agency proposals. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

FOR FURTHER INFORMATION CONTACT: Questions regarding the action can be addressed to Mark H. Burlas, Project Environmental Manager, phone (212) 264–4663, U.S. Army Corps of Engineers, New York District, Planning Division, 26 Federal Plaza New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION:

1. Authorization

The existing Federal project was originally authorized by the Flood Control Act of 12 October 1962 as a dual purpose Beach Erosion Control and Hurricane Protection Project in accordance with House Document No. 464, 86th Congress, Second session. This project provided for beach fill, groins, and levees for various sections of the study area. The constructed project consists of segmented sections of beach fill and levees surrounding various communities in Old Bridge Township and Keansburg and East Keansburg. The current study was authorized by a resolution of the Committee on Public Works and Transportation, U.S. House of Representatives, adopted August 1, 1990. The feasibility study seeks to develop improvement plans to ascertain the most suitable long-term solution for the study area's flood and storm damage problems.

2. Location of the Proposed Action

The study area is located in the northern portion of Monmouth County, New Jersey. It occupies an approximate 1.8 square mile area of land along the coast of the Raritan Bay. The Borough of Union Beach is surrounded by the Raritan Bay to the north, East Creek to the east, the Township of Hazlet to the south and Chigarora Creek to the west. The study area is largely located in low elevation regions with numerous small creeks providing drainage. Currently, low-lying residential and commercial structures in the area are experiencing flooding caused by coastal storm inundation. This problem has progressively worsened in recent years due to loss of protective beaches and increased urbanization in the area with structures susceptible to flooding from rainfall and coastal storm surges, erosion and wave attack, combined with restrictions to channel flow in the tidal creek.

3. Reasonable Alternative Actions

In addition to the ''No Action'' alternative, the flood control component of the feasibility study will evaluate alternatives such as buy-outs, storm gates and floodwalls to avoid and minimize impacts to coastal wetlands, as well as various levee layouts and heights. The shore protection component will analyze alternatives such as the expansion of existing dunes and various improvements to existing beaches.

4. Significant Issues Requiring In-Depth Analysis

1. Coastal Wetlands Impacts; 2. Impacts to Aquatic Resources; 3. Archaeological and Cultural Resources Impacts; 4. Hydrology Impacts; 5. Economic Impacts.

5. Environmental Review and Consultation

Review will be conducted as outlined in the Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and U.S. Army Corps of Engineer regulation ER 200–2–2 dated March 4, 1988.

6. Public Scoping Meeting

A public scoping meeting is tentatively scheduled for July 22, 1998, at the Hazlet Public Library, (251 Middle Road, Union Beach, New Jersey 07730) at 5:30 p.m.

7. Estimated Date of DEIS Availability

January 2000.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–18028 Filed 7–7–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–262–000]

Cabot Oil & Gas Corporation v. CNG Transmission Corporation; Notice of Complaint

July 1, 1998.

Take notice that on June 29, 1998, pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206, Cabot Oil & Gas Corporation (COGC) tendered for filing a complaint respectfully requesting that the Commission: (1) expeditiously issue an injunctive order barring CNG Transmission Corporation (CNGT) from forcing producers or shippers/pool operators to purchase low flow meters to avoid having their service terminated on July 1, 1998; (2) issue an order clarifying that CNGT's FERC Gas tariff does not provide CNGT with the authority to unilaterally terminate service unless a producer or shipper/pool operator agrees to purchase low flow meters from CNGT; and (3) issue an order requiring CNGT to repurchase any low flow meters that it forced parties to purchase in violation of its FERC Gas Tariff.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 15, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17999 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–000 (Phase II)]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

July 1, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, July 9, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas J. Burgess at (202) 208–

2058 or David R. Cain at (202) 208–0917.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17990 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–634–000]

Gas Transport, Inc.; Notice of Request Under Blanket Authorization

July 1, 1998.

Take notice that on June 25, 1998, Gas Transport, Inc. (GTI), P.O. Box 430, Lancaster, Ohio 43130–0430, filed in Docket No. CP98–634–000 for approval under Sections 157.205 and 157.212 of the Commission's Regulations to construct and operate, a delivery point in order to deliver gas to West Virginia Power Company (WVPC) under GTI's blanket certificate issued in Docket No. CP86–291–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The delivery point is designated as GTI Line #1, #41+30. The delivery point will be located in Steele District, Wood County, West Virginia and will be used to deliver a maximum of 3,000 Dth per year. The cost is $2,500, for which GTI will be fully reimbursed by WVPC. The service will be provided under GTI's IT Rate Schedule.

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. 98–17989 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–143–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Site Visit

July 1, 1998.

On July 7, 1998, the Office of Pipeline Regulation staff will participate in an inspection of the route proposed by the Great Lakes Gas Transmission Limited Partnership for its Sault Looping Project, in Mackinac County, Michigan. The inspection will begin at 12:00 p.m. from the office of the U.S. Department of Agriculture, Forest Service, Hiawatha National Forest, Eastside Administrative Unit at 1498 West U.S. 2, St. Ignace, Michigan.

All interested parties may attend the inspection. Those planning to attend must provide their own transportation. For further information, please contact Paul McKee at (202) 208–1611.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17988 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1994]

Heber Light and Power Company; Notice of Authorization for Continued Project Operation

July 1, 1998.

On November 2, 1995, Heber Light and Power Company, licensee for the Snake Creek Project No. 1994, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1994 is located on Snake Creek in Wasatch County, Utah.

The license for Project No. 1994 was issued for a period ending June 30, 1998. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b) (1998), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1994 is issued to Heber Light and Power Company for a period effective July 1, 1998, through June 30, 1999, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1999, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Heber Light and Power Company is authorized to continue operation of the Snake Creek Project No. 1994 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17992 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1982]

Northern States Power Company; Notice of Authorization for Continued Project Operation

July 1, 1998.

On June 24, 1996, Northern States Power Company, licensee for the Holcombe Project No. 1982, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1982 is located on the Chippewa River in Chippewa and Rusk Counties, Wisconsin.

The license for Project No. 1982 was issued for a period ending June 30, 1998. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an applicaiton for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1982 is issued to Northern States Power Company for a period effective July 1, 1998, through June 30, 1999, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1999, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Northern States Power Company is authorized to continue operation of the Holcombe Project No. 1982 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17991 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3267–000]

PSI Energy, Inc.; Notice of Filing

July 1, 1998.

Take notice that on June 9, 1998, PSI Energy, Inc., tendered for filing a Power Supply Agreement between Wabash Valley Power Association, Inc., PSI and Cinergy Services, Inc., dated January 1, 1998. This agreement is to succeed PSI's Rate Schedule FERC No. 241, the Interim Scheduled Power Agreement betwen itself and Wabash Valley Power Association, Inc.

Copies of the filing were served upon Wabash Valley Power Association, Inc., Indiana Utility Regulatory Commission and the Indiana Office of the Consumer Counsel.

PSI Energy, Inc., requests waiver of the Commission's notice requirements to allow the Interim Agreement to terminate as of year end 1997 and for the Long-Term Agreement to become effective January 1, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before July 10, 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. 98–18061 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–53–001]

Public Service Company of New Hampshire; Notice of Filing

July 1, 1998.

Take notice that on June 15, 1998, Public Service Company of New Hampshire tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 9, 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. 98–18063 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–117–002]

San Diego Gas & Electric Company; Notice of Application for Amended Section 3 Authorization Request and for a Presidential Permit

July 1, 1998.

Take notice that on June 22, 1998, San Diego Gas & Electric Company (SDG&E), Post Office Box 1831, San Diego, CA 92101, filed in Docket No. CP93–117–002 an application pursuant to Section 3 of the Natural Gas Act (NGA), as amended, and Subpart B of Part 153 of the Commission's Regulations thereunder, for an order amending previous authorization and Presidential Permit for the siting, construction, and operation of pipeline facilities and the place of exit for the export of natural gas at the International Boundary between the United States and Mexico in San Diego County, California,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SDG&E is a local distribution company (LDC), and as such is exempt from the Commission's jurisdiction under Section 1(c) of the NGA, the Hinshaw amendment, but is regulated

[1] The original authorization and Presidential Permit were granted in Docket No. CP93–117–000, *San Diego Gas & Electric Company*, 64 FERC ¶ 61,221, *rehr'g denied*, 65 FERC ¶ 61,299 (1993).

by the California Public Utilities Commission. In Docket No. CP93–117–000, SDG&E received authorization to construct, operate, and maintain a pipeline extending from SDG&E's existing distribution system to Otay Mesa, San Diego County, at the International Border with Mexico, and an associated meter station.

SDG&E states that between the time the Commission granted its original authorization in 1993 and the present, the area intended for the proposed border crossing has become thickly settled. SDG&E therefore requests permission to amend its authorization to:

1. Exclude the section of pipeline connecting SDG&E's existing system to the proposed facilities in the immediate vicinity of the border crossing;
2. Move the location of the border crossing 1.73 miles east to approximately 32° 33.2′ N by 116° 53.9′ W;
3. Reduce the pipeline size from 36 inches to 30 inches; and
4. Reduce the maximum capacity from 500 MMCF/day to 350 MMCF/day.

The facility will consist of a 100 foot by 120 foot meter station and 400 feet of 30-inch pipeline leading from the meter station to the International Boundary. Although not part of the Section 3 authorization, SDG&E proposes to build approximately 3 miles of pipeline connecting the proposed facilities with SDG&E's existing Hinshaw distribution system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no notion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SDG&E to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17987 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–6–000 and ER98–6–001]

USGen New England, Inc.; Notice of Issuance of Orders

July 1, 1998.

USGen New England, Inc. (USGenNE) filed an application for Commission authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, USGenNE requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by USGenNE. On February 25, 1998, the Commission issued an Order that inadvertently did not include USGenNE's name in the Ordering Paragraphs that granted to USGenNE the waivers and blanket authorizations generally afforded to power marketers. On March 27, 1998, USGenNE filed a Request For Clarification or, In The Alternative, Request For Rehearing of the Commission's February 25 Order. On June 10, 1998, the Commission issued an Order on Clarification and Rehearing that clarified the earlier order regarding such waivers and blanket authorizations.

The Commission's February 25, 1998 and the June 10, 1998 Orders granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (J), (K), and (M) of the February 25, 1998 Order:

(J) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by USGenNE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(K) Absent a request to be heard within the period set forth in Ordering Paragraph (J) above, USGenNE is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of USGenNE, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(M) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of USGenNE's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 10, 1998.

Copies of the full text of the Orders are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18062 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

July 1, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Major License.
b. Project No.: P–2004–073.
c. Date Filed: September 2, 1997.
d. Applicant: Holyoke Water Power Company.
e. Name of Project: Holyoke Hydroelectric Project.
f. Location: On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).
h. Applicant Contact:
Ronald G. Chevalier, Vice President, Holyoke Water Power Company, P.O.

Box 270, Hartford, CT 06141–0270, (860) 665–5315.

James J. Kearns, Project Manager, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, (860) 665–5936.

Catherine E. Shively, Counsel, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105, (603) 634–2326.

i. FERC Contact: Allan Creamer (202) 219–0365.

j. Comment Date: August 31, 1998.

k. Status of Environmental Analysis: This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The proposed run-of-river project would consist of the following features: (1) an approximately 1,000-foot-long masonry dam to elevation of 97.47 feet National Geodetic Vertical datum, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) a 2,290-acre reservoir that extends approximately 25 miles upstream; (4) a three-level canal system adjacent to the river with headgates at the dam; (5) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (6) a total nameplate capacity of 43,756 kilowatts; (7) transmission line connections; and (8) appurtenant facilities. The estimated average annual generation is about 223,389 megawatt-hours.

m. Purpose of Project: The power generated by the project is used for station service on site and sold to industrial customers in Holyoke, with the remainder transmitted to other utilities for resale outside of Holyoke.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Holyoke Water Power Company, 1 Canal Street, Holyoke, Massachusetts 01040, (413) 536–9428.

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 and 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, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice and requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of the 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory, Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17993 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Application Accepted for Filing With the Commission

July 1, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Major License.

b. Project No.: P–11607–000.

c. Date Filed: August 29, 1997.

d. Competing Applicant(s): Ashburnham Municipal Light Plant and Massachusetts Municipal Wholesale Electric Company.

e. Name of Project: Holyoke Hydroelectric Project.

f. Location: On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Competing Applicant(s) Contact:

Roger W. Bacon, Director, Power Services Division, Mass. Municipal Wholesale Elec. Company, Randall Road, P.O. Box 426, Ludlow, MA 01056, (413) 589–1041.

Jack LcMieur, Acting General Manager, Ashburnham Municipal Light Plant, 78 Central Street, P.O. Box 823, Ashburnham, MA 01430, (508) 827–4423.

i. FERC Contact: Allan Creamer (202) 219–0365.

j. Comment Date: August 31, 1998.

k. Status of Environmental Analysis: This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The proposed run-of-river project would consist of the following features: (1) an approximately 1,000-foot-long masonry dam to elevation 97.47 feet National Geodetic Vertical datum, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) the Fish Lift Park adjoining the dam; (4) a 2,290-acre reservoir that extends approximately 25 miles upstream; (5) a three-level canal system adjacent to the river with headgates at the dam; (6) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (7) a total nameplate capacity of 58,756 kilowatts (kW), consisting of the

existing 43,756 kW project plus a 15,000 kW expansion at the Hadley Falls Station; (8) transmission line connections; and (9) appurtenant facilities. The estimated average annual generation is about 212,000 megawatt-hours (MWh), which would increase to about 257,600 MWh after completing the expansion in 2006.

m. Purpose of Project: The power generated by the project would be used within Holyoke Gas & Electric Department's distribution system, with a portion sold to the Massachusetts Municipal Wholesale Electric Company.

n. This notice also consists of the following standard paragraphs: A4, B1, and E1.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. Copies are also available for inspection and reproduction at (1) the Ashburnham Municipal Light Plant, 78 Central Street, Ashburnham, Massachusetts 01430, and (2) the Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, Massachusetts 01040.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17998 Filed 7–7–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6122–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Air Pollution Regulations for the Outer Continental Shelf (OCS) Activities: Reporting, Recordkeeping and Testing Requirements, OMB Control Number 2060–0249, ICR number 1601.03, expiration date: August 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 8, 1998.

ADDRESSES: A copy of the supporting statement may be obtained from the Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711 or is available at http://www.epa.gov/ttn/oarpg/t1/fr__notice/ocs-icr.wpd. Comments must be mailed to David H. Stonefield, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD–15, Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: David Stonefield, telephone: 919–541–5350, Facsimile: 919–541–0824, E-MAIL: stonefield.dave@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are air pollution sources which are located on the outer continental shelf along the Arctic, Atlantic, and Pacific Oceans and in the Gulf of Mexico east of longitude 87°30′.

Title: Air Pollution Regulations for the Outer Continental Shelf (OCS) Activities: Reporting, Recordkeeping and Testing Requirements, OMB Control Number 2060–0249, ICR number 1601.03, expiration date: August 31, 1998.

Abstract: Section 328 (Air Pollution From Outer Continental Shelf Activities) of the Clean Air Act (CAA) as amended in 1990, gives EPA responsibility for regulating air pollution from OCS sources located offshore of the States along the Arctic, Atlantic and Pacific coasts, and along the eastern Gulf of Mexico coast (off the coast of Florida).

The U.S. Department of Interior's Minerals Management Service (MMS) retained the responsibility for regulating air pollution from sources located in the western Gulf of Mexico. To comply with the requirements of section 328 of the CAA, EPA, on September 4, 1992 at 57 FR 40792, promulgated regulations to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards and to meet other air quality goals. Sources located within 25 miles of a State's seaward boundary must comply with the same State/local air pollution control requirements as would be applicable if the source were located in the corresponding onshore area (COA). Sources located more than 25 miles from a State's seaward boundary (25-mile limit) must comply with EPA air

pollution control regulations. The regulations are codified as part 55 of chapter I of title 40 of the *Code of Federal Regulations* (CFR).

The proposed ICR addresses the information collection burden to industry respondents who are subject to the reporting, recordkeeping, and testing requirements of the OCS air regulations. Industry respondents include owners or operators of existing and new or modified stationary sources. The proposed ICR also addresses the burden to the agencies who are responsible for implementing and enforcing the OCS regulations. The EPA has delegated the authority to implement and enforce the OCS regulations for sources located off the coast of California to four local air pollution control agencies. The EPA implements and enforces the regulations for all other sources under its jurisdiction. All burden estimates are calculated for the 3-year period beginning September 1, 1998 and ending August 31, 2001.

The type, quantity and submission requirements of information will depend on the type and location of the source. Exploration facilities are generally smaller sources which operate for a short period of time (2 to 6 months), are required to submit an application to operate and are required to submit a copy of their log book to document their operation. Development and production facilities are generally larger sources which operate for periods up to 30 years, are required to obtain new source review and operating permits, conduct initial and periodic emission tests, and submit compliance information on a routine basis.

The requirements for sources located or locating within 25 miles of the States' seaward boundaries are essentially the same as the requirements for the sources located in the COA. These requirements will depend upon whether the area is attaining the air quality standards and the local regulatory requirements. For example, a new source locating off the coast of a nonattainment area would have to meet the stringent requirements of the nonattainment area, such as smaller size cut-offs for new source review requirements and control requirements for the lowest achievable emission rate. While sources locating off an area which is attaining the standards would have higher cut-off requirements and control requirements for the best available control technology.

In addition, since EPA has delegated authority to implement and enforce the regulations to four southern California air pollution control districts, sources locating off the coast of those districts would be submitting their applications and data to the local districts.

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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: There are two types of respondents affected by this proposed ICR: new and existing sources. New sources must submit adequate information to determine if the sources will meet the appropriate new source review requirements. The annual average of these one-time-only burdens for the respondents is estimated to be 16,742 hours. Existing sources must submit information to obtain an operating permit and information on the sources' emissions. The annual burden for the existing sources is 16,308 hours. The total estimate annual burden for the respondents is 33,050 hours and an annualized cost of $1,775,646. The burden for the State and local agencies to implement and enforce the regulations is estimated to be 4,109 hours and an annualized cost of $158,476. The burden for the EPA to implement and enforce the regulations is estimated to be 4,114 hours and an annualized cost of $177,099. 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.

Dated: June 18, 1998.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–18084 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6122–1]

Notice of Shrimp Virus Management Work Shop

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of shrimp virus management workshop.

SUMMARY: The Gulf of Mexico Program will jointly sponsor a Shrimp Virus Management Workshop. This workshop is a continuation of the shrimp virus work of the Joint Subcommittee on Aquaculture (JSA) of the President's Council on Science and Policy. This workshop is jointly sponsored by: the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (DOC/NOAA/NMFS); U.S. Department of Agriculture, Cooperative State Research, Education and Extension Service (DOA/CREES) and Agricultural Research Service (DOA/ARS); and U.S. Environmental Protection Agency (USEPA) Gulf of Mexico Program. The purpose of the workshop is to utilize all of the data and input gathered from the June 1996 Shrimp Pathogen Workshop, the Report of the JSA Shrimp Virus Work Group from June 1997, the Stakeholder Meetings held in Summer 1997 and the Expert Workshop held in January 1998 to develop Management Options/ Strategies for managing the threat of shrimp viruses to cultured and wild stocks of shrimp in the Gulf of Mexico and Southeastern U.S. Atlantic Waters.

DATES: The workshop will be held on July 28 & 29, 1998.

ADDRESSES: The workshop will be held at the Radisson Inn New Orleans Airport, 2150 Veterans Blvd., Kenner, LA. (504) 467–3111.

FOR FURTHER INFORMATION CONTACT: William D. Holland, Gulf of Mexico

Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–3726; or for technical assistance contact, Dr. Tom McIlwain, Chairperson of the JSA Shrimp Virus Work Group, National Marine Fisheries Service, 3209 Frederick Street, Pascagoula, MS 39567 at (228)762–4591.

SUPPLEMENTARY INFORMATION: The workshop will be structured with case studies, drawing on the experiences of Mexico and the states of South Carolina, Texas, and Florida, in managing the threat of shrimp viruses in their respective jurisdictions. Breakout groups will cover conservation, aquaculture, the processing industry, and wild caught stocks.

The tentative agenda is as follows:

Tuesday, July 28, 1998

8:00 a.m.—Introduction and Charge to Working Group
8:15 a.m.—Case Study #1
9:15 a.m.—Case Study #2
10:15 a.m.—Break
10:30 a.m.—Case Study #3
11:15 a.m.—Case Study #4
12:00 n.—Lunch
1:00 p.m.—Working Group Sessions (4 Different Groups)
5:00 p.m.—Adjourn

Wednesday, July 29, 1998

8:00 a.m.—Working Group Sessions (continued)
10:15 a.m.—Break
10:30 a.m.—Conclusions/Working Group Reports
12:00 n.—Adjourn

The Workshop is open to the public.

Bryon O. Griffith,

Deputy Director, Gulf of Mexico Program.

[FR Doc. 98–18085 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66251; FRL 5796–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 4, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some five pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
001757–00040	Amerstat 282	Methylenebis(thiocyanate)
005383–00060	Troysan 186	4,4-Dimethyloxazolidine
034704–00702	Clean Crop Butylate 6.7EC	*S*-Ethyl diisobutylthiocarbamate
034704–WA–97–0014	Clean Crop Carbaryl 4L	1-Naphthyl-*N*-methylcarbamate
045385–00046	Chem-Tox Low Odor Flea Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
001757	Ashland Chemical Co., Drew Industrial Division, One Drew Plaza, Boonton, NJ 07005.
005383	Lewis & Harrison, Agent For: Troy Chemical Corp., 122 C St., NW., Ste. 740, Washington, DC 20001.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
045385	CTX Inc., 481 Scotland Rd., Mchenry, IL 60050.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 4, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation

action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 23, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–17730 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34125; FRL 5797–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 4, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail; Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 62 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 4, 1999 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. *Note: Registration number(s) preceded by ** indicate a 90–day comment period.*

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000004–00224	Rotenone 5%	Rotenone	Use on cranberries
**000279–03023	Furadan 15G Insecticide-Nematicide	Carbofuran	Use on cranberries
000400–00399	Terraclor 75% Wettable Powder	Pentachloronitro-benzene	Foliar use on peanuts
000400–00402	Terraclor 10% Granular	Pentachloronitro-benzene	Foliar use on peanuts
000400–00453	Terraclor Flowable	Pentachloronitro-benzene	Foliar use on peanuts
000577–00541	Cuprinol Wood Preservative	Copper Naphthenate	Interior use
000577–00545	Clear Cuprinol Brand Wood Preservative Brand No. 20	Zinc Naphthenate	Interior use
001022–00409	Copper Naphthenate WR Wood Preservative Ready To Use	Copper Naphthenate	Interior use
001022–00507	Copper Naphthenate 1%	Copper Naphthenate	Interior use
001022–00518	CUNAPSOL–1	Copper Naphthenate	Interior use
001022–00522	CUNAPSOl–5	Copper Naphthenate	Interior use
001022–00523	CUNAPSON–2	Copper Naphthenate	Interior use
001022–00528	Copper Naphthenate Concentrate 8%	Copper Naphthenate	Interior use
001022–00536	Pol-Nu CURAP 20	Copper Naphthenate	Interior use

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
001022–00568	Chapo-CU-NAP 800EC	Copper Naphthenate	Interior use
001022–00571	Chapco-CU-NAP 400	Copper Naphthenate	Interior use
001022–00579	CURAP 20 PK	Copper Naphthenate	Interior use
001409–00022	Marine Woodlife Ready to Use	Copper Naphthenate	Interior use
001719–00002	COP-R-TOX	Copper Naphthenate	Interior use
001719–00007	Zin-Tox Clear Wood Preserver 74–2	Zinc Naphthenate	Interior use
001719–00038	Zin-Tox 202 Water Based Wood Preservative		Interior use
001719–00039	B.P. COP-R-TOX 202 Water Reducible Wood Preserve time	Copper Naphthenate	Interior use
003008–00055	COP-R-Plastic Wood Preservative Compound	Copper Naphthenate	Interior use
003008–00073	Osmose COP-R-NAP	Copper Naphthenate	Interior use
003215–00004	Water Repellent Wood Preserver	Zinc Naphthenate	Interior use
004091–00006	Kelan-Strip Coppo Extra	Copper Naphthenate	Interior use
007115–00012	Chex-Flame Preservative Coating for Canvas	Copper Naphthenate	Interior use
007424–00001	Jasco Termin-8 Wood Preservative Green/Black	Copper Naphthenate	Interior use
007424–00009	Jasco ZPW Wood Perservative	Zinc Naphthenate	Interior use
007969–00078	Basagran M60 Herbicide	MCPA, dimethylamine; Sodium Bentazon	Use on rice
009630–00004	6% Copper NAP-ALL	Copper Naphthenate	Interior use
009630–00005	M-GARD S120 Wood Preservative	Copper Naphthenate	Interior use
009630–00006	8% Zinc NAP-ALL	Zinc Naphthenate	Interior use
009630–00007	Zinc Hydro-NAP	Zinc Naphthenate	Interior use
009630–00008	M-Guard W112	Copper Naphthenate	Interior use
009630–00010	M-GARD W550	Zinc Naphthenate	Interior use
009630–00011	M-GARD W510	Copper Naphthenate	Interior use
009630–00012	M-GARD S520	Copper Naphthenate	Interior use
009630–00015	M-GARD S540	Copper Naphthenate	Interior use
009630–00017	Germicide Agueous	Copper Naphthenate	Interior use
009630–00021	M-GARD S550	Zinc Naphthenate	Interior use
009630–00026	M-GARD G540	Copper Naphthenate	Interior use
009630–00031	M-GARD S510	Copper Naphthenate	Interior use
010465–00034	10–9–0 Green F.O. Wood Preservative	Copper Naphthenate	Interior use
010465–00035	Cunap Wrap	Copper Naphthenate	Interior use
030573–00002	Pyrellin E.C.	Pyrethrins	Use on cranberries
043437–00001	Dussek 6% Copper Naphthenate	Copper Naphthenate	Interior use
043437–00003	Dussek 8% Zinc Naphthenate	Zinc Naphthenate	
043437–00004	Copper Naphthenate	Copper Naphthenate	Interior use
051036–00246	Acephate Technical	Acephate	Pasture & range land, wasteland, forestry uses
054471–00005	Cunap Coat	Copper Naphthenate	Interior use
054734–00001	Protecto-Copp	Copper Naphthenate	Interior use
054734–00002	Protecto-Zin	Zinc Naphthenate	Interior use
059639–00041	Valent ORTHENE Technical	Acephate	Forestry uses
059639–00042	Valent ORTHENE MFG	Acephate	Pasture & rangeland uses
059639–00088	ORTHENE Turf, Tree & Ornamental WSP		Pasture & rangeland uses
060061–00009	Wolman Wood Preservative/Water Repellent Clear	Zinc Naphthenate	Interior use
060061–00016	No. 00 Ready to Use Copper Treat	Copper Naphthenate	Interior use
060061–00019	Copper Treat 120 Ready- To-Use	Copper Naphthenate	Interior use

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
066591–00001	Copper Green Wood Preservative	Copper Naphthenate	Interior use
066591–00003	Green's Clear Wood Preservative	Zinc Naphthenate	Interior use
066591–00005	Coppernate 250 Wood Preservative	Copper Naphthenate	Interior use

Note: Registration number(s) preceded by **indicate a 90–day comment period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products, Inc., 2 Wurz Ave., Yorkville, NY 13495.
000279	FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103.
000400	Uniroyal Chemical Co., Inc., 74 Amity Road, Bethany CT 06524.
000577	Sherwin-Williams Co., 101 Prospect Avenue, Cleveland, OH 44115.
001022	IBC Manufacturing Co., 5966 Heisley Road, Mentor, OH 44060.
001409	Derusto-Woodlife, P.O. Box 277, Dayton, OH 45401.
001719	Mobile Paint Manufacturing Co., Box 717 – Theodore Inds. Park, Hamilton Road, Theodore, AL 36582.
003008	OSMOSE Wood Perserving, Inc., 980 Ellicott Street, Buffalo, MY 14209.
003125	Bayer Corp., 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120.
004091	W.M. Barr & Co., 2105 Channel Avenue, Memphis, TN 38113.
007115	Building Care, 5300 W. 127th Street, Aslip, IL 60658.
007424	JASCO Chemical Co., 1710 Villa Street, Mountain View, CA 94042.
007969	BASE Corporation, P.O. Box 13528, Research Triangle Park, NC 27709.
009630	OMG Americas, Inc., 811 Sharon Drive, Westlock, OH 44145.
010465	Chemical Specialities, Inc., One Woodlawn Green, Suite 250, Charlotte, NC 28217.
030573	Webb Wright Corp., P.O. Box 1572, Fort Myers, FL 33902.
043437	Dussek Campbell Limited, C/o A.N. Deringer, Inc., Rd., #1, P.O. Box W432, Alexandria Bay, NY 13607.
051036	Micro Flo Company, P.O. Box 5948, Lakeland, FL 33807.
054471	Teniono Wood Perservatives, P.O. Box 707, Columbus, NE 68602.
054734	Lanco Mfg. Corp. URB, Aponte 5, San Lorenzo, PR 00754.
059639	Valent USA Corporation, 1333 N. California Blvd., Ste. 600, Walnut Creek, CA 94596.
060061	Kop-Coat, Inc., 436 Seventh Avenue, Pittsburgh, PA 15219.
066591	Green Products Co., 810 Market Street, Richmond, CA 94801.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 23, 1998.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–17731 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30375B/30429A; FRL–5799–1]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products PFR-MUP, PFR-97™ 20% WDG, and NEU 1160 Vegetable Oil Insecticide, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460, listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Shanaz Bacchus	Rm. 14, 9th floor, CM #2, 703–308–8097, e-mail: bacchus.shanaz@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Susanne Cerrelli	Rm. 14, 9th floor, CM #2, 703–308–8077, e-mail: cerrelli.susanne@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of November 2, 1994 (59 FR 54903) (FRL–4917–5), which announced that W. R. Grace and Company, 7379 Route 32, Columbia, MD 21044, had submitted applications to register the pesticide products PFR-MUP and PFR-97™ WDG (EPA File Symbols 11688–RL and 11688–RA), containing the new active ingredient *Paecilomyces fumosoroseus* Apopka Strain 97 at 7 and 12.5 percent respectively, an active ingredient not included in any previously registered products.

These applications were subsequently transferred to Thermo Trilogy Corporation, 9145 Guilford Road, Suite 100, Columbia, MD 21046. The applications were approved on April 22, 1998, with new assigned registration numbers for the products PFR-MUP for manufacturing use only in the formulation of insecticides (EPA Registration Number 70051-17) and PFR-97™ 20% WDG for use on whiteflies, aphids, thrips, spider mites, ornamentals, nonfood crops in greenhouses, and interiorscapes (EPA Registration Number 70051–19). (S.Bacchus)

EPA also published a notice in the **Federal Register** of February 20, 1997 (62 FR 7776) (FRL–5588–2), which announced that W. Neudorff GmbH KG Postfach 1209, an der Muhle 3, D-31860 Emmerthal, Germany, had submitted an application to register the pesticide product NEU 1160 Vegetable Oil Spray (EPA File Symbol 67702–U) containing the ingredient canola oil at 96 percent, an active ingredient not included in any previously registered product.

The application was approved on April 28, 1998, as NEU 1160 Vegetable Oil Insecticide (EPA Registration Number 67702–4), for use to control adelgids, aphids, cankerworms, caterpillars, fungus gnats, mites, and a variety of other insects on growing crops. (S. Cerrelli)

The Agency has considered all required data on risks associated with the proposed use of *Paecilomyces fumosoroseus* Apopka Strain 97 and canola oil, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the microbial or biochemical pesticide and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Paecilomyces fumosoroseus* Apopka Strain 97 and canola oil when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on *Paecilomyces fumosoroseus* Apopka Strain 97 and canola oil.

A copy of these fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 25, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–18078 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30427B/30442A; FRL–5799–2]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Game Stop, M-97-002 Kaolin, M-97-009 Kaolin, and M-96-018 Kaolin, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Driss Benmhend	Rm. 37, 9th floor, CM #2, 703–308–9525, e-mail: benmhend.driss@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sheila Moats	Rm. 14, 9th floor, CM #2, 703–308–1259, e-mail: moats.sheila@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of January 22, 1997 (62 FR 3287) (FRL–5582–4), which announced that Themac Incorporation P.O. Box 5209, Valdosta, GA 31603–5209, had submitted an application to register the pesticide product Game Stop a vertebrate repellent (EPA File Symbol 70061–R), containing the new active ingredient fish oil at 11.6 percent, an active ingredient not included in any previously registered product.

The application was approved on March 6, 1998, as Game Stop, (EPA Registration Number 70061–1) for terrestrial use application of liquid formulation to foliage and twigs of trees, shrubs, and ornamental plants which are fed upon by rabbits and deer. (S. Moats)

EPA also published a notice in the **Federal Register** of October 30, 1997 (62 FR 58729) (FRL–5751–4), which announced that Engelhard Corporation, 101 Wood Avenue, Iselin, NJ 08830, had submitted applications to register the pesticide products M-97-002, M-97-009, and M-96-018 (EPA File Symbols 70060–E, 70060–R, and 70060–G) containing the active ingredient kaolin at 99.4, 100, and 98.8 percent respectively, an active ingredient not included in any previously registered products.

The applications for these products were approved on March 17, 1998, as M-97-002 Kaolin, M-97-009 Kaolin, and M-97-018 Kaolin, as a broad spectrum agricultural repellent/protectant for controlling damage to crops from various insects, mites, fungal, and bacterial diseases (EPA Registration Numbers 70060–2, 70060–1, and 70060–3), respectively. (D. Benmhend)

The Agency has considered all required data on risks associated with the proposed use of fish oil and kaolin, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of fish oil and kaolin when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on fish oil and kaolin.

A copy of these fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 24, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–18079 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–808; FRL–5791–6]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–808, must be received on or before August 7, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard W. King, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, (7511C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 14, 9th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703) 308–8052; e-mail: king.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–808] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–808] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

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

Dated: June 29, 1998.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Asahi Chemical Manufacturing Company

PP 7F4835

EPA has received a pesticide petition (PP 7F4835) from Asahi Manufacturing Company, Ltd., c/o Chemical Consultants International, Inc., 7270 West 98th Terrace, Suite 100, Overland Park, KS, 66212, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an amendment/expansion of an existing tolerance exemption for the biochemical pesticide Sodium o-Nitrophenolate, Sodium p-Nitrophenolate, and Sodium 5-Nitroguaiacolate in or on all crops.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Asahi Manufacturing Company, Ltd. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Asahi Manufacturing Company, Ltd. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. ATONIK® and Proposed Use Practices

ATONIK® is registered for use as a plant growth stimulator on cotton, rice and soybeans. Application should be made with the addition of a non-ionic surfactant.

1. *Cotton*. ATONIK® may be applied twice during the growing season in 40 to 60 gallons of water per acre. ATONIK® may be applied at 8 fluid ounces per acre at first bloom with a second application at 14 fluid ounces during early boll development.

2. *Rice*. ATONIK® may be applied twice during the growing season in 40 to 60 gallons of water. ATONIK® may be applied at 6 to 8 fluid ounces per acre at the beginning of panicle initiation with a second application of 6 to 8 fluid ounces at post anthesis.

3. *Soybeans*. ATONIK® may be applied twice during the growing season in 40 to 60 gallons of water. ATONIK® may be applied at 6 to 8 fluid ounces per acre 5 days after first bloom with a second application of 6 to 8 fluid ounces 3 to 4 weeks after first bloom.

B. Product Identity/Chemistry

ATONIK® is comprised of three active ingredients. These three active ingredients have each been exempted from the requirements of tolerance for cotton, rice and soybeans. The three active ingredients and the percentage of each in ATONIK® are:

i. Sodium o-Nitrophenolate 0.20%
ii. Sodium p-Nitrophenolate 0.30%
iii. Sodium 5-Nitroguaiacolate 0.10%

The Chemical properties of each of the three ingredients in ATONIK® and of ATONIK® itself are presented in section A of the submission. The three active ingredients have all been shown to be taken up into plants and immediately metabolized. Therefore, no measurable residues have been found or will be expected.

C. Mammalian Toxicological Profile

Acute toxicology studies place ATONIK® in Category IV. Acute toxicology studies place Sodium o-Nitrophenolate in Category II based upon the results of the primary eye study, Sodium p-Nitrophenolate is in Category II based upon the results of the acute oral and the primary eye studies and Sodium 5-Nitroguaiacolate is in Category I based upon the results of the primary eye study. ATONIK® was found to be a mild sensitizer in the guinea pig.

A subchronic oral feeding study was performed on the end-use product ATONIK® using dietary dose levels of 0, 5,000, 15,000 and 50,000 parts per million (ppm), which was equivalent to 515, 1,590, and 5,056 milligrams/kilograms (mg/kg/day) for male rats and 531, 1,723, and 6,553 mg/kg/day for female rats. The lowest observed effect level (LOEL) was 1,589 mg/kg/day for male rats and 1,723 mg/kg/day for female rats based upon decreased weight gains, changes in hematology parameters, relative organ weights of the liver and kidney, and pigment accumulation in kidney and spleen.

A developmental toxicity study in rats was conducted on ATONIK®. Administration was by gavage at dose levels of 0, 100, 300, and 600 mg/kg/day. Significantly decreased body weight gain and food consumption was observed at 600 mg/kg/day in the female rats. One death was noted and attributed to the test chemical. The maternal no observed effect level (NOEL) and LOEL were determined to be 300 and 600 mg/kg/day, respectively. No developmental toxicity was observed. The NOEL for developmental toxicity was determined to be 600 mg/kg/day.

The Ames Test, Mouse Micronucleus Assay and the Mouse Lymphoma Assay were each performed with each of the three active ingredients in ATONIK®. All results were negative.

The toxicity studies are sufficient to demonstrate that there are no foreseeable human or domestic animal health hazards possible from use of these active ingredients as plant regulators in the concentrations present in ATONIK®.

D. Aggregate Exposure

The end-use product, ATONIK®, contains the three active ingredients in very low concentrations. At the application rates employed, the level of active ingredient which may be present in any of the food or feed items would be far below the levels which demonstrated any effects in the subchronic oral feeding study, the developmental toxicity study or the mutagenicity studies. It can be shown that in order to reach a dose rate comparable to the LOEL of 1,600 mg/kg/day obtained in the subchronic oral feeding study, a person weighing 50 kg would have to consume all of the produce from 4 acres of crop every day.

Further, due to the rapid uptake and metabolism of the three active ingredients in the plants, it is most unlikely that any of the residue would be available for potential exposure.

Similarly, exposure of the residues to humans from consumption of water would be equally unlikely. There is no allowed use of the product containing the three active ingredients on lawns, rights-of-way, golf courses, or other areas where human exposure may result. Therefore, exposure from these areas would be non-existent.

E. Cumulative Exposure

Exposure through other pesticides and substances with the same mode of toxicity is not likely. What little toxicity that is observed is only observed at extremely high concentrations of these active ingredients.

F. Safety Determination

The three active ingredients in the end-use product, ATONIK®, are all biochemicals. The low toxicity of each of these alone and in combination, as discussed above, demonstates that these chemicals, at the rates established, will not pose any known risk to human health, either as children or as adults. These three active ingredients are already exempted from the requirements of a tolerance for use on cotton, rice and soybeans.

G. Effects on the Immune and Endocrine Systems

The Agency has no information to suggest that ATONIK® will have an effect on the immune and endorine systems. The Agency is not requiring information on the endocrine effects of this biological pesticide at this time. Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

H. Existing Tolerances

Exemptions from the requirements of a tolerance have already been established for residues of the biochemical plant regulators Sodium o-Nitrophenolate, Sodium p-Nitrophenolate, and Sodium 5-Nitroguaiacolate in or on the raw agricultural commodities cottonseed, cotton gin by products, rice, rice straw, soybeans, and soybean forage and hay.

I. International Tolerances

No known international tolerances have been granted for this pesticide. Therefore, based on the completeness and reliability of the toxicity data from the published literature and conservative exposure assessment, Asahi Manufacturing Company, Ltd., concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of the ATONIK® including all anticipated dietary exposure and all non-occupational exposures.

[FR Doc. 98–18076 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50842; FRL–5798–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Sheila Moats, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th Floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–1259, e-mail: moats.sheila@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

70515–EUP–1. Issuance. J P BioRegulators, Inc., IR-4 Project Rutgers University, Cook College, P.O. Box 231, New Brunswick, NJ 08903–0231. This experimental use permit allows the use of 72 kilograms each year for the biochemical phospholipid: Lyso-PE (lysophosphatidylethanolamine) on 520 acres of apples, citrus, cranberries, grapes, peaches, pears, nectarines, strawberries, and tomatoes to evalaute pre-harvest and post-harvest ripening and storage shelf-life. The program is authorized only in the States of Arizona, California, Florida, Massachusetts, Michigan, Ohio, Washington, West Virginia, and Wisconsin. The program is effective from June 3, 1998 to June 1, 2001.

Persons wishing to review this experimental use permit are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 24, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–18077 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[TRL–6122–6]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION: Call Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epamail.epa.gov'', and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1837.02; Four Private Party Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters; was approved 06/15/98; OMB No. 2020–0013; expires 04/30/99.

EPA ICR No. 1011.04; Partial Updating of TSCA Inventory Data Base, Production and Site Reports; in 40 CFR Part 710; was approved 06/05/98; OMB No. 2070–0070; expires 06/30/2001.

EPA ICR No. 1136.05; NSPS for Petroleum Refinery Wastewater Systems Reporting and Record Keeping; in 40 CFR Part 60, Subpart QQQ; was approved 05/21/98; OMB No. 2060–0172; expires 12/31/2000.

EPA ICR No. 1365.05; Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule (MAP); in 40 CFR Part 763, Subpart E; was approved 05/27/98; OMB No. 2070–0091; expires 05/31/2001.

EPA ICR No. 1050.06; NSPS for Storage Vessels of Petroleum Liquids, Construction, Reconstruction of Modification Commenced after May 18, 1978, and prior to July 23, 1984; in 40 CFR Part 60, Subpart Ka; was approved 06/01/98; OMB No. 2060–0121; expires 06/30/2001.

EPA ICR No. 1063.07; NSPS for Sewage Sludge Treatment Plant Incineration, Reporting and Record Keeping Requirements; in 40 CFR Part 60, Subpart O; was approved 06/17/98; OMB No. 2060–0035; expires 06/30/2001.

OMB Disapprovals

EPA ICR No. 1675.03; Non-road Spark-Ignition Engines at or below 19 Kilowatts, In-Use Testing Reporting and Record Keeping Requirements; OMB No. 2060–0292; was disapproved by OMB 05/21/98.

EPA ICR No. 1843.01; Non-road Spark-Ignition Engines at or below 19 Kilowatts, Application for the In-Use Credit Program for New Handheld Engines; was disapproved by OMB 05/20/98.

EPA ICR No. 1695.04; Control of Air Pollution; Emission Standards for New Non-road Spark-Ignition Engines at or below 19 Kilowatt; OMB No. 2060–0338; in 40 CFR Part 90, Subpart B; was disapproved by OMB 05/21/98.

EPA ICR No. 1845.01; Small Spark Ignition Manufacturers Production Line Testing; was disapproved by OMB 05/21/98.

EPA ICR No. 1857.01; Emission Reporting Requirements for Ozone SIP Revisions Relating to Statewide Budgets for Nox Emissions; was disapproved by OMB 06/05/98;

Extensions of Expiration Dates

EPA ICR No. 1637.03; Determining Conformity of General Federal Action to State Implementation Plans; in 40 CFR Part 51, Subpart W and 40 CFR Part 93, Subpart B; OMB No. 2060–0279; on 04/09/98 OMB extended the expiration date through 07/31/98.

EPA ICR No. 0277.10; Application for New or Amended Registration; in 40 CFR Part 52 and Part 58; OMB No. 2070–0060; on 05/29/98 OMB extended the expiration date through 09/30/98.

EPA ICR No. 1728.02; Municipal Water Pollution Prevention Program Evaluation (Self-Audit); in 40 CFR Part 104, Subpart B; OMB No. 2040–0181; on 05/29/98 OMB extended the expiration date through 11/30/98.

EPA ICR No. 0827.04; Construction Grants Program Information Collection Request; in 40 CFR Part 35, Subpart I; OMB No. 2040–0027; on 05/29/98 OMB extended the expiration date through 11/30/98.

EPA ICR No. 0596.05; Application and Summary Report for an Emergency Exemption for Pesticides; in 40 CFR Part 166; OMB No. 2070–0032; on 05/29/98 OMB extended the expiration date through 08/31/98.

EPA ICR No. 0107.05; Source Compliance and State Action Reporting; in 40 CFR Part 51, Subpart Q; OMB No. 2060–0096; on 06/10/98 OMB extended the expiration date through 10/31/98.

Dated: July 2, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–18073 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00543; FRL–5798–8]

Pesticides; Residue Data Guidelines on Grass Seed Screenings and Straw; Notice of Availability and Solicitation of Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This **Federal Register** notice announces the availability of the draft Pesticide Registration (PR) Notice entitled ''Residue Data Guidelines on Grass Seed Screenings and Straw.'' EPA is soliciting comments on the proposed guidance amending and clarifying EPA's policy on data for grass seed screenings and straw derived from grass grown for seed. If, after reviewing any comments, EPA determines that changes to the PR Notice are warranted, the Agency will revise the draft PR Notice prior to release.

DATES: Written comments must be received on or before August 24, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public

docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

For a copy of the PR Notice, contact William Hazel at the telephone number or address listed below.

FOR FURTHER INFORMATION CONTACT: By mail: William Hazel, Office of Pesticides Program, Health Effects Division (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6E, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 305–7677, fax: 703–305–5147, e-mail: hazel.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the draft PR Notice also are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 6114 for a copy of the PR Notice.

II. Summary of the PR Notice

The draft PR Notice proposes that grass seed screenings and straw derived from grass grown for seed should be commodities on which residue data are provided. Under this amended policy, EPA would establish pesticide tolerances for these commodities based on such data if such tolerances are consistent with the safety standard under FFDCA.

Currently, the Residue Chemistry Guidelines (OPPTS 860 Series) do not clearly define whether data should be provided for pesticide residues in grass grown for seed. In the absence of such data, EPA cannot set tolerances for pesticide residues in animal commodities derived from grass grown for seed. In addition, on at least three occasions, concerns have been expressed by state regulatory agencies and some segments of the agricultural community in the Northwest over the absence of tolerances for residues of pesticides in grass seed screenings and straw.

Grass seed screenings were listed in the June 1994 version of Table II of the Subdivision O Guidelines as a raw agricultural commodity (RAC) and livestock feedstuff. However, in July 1995, the screenings were dropped from the table because they were not considered to be a significant livestock feed item by the criteria developed at that time. Based on the concerns raised by the various groups in the Northwest, EPA has reexamined this decision.

In conjunction with the deletion of minor feed commodities from Table 1 of the OPPTS Test Guidelines 860.1000 in 1996, EPA revoked tolerances for pesticide residues in or on those feed commodities. EPA did not intend for these revocations to have the consequence of rendering these commodities adulterated under FFDCA if they contain pesticide residues. To address this situation, EPA issued the following interpretation of its tolerance regulations:

> It is not EPA's intention that [revocation of tolerances for insignificant feed items] should have the effect of rendering the affected commodities adulterated due to the absence of a tolerance. Rather, EPA interprets its tolerance regulation for the principal RAC [raw agricultural commodities] as covering any insignificant livestock feed commodities (i.e., those not in Table I) of that crop as provided below. (62 FR 66020, December 17, 1997)

This interpretation addresses most of the insignificant feed commodities dropped from Table 1. However, this interpretation would not apply to grass seed screenings because there is no RAC associated with this feed item. Accordingly, EPA is proposing to reinstitute grass seed screenings as a livestock feed item on Table 1 of the OPPTS Test Guidelines 860.1000. This step would provide guidance to affected parties that residue data should be submitted on these commodities and the submission of these data would allow EPA to establish tolerances on these commodities. In addition, grass straw would be added to Table 1 of Guideline 860.1000 based on changes in practices and the resulting increasing use as a livestock feed.

III. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPP–00543'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00543.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticides.

Dated: July 1, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–18075 Filed 7–7–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

June 30, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by September 8, 1998.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC 854, and FCC 854 ULS.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals; Businesses or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 4,500.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion reporting requirements.

Cost to Respondents: $0.

Total Annual Burden: 2,250 hours

Needs and Uses: Section 303(q) of the Communications Act, as amended, authorizes the Commission to require the painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. The data collected is required by the Communications Act of 1934, as amended; FCC Rules Section 1.61(a), 17.4, 21.11(g), 25.113(c), 73.3533(c), 74.551(c), 74.651(d), 74.1251(d), 78.109(c), 95.83(a)(3), 97.15(d).

This FCC form is to be used for the purpose of registering structures used for wire or radio communication services within the United States, or to make changes to an existing registered structure, or to notify the Commission of the dismantlement of a structure. The Commission staff will evaluate the antenna data submitted by the tower owner and determine if Part 17 rule requirements are met and if any obstruction painting and/or lighting will be necessary. The tower owner will receive notification that the Commission has registered the structure, modification or dismantlement on FCC Form 854R, Antenna Structure Registration. Owners of new and modified towers must notify the Commission within 24 hours of construction completion and/or disposition of structure, using a portion of the FCC Form 854R which is detachable.

The Commission has completed the final phase of the initial two year registration period for the revised antenna structure registration process. We estimate a significant decrease (adjustment) in the number of total respondents from 43,000 to 4,500 and a decrease in the total annual burden from 21,500 hours to 2,250 hours as a result of a re-evaluation of receipts due to the program change implemented two years ago.

The Commission is currently developing a Universal Licensing System (ULS) which combines 11 separate databases into one. The databases are gradually being converted to ULS and use is subsequently being phased in. Antenna Structure Registration will be part of the ULS and Form 854 is being re-designed for use with ULS. We will need to maintain approval on both the current Form 854 and the Form 854ULS until ULS is fully implemented. At that time, we will submit a modification to the collection to reflect the obsolescence of the current FCC Form 854.

The Form 854ULS differs from the Form 854 as follows: ULS will assign a sequential file number to each filing for tracking purposes. The purpose of ''Registration of an existing antenna structure'' has been deleted and purposes of ''Duplicate'', ''Withdraw pending'', ''Amendment'' and ''Cancel'' have been added. When applicable, FCC 854ULS will collect ''file number of pending application for antenna structure registration on file''; coordinates for center of structure array; contact representative information; overall height above mean sea level; and FAA notification issue date. Form 854ULS will collect only NAD83 datum of coordinates (no longer a NAD27 option). FCC 854ULS will not collect ''issue date of most current registration''; nature of modification; FAA Regional Office name; ''Date FAA Notification was filed''; or ''FCC Painting and Lighting Paragraphs''.

FCC 854ULS will collect Taxpayer Identification Number (TIN) of the antenna structure owner. For individuals, TIN is your Social Security Number; for other entities, it is Employer Identification Number (EIN). In order to use ULS, each antenna structure owner will be required to register their Taxpayer Identification Number and any associated registration numbers with the Commission. TIN will provide a ''link'' to all antenna structure registrations associated to any one owner. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to any given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public will have to enter for later filings. Taxpayer Identification Numbers (TINS) will not be displayed to the public. Additionally, we have updated the privacy act and public burden statements and the FAA Regional Office names and addresses.

The number of respondents is not being adjusted due to the new form. Antenna structure owners will be required to file either the current form or the new form, depending upon the timeframe in which the Antenna Structure Registration database is converted to ULS. Owners will be required to file the current form 854 until such time as a public notice is issued announcing conversion to ULS and requirements to begin using the Form 854ULS. Once Antenna Structure Registration is implemented in ULS, the current Form 854 process will no longer be available.

The estimated burden per form remains at 30 minutes. As users of ULS become more familiar with using the system, this burden estimate may need to be adjusted to reflect the electronic filing process. We encourage the use of electronic filing for antenna structure registration. ULS will provide many enhancements which are not available in the current interactive/electronic filing process.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–18041 Filed 7–7–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval

July 1, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection

of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0360.

Title: Section 80.409(c), Public coast station logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 316.

Estimated Time Per Response: 95 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Cost to Respondents: $0.

Total Annual Burden: 30,020 hours.

Needs and Uses: The recordkeeping requirement contained in this rule section is necessary to document the operation and public correspondence service of public coast radio telegraph, public coast radiotelephone stations, and Alaska-public fixed stations, including the logging of distress and safety calls where applicable. A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning the above stations would not be available.

OMB Approval Number: 3060–0364.

Title: Section 80.409 (d) and (e), Ship radiotelegraph logs, ship, radiotelephone logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 10,950 (10,150 compulsory equipped vessels + 800 high seas vessels).

Estimated Time Per Response: 47.3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Cost to Respondents: $0.

Total Annual Burden: 517,935 hours.

Needs and Uses: The recordkeeping requirement contained in these rule sections is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties (including treaty requirements contained in Appendix 11 of the International Radio Regulations, Chapter IV, Regulation 19 of the International Convention for the Safety of Life at Sea, the Bridge-to-Bridge Radio Telephone Act, the Great Lakes Agreement, and the Communications Act of 1934, as amended.) A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning station operations would not be available and treaty requirements would not be complied with.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–18044 Filed 7–7–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Thursday, July 9, 1998

July 2, 1998.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 9, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No./Bureau	Subject
1. Cable Services.	Title: Carriage of the Transmissions of Digital Television Broadcast Stations; and Amendments to Part 76 of the Commission's Rules. Summary: The Commission will consider issues relating to the carriage of digital broadcast television stations by cable operators.
2. Common Carrier.	Title: Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers (CC Docket No. 96–238). Summary: The Commission will consider action concerning procedures to create an accelerated docket to handle certain formal complaints filed against common carriers.

After consideration of these items, the Commission will hold an *en banc* presentation regarding provision of advanced services and expanded bandwidth under Section 706 of the Telecommunications Act of 1996. A Public Notice announcing this *en banc* hearing was issued June 30, 1998.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202)

966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–18239 Filed 7–6–98; 2:21 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Acquisition Services Information Requirements.

Form Number: FDIC 3700/13; 3700/44; 3700/12, 3700/04A; 3700/29; 3700/33; 1600/04; 1600/10.

OMB Number: 3064–0072.

Annual Burden

Estimated annual number of respondents: 21,736.

Estimated time per response: Varies from 0.25 hours to one hour.

Average annual burden hours: 11,764 hours.

Expiration Date of OMB Clearance: May 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before [insert date 30 days after date of publication in the Federal Register] to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The collection involves the submission of information on various forms by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to enter contractors on the FDIC's nationwide contractor database (the National Contractor System); ensure compliance with established contractor ethics regulations (12 CFR 366); obtain information on a contractor's past performance for proposal evaluation purposes; and review a potential lessor's fitness and integrity prior to entering into a lease transaction. The proposed revisions to this collection would revise and update the following three forms: (1) *FDIC Background Investigation Questionnaire for Contractor Personnel and Management Officials* (FDIC 1600/04); (2) *FDIC Contractor Application* (FDIC 3700/13); and (3) *FDIC Leasing Representations and Certifications* (FDIC 3700/44); delete the *FDIC Fitness and Integrity Certifications* (FDIC 3700/04) and create the following three forms: (1) *FDIC Contractor Eligibility Representations and Certifications* (FDIC 3700/12); (2) *FDIC Contractor Representations and Certifications* (FDIC 3700/04A); and (3) *Notice and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act of 1970, 15 U.S.C. section 1681, et seq.* (FDIC 1600/10); and create the following two forms for obtaining past performance information on a contractor and documenting contractor change requests: (1) *Contractor Past Performance RFP Reference Check Questionnaire* (FDIC 3700/29) and (2) *Contractor Application Revision Request* (FDIC 3700/33).

Dated: July 2, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–18042 Filed 7–7–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011223–019

Title: Transpacific Stabilization Agreement

Parties: American President Lines, Ltd. and APL Co. PTE Ltd. (operating as a single carrier) Evergreen Marine Corp. (Taiwan) Ltd. Hanjin Shipping Co., Ltd., Hapag-Lloyd Container Linie Gmbh, Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd. Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P%O Nedlloyd B.V., P&O Nedlloyd Limited, Sea-Land Service, Inc., Yangming Marine Transport Corp.

Synopsis: The proposed modification clarifies and updates non-binding agreement authority with respect to guidelines, centralized processes, and the parties' obligations under the Agreement. it also deletes reference to a former member.

Agreement No.: 232–011491–004

Title: Lykes/Evergreen Reciprocal Space Charter, Sailing, and Cooperative Working Agreement

Parties: Lykes Lines Limited, LLC Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed Agreement changes the name of the Agreement by deleting the word reciprocal from the name, restates the Agreement, and makes some substantial and non-substantial changes to various articles in the Agreement.

Agreement No.: 217–011627.

Title: Yangming/Hanjin Slot Exchange Agreement.

Parties: Yangming Marine Transport Corporation Hanjin Shipping Co., Ltd.

Synopsis: The proposed Agreement authorizes the parties to exchange up to 500 TEUs of container space per week, both eastbound and westbound, on each others' vessels operating in the trade between East Asia and the east and west coasts of the United States.

Agreement No.: 201–200063–017.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties: New York Shipping Association, Inc. International Longshoremen's Association.

Synopsis: The proposed amendment reduces tonnage assessment rates on in house containers originating at or destined for certain North American points and also establishes a new container charge for waste paper and cardboard.

Dated: July 2, 1998.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assisant Secretary.

[FR Doc. 98–18088 Filed 7–7–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 1915
Name: Alfonso X. Soto d/b/a Soto Forwarding Agency
Address: 1535 North Central Avenue, Brownsville, TX 78521
Date Revoked: March 31, 1998
Reason: Surrendered license voluntarily

Licsnse Number: 3580
Name: American International Brokerage, Inc.
Address: 3125 Ashley Phosphate Road, Suite 110–R, North Charleston, SC 29418
Date Revoked: May 3, 1998
Reason: Failed to maintain a valid surety bond

License Number: 3747
Name: Americargo International Forwarders, Inc.
Address: 8012 N.W. 29th Street, Miami, FL 33122–1077
Date Revoked: April 29, 1998
Reason: Failed to maintain a valid surety bond

License Number: 3104
Name: Associated International Consultants, Inc.
Address: 618 Central Avenue, Reserve, LA 70084
Date Revoked: May 23, 1998
Reason: Failed to maintain a valid surety bond

License Number: 3774
Name: AXO Industries, Inc.
Address: 1740 N.W. 94th Ave., Miami, FL 33172
Date Revoked: May 11, 1998
Reason: Surrendered license voluntarily

Llcense Number: 3418
Name: Carinter Miami, Inc.
Address: 1338 N.W. 78th Avenue, Miami, FL 33126
Date Revoked: March 31, 1998
Reason: Surrendered license voluntarily

License Number 927
Name: CHR Greene International Company
Address: 8100 Mitchell Road, Suite 200, Eden Prairie, MN 55344
Date Revoked: March 1, 1998
Reason: Surrendered license voluntarily

License Number: 1470
Name: David W. Shenk & Co.
Address: 8610 Airport Blvd., Los Angeles, CA 90045
Date Revoked: May 7, 1998
Reason: Failed to maintain a valid surety bond

License Number: 2475
Name: Gunther George Schmid Associates, Inc.
Address: 9111 South La Cienega Blvd., Suite 210, Inglewood, CA 90301
Date Revoked: April 10, 1998
Reason: Failed to maintain a valid surety bond

License Number: 4038
Name: I Chen Chiang d/b/a Prestige Forwarding Co.
Address: 13630 Destino Place, Cerritos, CA 90703
Date Revoked: April 16, 1998
Reason: Surrendered license voluntarily

License Number: 3967
Name: Jet Logistics International Inc.
Address: 4232 Artesia Blvd., Torrance, CA 90504–3100
Date Revoked: May 14, 1998
Reason: Surrendered license voluntarily

License Number: 3897
Name: Maverick Distribution Services, Inc.
Address: 1111 Corporate Center Dr., Suite 204, Monterey Park, CA 91754
Date Revoked: April 6, 1998
Reason: Surrendered license voluntarily

License Number: 4025
Name: Quartet International
Address: 7508 Potrero Avenue, El Cerrito, CA 94530–2020
Date Revoked: April 14, 1998
Reason: Surrendered license voluntarily

License Number: 3480
Name: Transoceanic Shipping Co., Inc.
Address: 2151 N.W. 79th Ave., Miami, FL 33122
Date Revoked: December 31, 1997
Reason: Surrendered license voluntarily

License Number: 4322
Name: Trans Pacific Shipping, Inc.
Address: 350 South Crenshaw Blvd., Suite A–105, Torrance, CA 90503
Date Revoked: April 29, 1998
Reason: Failed to maintain a valid surety bond

License Number: 4336
Name: Worldwide Shipping & Agencies USA, Inc.
Address: 1360 Union Hill Road, Suite A, Alpharetta, GA 30201
Date Revoked: May 23, 1998
Reason: Failed to maintain a valid surety bond

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–18087 Filed 7–7–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Forms SF–424, SF–269a (LM–6), (LM–8), SF–270a (LM–7), (LM–9), and (LM–3) submitted for extension and review to the Office of Management and Budget.

SUMMARY: This notice announces that six information collection requests contained in the Federal Mediation and Conciliation Service (FMCS) agency forms are coming up for renewal. FMCS submitted to the Office of Management and Budget (OMB) a request for review of six FMCS forms: SF–424—Application for Federal Assistance, SF–269a (LM–6)—Request for Advance or Reimbursement, (LM–8)—Project Performance, SF–270a (LM–7)—Financial Status Report, (LM–9)—FMCS Grants Program Grantee Evaluation Questionnaire, and (LM–3)—Accounting System and Financial Capability Questionnaire. The request seeks OMB approval to extend the expiration date of Forms SF–424, SF–269a (LM–6), (LM–8), SF–270a (LM–7), (LM–9), and (LM–3) until October 31, 1998. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 8, 1998.

ADDRESSES: Submit written comments identified by the appropriate agency form number by mail to Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Room 714, Washington, DC 20427, ATTN: Karen Pierce. Copies of the complete agency forms may be obtained from the Labor

Management Grants Program at the above address or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT.**

Comments and data may also be submitted by fax at (202) 606–4216 or electronically by sending electronic (e-mail) to pgmsvcs@fmcs.gov. All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection in Room 714 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, Director, Program Services, FMCS 2100 K Street, NW, Washington, DC 20427 (202) 606–8181; Fax: (202) 606–4216.

SUPPLEMENTARY INFORMATION: Copies of each of the agency forms are available from the Labor-Management Grants Program, by calling, faxing, or writing, Ms. Karen Pierce at the above address. Please ask for the form by title and agency form number.

I. Formation Collection Requests

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0006.

Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.

Affected Entities: Potential applicants/grantees who received our grant application kit. Also, applicants/grantees who have received a grant from FMCS.

Frequency: a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7/LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a ''similar information'' requirement could apply. That form takes the requirement into consideration by accepting recent audit reports in lieu of applicant completion of items C2 through 9 and items D1 through 3.

Burden: SF–424 Application for Federal Assistance, SF–269a (LM–6) Request for Advance or Reimbursement—30 minutes, (LM–8) Project Performance—60 minutes, SF–270a (LM–7) Financial Status Report—30 minutes, (LM–9) FMCS Grants Program Evaluation Questionnaire—60 minutes, and (LM–3) Accounting System and Financial Capability Questionnaire—60 minutes.

Abstract: Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended in OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-governmental potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

II. Requests for Comments

FMCS solicits comments to:

(i) 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.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, e.g. permitting electronic and fax submission of responses.

III. The Public Docket

The official record is the paper records maintained at the address in **ADDRESSES** at the beginning of this document. FMCS will transfer all electronically received comments into printed form as they are received. These records are available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Dated: July 1, 1998.

Vella Traynham,

Deputy Director.

[FR Doc. 98–18006 Filed 7–7–98; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. HBancorporation, Inc. Employee Stock Ownership Plan, Lawrenceville, Illinois; to acquire additional voting shares of HBancorporation, Inc., Lawrenceville, Illinois, and thereby indirectly acquire Heritage National Bank, Lawrenceville, Illinois.

Board of Governors of the Federal Reserve System, July 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–18091 Filed 7–7–98; 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 31, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, Nashville, Tennessee; to merge with CSB Financial Corporation, Ashland City, Tennessee, and thereby indirectly acquire Cheatham State Bank, Kingston Springs, Tennessee.

Board of Governors of the Federal Reserve System, July 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–18092 Filed 7–7–98; 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 22, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire ProImage, Inc., Macon, Georgia, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–18093 Filed 7–7–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99003]

Applied Research Program in Emerging Infections Investigations of Infectious Causes of Chronic Diseases; Notice of Availability of Funds for Fiscal Year 1999

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for competitive grants and/or cooperative agreements to support applied research on emerging infections. This announcement specifically addresses infectious causes of chronic diseases.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 247b(k)(2)].

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day-care, health-care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, including State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations are eligible to apply.

Note: Only one application will be accepted from any single applicant, organization, government, or agency.

Availability of Funds

Approximately $500,000 is available in FY 1999 to fund one to three awards. It is expected that the average award will be $500,000, ranging from $100,000 to $500,000. It is expected the award(s) will begin on or about March 1, 1999, and will be made for a 12-month budget period within a project period of up to three years. (These funding amounts are for the first 12-month budget period and include both direct and indirect costs.)

Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the evaluation criteria. Before issuing awards, CDC will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial CDC involvement in the project.

To assist applicants in making a determination as to which type of award to apply for, the following information is provided:

1. Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

2. Cooperative Agreements

A research project cooperative agreement is one in which CDC will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in sections 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

In the United States (U.S.) and elsewhere, infectious diseases continue to threaten public health and contribute to the escalating costs of health care. While infectious diseases remain the leading cause of death in developing countries, the burden of illness and death due to chronic medical conditions has surpassed the role of infectious diseases in most industrialized countries. However, an increasing body of evidence now suggests that infectious agents play critical roles in several chronic diseases, including major problems such as cancer, heart disease, and diabetes mellitus. The emerging role of micro-organisms as etiologies for chronic diseases has important implications for therapy, prevention, and pathogenesis, and this topic merits research efforts designed with the public health implications of these new associations kept in mind.

Over the past decade, causative roles have been proposed or established for infectious agents in conditions as diverse as: duodenal ulcers and gastric cancer; juvenile onset diabetes mellitus; atherosclerosis; Kaposi's sarcoma; Guillain-Barre syndrome; Crohn's disease; cerebral palsy; preterm low birth weight, and infertility. The burden of evidence supporting some of these associations has been sufficient to introduce intervention trials (e.g., *Chlamydia pneumoniae* and atherosclerosis) and even consensus treatment standards (e.g., *Helicobacter pylori* and peptic ulcer disease), while other associations remain speculative at present. The fraction of a given chronic disease which can be attributed to specific infectious agents is unknown for the majority of conditions for which an association is now considered likely. Further, although several specific infections are now recognized causes of pre-term low birth weight, the proportion of infants born prematurely as a result of infectious diseases is not known, nor is the proportion of these occurrences which can be prevented through appropriate screening and treatment of infections prenatally.

CDC has developed a plan for revitalizing the nation's ability to identify, contain, and prevent illness from emerging infectious diseases (*Addressing Emerging Infectious Diseases Threats: A Prevention Strategy for the U.S*). The plan includes applied research as a major objective, stressing the importance of integrating laboratory science and epidemiology to optimize public health practice in the U.S. CDC has developed an Extramural Applied Research Program in Emerging Infections (EARP) designed to fill gaps in existing support for research in emerging infectious disease surveillance, epidemiology, and prevention. This announcement specifically addresses investigations of infectious causes of chronic diseases and solicits applications in this area.

For additional reading on this topic, the following article is recommended: Lorber B. Are All Diseases Infectious? Ann Intern Med 1996;125:844–851.

Purpose

The purpose of the EARP is to provide financial and technical assistance for applied research projects on emerging infections in the U.S. As a component of EARP, the purpose of this grant/cooperative agreement announcement is to provide assistance for one or more projects addressing infectious causes of chronic diseases.

The objective is to address potential associations between one or more infectious agents and a chronic disease syndrome by conducting an investigation which either: (a) evaluates a suspected relation between a specific infectious agent and a chronic disease syndrome; (b) designs and tests an intervention strategy aimed at the infection as a means of reducing chronic disease sequelae; or (c) determines the health burden of a chronic disease attributable to the infectious agent. Note that in addition to the standard chronic disease syndromes such as cancer, heart disease, diabetes, etc., syndromes that may be addressed under this announcement include preterm low birth weight and infertility.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities) under cooperative agreements:

A. Recipient Activities

1. Develop a research protocol to conduct one or more of the following studies:

a. Evaluate a suspected association between one or more infections and a chronic disease syndrome.

b. Develop, implement, and evaluate a prevention strategy for reducing a chronic disease by addressing the associated infectious agent.

c. Determine the health burden of a chronic disease attributable to an associated infectious agent.

2. Conduct the proposed study using a pilot phase, where appropriate, to identify potential problems and make modifications to the research protocol.

3. Publish and/or otherwise disseminate results of the project.

B. CDC Activities (Cooperative Agreements)

1. Provide technical assistance in the design and conduct of the research.

2. Perform selected laboratory tests, as appropriate and necessary.

3. Participate in data management, the analysis of research data, and the interpretation and presentation of research findings.

4. Provide biological materials (e.g., strains, reagents, etc.) as necessary for studies.

Technical Reporting Requirements

Narrative progress reports are required semiannually. The first semiannual report is required with the second year's noncompeting continuation application and should cover program activities from the date of award for reporting in the first year of the project. The second semiannual report is due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should summarize tasks completed, problems encountered, and plans for continued research activities. Reports should also include copies of any publications resulting from the project.

An original and two copies of a Financial Status Report (FSR) are required no later than 90 days after the end of each budget period.

A final performance report and FSR are due no later than 90 days after the end of the project period. All reports are to be submitted to the Grants Management Branch, CDC.

Application

1. Pre-application Letter-of-Intent

In order to enable CDC to plan and review applications submitted under this Program Announcement, all parties intending to submit applications are requested to inform CDC of their intention to do so as soon as possible but not later than 30 business days prior to the application due date. Notification should include: (1) this program Announcement Number 99003, (2) name and address of institution, and (3) name, address, and telephone number of contact person. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail) to Anne Schuchat, M.D., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–23, Atlanta, GA 30333, Facsimile (404) 639–3970, Internet acs1@cdc.gov.

2. Application Content

Applicants are strongly encouraged to develop applications in accordance with PHS Form 398 (Revised 5/95, OMB Control Number 0925–0001) information contained in this grant/cooperative agreement announcement and the instructions outlined below. In order to ensure an objective, impartial, and prompt review, applications must conform to these instructions.

The original and five (5) complete copies of the application must be UNSTAPLED and UNBOUND. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included. All typewritten materials must be single-spaced, using a font no smaller than size 12. All supplemental pages of the application (i.e., in addition to the 398 forms) must be on the 8½″ by 11″ white paper. All pages must be printed on ONE side only, with at least 1'' margins, headers, and footers.

The application narrative must not exceed 12 pages (excluding budget and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

a. Abstract

Provide a brief (two pages maximum) abstract of the project. Clearly identify the project period proposed (not to exceed maximum of 3 years as indicated in Availability of Funds section). Clearly identify the type of award that is being applied for, grant or cooperative agreement.

b. Background and Need

Discuss the background and need for the proposed project. Demonstrate a clear understanding of the purpose and objectives of this program announcement. Discuss and demonstrate how the proposed project addresses an important gap which is of public health importance.

c. Capacity and Personnel

Describe applicant's past experience in conducting activities similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Clearly identify specific assigned responsibilities for all key professional personnel. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc. (if any), which clearly indicate their commitment to participate as described in the operational plan. (Do not include letters of support from CDC personnel—they will not be accepted.)

d. Objectives and Technical Approach

Present specific objectives for the proposed research which are measurable and time-phased and are consistent with the Purpose and Recipient Activities of this announcement. Present a detailed operational plan for initiating and conducting the research which clearly and appropriately addresses these objectives (if proposing a multi-year project, provide a detailed description of first-year activities and a brief overview of subsequent-year activities). Include a clear description of applicant's technical approach/methods which are directly relevant to the above objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC (if proposing a cooperative agreement) and/or others during various phases of the research. Describe in detail a plan for evaluating progress toward achieving process and outcome project objectives. If the project will employ a particular research subject population, describe characteristics of the patient population and how research in this subject group will yield generalizable information. Describe contingency plans which acknowledge how the research will address likely obstacles and assure that the proposed task(s) can still be completed. Include sample size calculations where appropriate to assure that measurable objectives can be evaluated.

e. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification for the first year of the project that demonstrates the request is consistent with the purpose and objectives of this program. If requesting a multi-year project, provide estimated total budget (direct plus indirect) for subsequent years. If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

f. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe in an appendix adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (15 Points)

Extent to which applicant demonstrates a clear understanding of the background, purpose, and objectives of the project and the extent to which the proposed project addresses an area of public health importance not adequately addressed in ongoing programs.

2. Capacity (30 Points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan. If the proposed project includes evaluation of health conditions in a defined population, the extent to which generalizations from this particular study population to broader populations can be made.

3. Objectives and Technical Approach (55 Points Total)

a. Extent to which applicant describes objectives of the proposed research which are consistent with the purpose of this announcement and which are measurable and time-phased. (15 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the research which clearly and appropriately addresses all Recipient Activities. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed research and extent to which the approach/methods are appropriate and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate and appropriate collaboration with CDC (if proposing a cooperative agreement) and/or others during various phases of the project. If the proposed project involves human subjects, whether or not exempt from HHS regulations, the extent to which adequate procedures are described for the protection of human subjects, and extent to which protections appear adequate that women, racial and ethnic minority populations are appropriately represented in applications involving human research. (35 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

4. Budget (Not Scored)

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant/cooperative agreement funds.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the grant/cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If the Native American community is involved, its Tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadline

Applicants are strongly encouraged to submit the original and five complete copies of application PHS Form 398 (Revised 5/95, OMB Control Number 0925–0001) to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, on or before October 1, 1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. (Please refer to Announcement Number 99003.) You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6546, Facsimile (404) 842–6513, Internet oxb3@cdc.gov. Programmatic technical assistance may be obtained from Anne Schuchat, M.D., National Center for Infectious Diseases, Division of Bacterial and Mycotic Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–23, Atlanta, GA 30333, telephone (404) 639–4720, Internet acs1@cdc.gov.

Please refer to Announcement Number 99003 when requesting information regarding this program.

You may obtain this announcement from one of two Internet sites on the actual publication date: CDC's Home Page at http://www.cdc.gov or at the Government Printing Office Home Page (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 512–1800.

Dated: July 1, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18018 Filed 7–7–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99005]

Applied Research Program in Emerging Infections Correlation of Environmental Monitoring of Microbial Agents With Disease Control; Notice of Availability of Funds for Fiscal Year 1999

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for competitive grants and/or cooperative agreements to support applied research on emerging infections. This announcement specifically addresses the correlation of environmental monitoring of microbial agents with disease control.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 247b(k)(2)].

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day-care, health-care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, including State and local governments or their bona fide agents are eligible to apply.

Note: An organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Only one application will be accepted from any single applicant, organization, government, or agency.

Availability of Funds

Approximately $500,000 is available in FY 1999 to fund one to three awards, ranging from $100,000 to $500,000. It is expected the award(s) will begin on or about March 1, 1999, and will be made for a 12-month budget period within a project period of up to three years. (The funding amounts listed above are for the first 12-month budget period and include both direct and indirect costs.) Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the evaluation criteria. Before issuing awards, CDC will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial CDC involvement in the project.

To assist applicants in making a determination as to which type of award to apply for, the following information is provided:

1. Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

2. Cooperative Agreements

A research project cooperative agreement is one in which CDC will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant; cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 ''Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act'' (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

Once expected to be eliminated as a public health problem, infectious diseases remain the leading cause of death worldwide. In the United States (U.S.) and elsewhere, infectious diseases increasingly threaten public health and contribute significantly to the escalating costs of health care.

In 1992, the Institute of Medicine of the National Academy of Sciences published a report entitled *Emerging Infections, Microbial Threats to Health in the United States* highlighting the threat of emerging infections and making specific recommendations to address the threat. This report emphasized a critical leadership role for CDC in a national effort to detect and control infectious disease threats.

In partnership with other Federal agencies, State and local health departments, academic institutions, and others, CDC has developed a plan for revitalizing the nation's ability to identify, contain, and prevent illness from emerging infectious diseases. The plan, *Addressing Emerging Infectious Disease Threats; A Prevention Strategy for the United States,* includes applied research as a major objective, stressing the importance of integrating laboratory science and epidemiology to optimize public health practice in the U.S. CDC has developed an Extramural Applied Research Program in Emerging Infections (EARP) designed to fill gaps in existing support for research in emerging infectious disease surveillance, epidemiology, and prevention. This announcement specifically addresses the correlation of environmental monitoring of microbial agents with disease control.

The microorganisms present in the environment have played a role in the transmission of infectious diseases. *Legionella, Cryptosporidia, Cyclospora, Aspergillus,* and vancomycin-resistant enterococci are just a few examples of agents with public health significance. There are very few situations where the results of environmental monitoring have been correlated with disease control. A good example of a situation where correlation has been done is the microbial quality of water and dialysate in hemodialysis units. Here it has long been established that once bacteria (and in some instances endotoxin) go above certain concentrations (2,000 CFU/ml in dialysate, 200 CFU/ml in water, or 5 EU/ml in water used to reprocess hemodialyzers) the risk of patients developing bacteremia or a ''pyrogenic'' reaction during dialysis increases substantially. However, the correlation of environmental monitoring of microbial agents with disease control in other situations is unclear.

Legionnaires' disease (LD) occurs when an aerosol of water containing *Legionella* spp. is inhaled. There are 8,000–18,000 cases of LD that occur each year in the U.S., and 23 percent of case-patients reported to the CDC appear to have acquired the infection in a health-care facility. Recent investigations have demonstrated that nosocomial transmission from colonized hot water systems can occur for years or even decades unless the illness is recognized and the organism is eradicated. Case-fatality rates among patients with nosocomial LD may reach > 30 percent, particularly in immunocompromised individuals. In 1997, a survey of 253 National Nosocomial Infections Surveillance System (NNIS) hospitals indicated that 31 percent have identified cases of nosocomial LD since 1990 and in 41 percent of hospitals legionellae were recovered from the potable water systems. However, many hospitals with cases had done little to reduce colonization and prevent further transmission. Current CDC guidelines only state that an environmental investigation and intervention should be done after nosocomial cases are identified.

Vancomycin-resistant enterococci (VRE) were first reported in 1989 and have increased rapidly in incidence and prevalence in the interim. At 189 hospitals reporting to the NNIS system, the percentage of enterococcal isolates from all body sites that were resistant to vancomycin increased from 0.3 percent in 1989 to 10.5 percent in 1995.

Numerous hospital VRE outbreaks have been reported and contamination of environmental surfaces (e.g., bed rails, countertops) with VRE has been documented. Since VRE may survive routine cleaning and disinfection procedures, contamination of environmental surfaces may contribute to nosocomial transmission of VRE. There is a need to document the extent of environmental contamination with this organism, the extent to which such contamination contributes to nosocomial transmission, and the cleaning/disinfection procedures necessary to remove VRE.

Invasive aspergillosis is a threat to patients with compromised macrophage or neutrophil function (i.e., patients with neutropenia, receiving high-dose corticosteroid therapy) or with underlying chronic lung disease. *Aspergillus* spp., are ubiquitous and are routinely isolated from tap water, soil, decaying vegetation, wet paint, food, dust, and even sanitizing agents used in hospitals. Several outbreaks of aspergillosis have occurred during periods of construction in and around hospitals. Current recommendations are directed at controlling the production of aerosols during these periods. Additionally, there is evidence that higher aspergillosis spore counts contribute to higher rates of invasive disease among immunocompromised patients. However, there is not consensus about whether there should be a benchmark spore count or on the best methods to purify air.

Outbreaks of child-care-associated illness may be caused by many different agents and involve several different modes of transmission. The environment can play an important role in these outbreaks. Most environmental studies in child care settings have focused on enteric diseases. Toys and surfaces become contaminated either directly or indirectly by feces and body secretions from ill children. The incidence of diarrhea has been associated with isolation of fecal coliforms from hands of children and staff and from various environmental surfaces in child-care centers. Levels of environmental fecal coliforms have also been linked with diaper type and the use of over clothing in classes of non-toilet-trained children in child-care centers. Cytomegalovirus has also been isolated from hands and toys in a classroom with a high prevalence of infected children. Although respiratory infections account for the majority of illness episodes among children in child-care facilities, relatively little work has been done on the environmental aspects of these infections.

The relationship between results of environmental monitoring of microbial agents and the risk of infection from these agents in the environment remains largely undefined. In addressing this issue, it is necessary to consider the following requirements for environmental transmission of disease to take place: (1) presence of a microbial agent in the environment, (2) the organism must have sufficient virulence, (3) relatively high numbers of organisms, (4) mechanism of transmission from the environment to the host, (5) a successful portal of entry, and (6) a susceptible host.

Purpose

The purpose of the EARP is to provide financial and technical assistance for applied research projects on emerging infections in the U.S. As a component of EARP, the purpose of this grant/cooperative agreement announcement is to provide assistance for one or more projects addressing the correlation of environmental monitoring of microbial agents with disease control. Environmental monitoring may play an important role in infectious disease control. However, additional studies are needed to correlate results of environmental monitoring with human disease. Examples of areas needing attention include, but are not limited to, *Legionella* and *Cryptosporidia* in water, *Aspergillus* spores in air, vancomycin-resistant enterococci and other agents in hospital and child-care environments. Where appropriate, projects proposed may include interventions to evaluate detection methods.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities) under cooperative agreements:

A. Recipient Activities

1. Identify a microbial agent of increasing public health importance that has a known environmental reservoir (air, water, etc).
2. Conduct surveillance for human infections in a particular setting, e.g., child-care facilities, health-care facilities (hospitals, clinics, long-term care facilities), etc.
3. Define the relationship between finding the target organism in the environment and the risk of human disease in the target setting.
4. If feasible, determine the cost effectiveness of different options for microbial detection and disease control; determine interventions where appropriate.
5. Publish and/or otherwise disseminate study findings.

B. CDC Activities (Cooperative Agreements)

1. Provide technical assistance in the design and conduct of the research.
2. Perform selected laboratory tests, as appropriate and necessary.
3. Participate in data management, the analysis of research data, and the interpretation and presentation of research findings.
4. Provide biological materials (e.g., strains, reagents, etc.) as necessary for studies.

Technical Reporting Requirements

Narrative progress reports are required semiannually. The first semiannual report is required with the first noncompeting continuation application and should cover program activities from date of award. The second semiannual report is due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should summarize tasks completed, problems encountered, and plans for continued research activities. Reports should also include copies of any publications resulting from the project.

An original and two copies of a Financial Status Report (FSR) are required not later than 90 days after the end of each budget period.

A final performance report and FSR are due not later than 90 days after the end of the project period. All reports are to be submitted to the Grants Management Branch, CDC.

Application

1. Pre-application Letter-of-Intent

In order to enable CDC to plan the review of applications submitted under this Program Announcement, all parties intending to submit application(s) are requested to inform CDC of their intention to do so as soon as possible but not later than 30 business days prior to the application due date. Notification should include: (1) this program announcement number (99005), (2) name and address of institution, and (3) name, address, and phone number of contact person. Notification can be provided by Facsimile, postal mail, or electronic mail (E-mail) to: Matthew Arduino, Dr. P.H., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC) 1600

Clifton Road, NE., Mailstop C–1, Atlanta, GA 30333, Facsimile (404) 639–3822, E-mail mja4@cdc.gov.

2. Application Content

Applicants are strongly encouraged to develop applications in accordance with PHS Form 398 information contained in this grant/cooperative agreement announcement, and the instructions outlined below.

The original and five (5) complete copies of the application must be UNSTAPLED and UNBOUND. ALL pages must be clearly numbered, and a complete index to the application and its appendices must be included. All typewritten materials must be single-spaced, using a font no smaller than size 12. All supplemental pages of the application (i.e., in addition to the 398 forms) must be on the 8½″ by 11″ white paper. All pages must be printed on ONE side only, with at least 1″ margins, headers, and footers.

The application narrative must not exceed 12 pages (excluding budget and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

a. Abstract

Provide a brief (two pages maximum) abstract of the project. Clearly identify the project period proposed (not to exceed maximum of 3 years as indicated in Availability of Funds Section). Clearly identify the type of award that is being applied for, grant or cooperative agreement.

b. Background and Need

Discuss the background and need for the proposed project. Demonstrate a clear understanding of the purpose and objectives of this program announcement. Discuss and demonstrate how the proposed project addresses an important gap which is of public health importance.

c. Capacity and Personnel

Describe applicant's past experience in conducting activities similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Clearly identify specific assigned responsibilities for all key professional personnel. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc. (if any), which clearly indicate their commitment to participate as described in the operational plan. (Do not include letters of support from CDC personnel—they will not be accepted.)

d. Objectives and Technical Approach

Present specific objectives for the proposed project which are measurable and time-phased and are consistent with the Purpose and Program Requirements (Recipient Activities) sections of this announcement. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses these objectives (if proposing a multi-year project, provide a detailed description of first-year activities and a brief overview of subsequent-year activities). Include a clear description of applicant's technical approach/methods which are directly relevant to the above objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC (if proposing a cooperative agreement) and/or others during various phases of the project. Describe in detail a plan for evaluating progress toward achieving process and outcome project objectives. If the project will employ a particular research subject population, describe characteristics of the patient population and how research in this subject group will yield generalizable information. Describe contingency plans which acknowledge how the project will address likely obstacles and assure that the proposed task(s) can still be completed. Include sample size calculations where appropriate to assure that measurable objectives can be evaluated.

e. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification for the first year of the project that demonstrates the request is consistent with the purpose and objectives of this program. If requesting a multi-year project, provide estimated total budget (direct plus indirect) for subsequent years. If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

f. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe in an appendix adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (15 Points)

Extent to which applicant demonstrates a clear understanding of the background, purpose, and objectives of the project and the extent to which the proposed project addresses an area of public health importance not adequately addressed in ongoing programs.

2. Capacity (30 Points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. If applicable, extent to which applicant includes letters of support from non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (55 Points Total)

a. Extent to which applicant describes objectives of the proposed project which are consistent with the purpose of this announcement and which are measurable and time-phased. (15 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all Recipient Activities. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are appropriate and adequate to

accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate and appropriate collaboration with CDC (if proposing a cooperative agreement) and/or others during various phases of the project. If the proposed project involves human subjects, whether or not exempt from the HHS regulations, the extent to which adequate procedures are described for the protection of human subjects, and the extent that women, racial and ethnic minority populations are appropriately represented in applications involving human research. (35 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

4. Budget (Not Scored)

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant/cooperative agreement funds.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the grant/cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If the Native American community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadline

The original and five complete copies of each application PHS Form 398 must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, on or before October 1, 1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. (Please refer to Announcement Number 99005.) You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6546, Facsimile (404) 842–6513, Internet oxb3@cdc.gov.

Programmatic technical assistance may be obtained from Matthew J. Arduino, M.S., Dr.P.H., National Center for Infectious Diseases, Hospital Infections Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–01, Atlanta, GA 30333, telephone (404) 639–2318, Internet mja4@cdc.gov.

You may obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone: (202) 512–1800.

Dated: July 1, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18017 Filed 7–7–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement 98043]

National Partnership for Human Immunodeficiency; Virus (HIV) Prevention; Notice of Availability of Funds for Fiscal Year 1998 Amendment

A notice announcing the availability of Fiscal Year 1998 funds for grants to support National Partnerships for Human Immunodeficiency Virus (HIV) Prevention Program was published in the **Federal Register** on June 3, 1998, [Vol. 63 FR No. 106]. The notice is amended as follows:

On page 30233, third column, under ''Eligible Applicants'', the first paragraph, line 12 should read: ''Tax-exempt status is determined by the Internal Revenue Service (IRS) Code, Section 501(c). Tax-exempt status may be proved by either providing a copy of the pages from the IRS' most recent list of 501 (c) tax-exempt organizations or a copy of the current IRS Determination Letter.''

On page 30238, second column, under ''Submission and Deadline'', the second paragraph should read: ''On or before August 7, 1998, submit the application to: Julia Valentine Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98043, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, M/S E15, Atlanta, GA 30305–2209.

All other information and requirements of the notice remain the same.

Dated: July 1, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18015 Filed 7–7–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98085]

Young People in Alternative Education Settings: Preventing HIV and Other Sexually Transmitted Diseases Notice of Availability of Fiscal Year 1998 Funds; Amendment

A notice announcing the availability of fiscal year (FY) 1998 funds for cooperative agreements for the prevention of human immunodeficiency virus (HIV), and other sexually transmitted diseases (STDs) among young people in alternative educational settings was published in the **Federal Register** on June 24, 1998, [Vol. 63 FR Number 121]. The notice is amended as follows:

On page 34432, third column, under ''Application Submission and Deadline'', the second paragraph should read: ''An original and two copies of the application PHS Form 5161–1 (Revised 5/96, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, Mail Stop E–18, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, on or before August 15, 1998.''

All other information and requirements of the notice remain the same.

Dated: July 01, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18023 Filed 7–7–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 1995, 1996, and 1997. FDA apologizes for the lateness in the filing of these reports due to circumstances beyond the agency's control.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1994, through September 30, 1995:

Center for Biologics Evaluation and Research:

Allergenic Products Advisory Committee,

Biological Response Modifiers Advisory Committee,

Blood Products Advisory Committee,

Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:

Anesthetic and Life Support Drugs Advisory Committee,

Anti-Infective Drugs Advisory Committee,

Antiviral Drugs Advisory Committee,

Arthritis Advisory Committee,

Drug Abuse Advisory Committee,

Endocrinologic and Metabolic Drugs Advisory Committee,

Generic Drugs Advisory Committee,

Medical Imaging Drugs Advisory Committee,

Nonprescription Drugs Advisory Committee,

Oncologic Drugs Advisory Committee.

Center for Devices and Radiological Health:

Medical Devices Advisory Committee (consisting of reports for the Anesthesiology and Respiratory Therapy Devices Panel; Circulatory System Devices Panel; Clinical Chemistry and Clinical Toxicology

Devices Panel (did not include a closed session); Dental Products Panel; Ear, Nose, and Throat Devices Panel; Gastroenterology and Urology Devices Panel; General and Plastic Surgery Devices Panel; General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Immunology Devices Panel; Microbiology Devices Panel; Neurological Devices Panel; Obstetrics and Gynecology Devices Panel; Ophthalmic Devices Panel; Orthopedic and Rehabilitation Devices Panel; and the Radiological Devices Panel).

National Center for Toxicological Research:

Science Advisory Board to the National Center for Toxicological Research.

FDA is also announcing the availability of annual reports for the following advisory committees during the period October 1, 1995, through September 30, 1996:

Center for Biologics Evaluation and Research:

Allergenic Products Advisory Committee,

Blood Products Advisory Committee,

Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:

Anesthetic and Life Support Drugs Advisory Committee,

Antiviral Drugs Advisory Committee,

Endocrinologic and Metabolic Drugs Advisory Committee,

Medical Imaging Drugs Advisory Committee,

Oncologic Drugs Advisory Committee,

Pulmonary-Allergy Drugs Advisory Committee.

Center for Devices and Radiological Health:

Medical Devices Advisory Committee (consisting of reports for the Anesthesiology and Respiratory Therapy Devices Panel; Circulatory System Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Dental Products Panel; Ear, Nose, and Throat Devices Panel; Gastroenterology and Urology Devices Panel; General and Plastic Surgery Devices Panel; General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Immunology Devices Panel; Microbiology Devices Panel; Neurological Devices Panel; Obstetrics and Gynecology Devices Panel; Ophthalmic Devices Panel; Orthopedic and Rehabilitation Devices Panel; and the Radiological Devices Panel).

National Center for Toxicological Research:

Science Advisory Board to the National Center for Toxicological Research.

FDA is also announcing the availability of annual reports for the following advisory committees during the period October 1, 1996, through September 30, 1997:

Center for Biologics Evaluation and Research:

Allergenic Products Advisory Committee,

Biological Response Modifiers Advisory Committee,

Blood Products Advisory Committee,

Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:

Anesthetic and Life Support Drugs Advisory Committee,

Anti-Infective Drugs Advisory Committee,

Antiviral Drugs Advisory Committee,

Arthritis Advisory Committee,

Cardiovascular and Renal Drugs Advisory Committee,

Drug Abuse Advisory Committee,

Dermatologic and Ophthalmic Drugs Advisory Committee,

Endocrinologic and Metabolic Drugs Advisory Committee,

Nonprescription Drugs Advisory Committee.

Center for Devices and Radiological Health:

Medical Devices Advisory Committee (consisting of reports for the Anesthesiology and Respiratory Therapy Devices Panel; Circulatory System Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology and Urology Devices Panel; General and Plastic Surgery Devices Panel; General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Immunology Devices Panel; Neurological Devices Panel; Obstetrics and Gynecology Devices Panel; Ophthalmic Devices Panel; Orthopedic and Rehabilitation Devices Panel; and Radiological Devices Panel).

National Center for Toxicological Research:

Science Advisory Board to the National Center for Toxicological Research.

Annual reports are available for public inspection at: (1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and (2) the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–18143 Filed 7–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0363]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for new animal drugs for investigational use.

DATES: Submit written comments on the collection of information by September 8, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drugs for Investigational Use (21 CFR Part 511) (OMB Control Number 0910–0117—Reinstatement)

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act), for approval of new animal drugs for investigational use. Section 512(j) of the act (21 U.S.C. 360b(j)), requires that a sponsor submit to FDA a ''Notice of Claimed Investigational Exemption'' INAD, prior to shipment of the new animal drug for clinical tests in animals. The regulations implementing statutory requirements for INAD approval have been codified under part 511 (21 CFR part 511). The INAD application must contain, among other things, the following specific information: (1) Identity of the new animal drug; (2) labeling; (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices; and (4) name and address of each clinical investigator and the approximate number of animals to be treated or amount of new animal drug(s) to be shipped. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, that distribution is controlled to prevent potential abuse, and that edible products of treated animals will not be distributed for food without proper authorization from FDA. The agency utilizes these required records under its ''Bio-Research Monitoring Program'' to monitor the validity of the studies and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are sponsored primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are both sponsors and investigators.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	6	1,147	8	9,176
511.1(b)(5)	190	1.5	287	140	40,180
511.1(b)(6)	190	.005	1	250	250
511.1(b)(8)(ii)	190	.005	1	20	20
511.1 (b)(9)	190	.16	30	8	240
Total Burden Hours					49,866

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
511.1(a)(3)	190	7.5	1,434	9	12,906
511.1(b)(3)	190	10	1,912	1	1,912
511.1(b)(7)(ii)	190	2	956	3.5	3,346
511.1(b)(8)(i)	190	4	956	3.5	3,346
Total Burden Hours					21,510

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

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e., the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18145 Filed 7–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0308]

Determination of Regulatory Review Period for Purposes of Patent Extension; IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the animal drug product IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle (eprinomectin). IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle is indicated for treatment and control of gastrointestinal nematodes (adults and fourth stage larvae, L_4), lungworms (adults and L_4), cattle grubs (all parasitic stages), lice, mange mites, and flies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle (U.S. Patent No. 4,427,663) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 7, 1997, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle is 2,492 days. Of this time, 2,475 days occurred during the testing phase of the regulatory review period, while 17 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(j)) became effective*: June 22, 1990. FDA has verified the applicant's claim that the date the investigational new animal drug application became effective was on June 22, 1990.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act:* March 31, 1997. The applicant claims March 27, 1997, as the date the new animal drug application (NADA) for IVOMEC® EPRINEX™ Pour-On for Beef and Dairy Cattle (NADA 141–079) was initially submitted. However, FDA records indicate that the date of FDA's official acknowledgement letter assigning a number to NADA 141–079 was March 31, 1997, which is considered to be the initially submitted date for NADA 141–079.

3. *The date the application was approved:* April 16, 1997. FDA has verified the applicant's claim that NADA 141-079 was approved on April 16, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,255 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 4, 1999 publication in the **Federal Register**), for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–18141 Filed 7–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N–0070; DESI 1626]

Combination Drugs Containing Theophylline, Ephedrine Sulfate, and Hydroxyzine Hydrochloride; Withdrawal of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug applications (NDA's) for Marax Tablets and Marax

Syrup. FDA is also declaring all identical, similar, and related drug products, not otherwise subject to an approved drug application, unlawful, including Brofed Tablets and Hydroxyzine Compound Syrup. Each of these products contains theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The basis of the withdrawals is that there is a lack of substantial evidence that these combination drugs are effective for the treatment of bronchial asthma.

EFFECTIVE DATE: August 7, 1998.

ADDRESSES: Requests for applicability of this notice to a specific product should be identified with the Docket and DESI numbers found in brackets in the heading of this document and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

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

SUPPLEMENTARY INFORMATION: As part of the agency's drug efficacy program, in a notice published in the **Federal Register** of September 17, 1984 (49 FR 36443), the Commissioner of Food and Drugs granted an evidentiary hearing before an administrative law judge on the proposal to withdraw approval of NDA 11–768 for Marax Tablets and NDA 12–879 for Marax Syrup, each containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The NDA's are held by J. B. Roerig, Division of Pfizer, Inc. (Pfizer), 235 East 42d St., New York, NY 10017.

Other party participants were:

1. Barre-National, Inc., 4128 Haywood Ave., Baltimore, MD 21215 (Barre); Hydroxyzine Compound Syrup (no NDA).

2. Cord Laboratories, Inc. (now Geneva Pharmaceuticals, Inc.), 2555 West Midway Blvd., Broomfield, CO 80038 (Cord); Brofed Tablets (no NDA).

3. Barrows Research Group, Inc., 99 West Hawthorne Ave., Valley Stream, NY 11580 (Barrows). Unnamed drug product. Barrows later withdrew its hearing request.

Subsequently, in accordance with agreements to resolve, by other means, the issue of their drug products' effectiveness, Pfizer, Barre, and Cord withdrew their hearing requests. Under those agreements, FDA has concluded that Marax Tablets and Marax Syrup have not been shown to be effective, and FDA is now withdrawing approval of the NDA's for these products.

This notice applies to any drug product that is identical, related, or similar to these products and is not the subject of an approved NDA (21 CFR 310.6). Such products include Hydroxyzine Compound Syrup and Brofed Tablets, each of which contains theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (address above).

The Director of the Center for Drug Evaluation and Research, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and under the authority delegated to her (21 CFR 5.82), finds that on the basis of new information before her with respect to Marax Tablets and Marax Syrup, evaluated together with the evidence available to her when the applications were approved, there is a lack of substantial evidence that the products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, approvals and all the amendments and supplements thereto of NDA 11–768 and NDA 12–879 are withdrawn effective August 7, 1998. Shipment in interstate commerce of the products listed above or of any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: June 15, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–18140 Filed 7–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appears in the **Federal Register** of June 25, 1998 (63 FR 34655). The notice announced a meeting of the Anti-Infective Drugs Advisory Committee, which was scheduled for July 29, 30, and 31, 1998. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 98–16934 appearing on page 34655 in the **Federal Register** of Thursday, June 25, 1998, the following correction is made:

On page 34655, under the *Agenda* caption, in the 2d column, beginning in the 1st line, ''http://www.fda.gov/cder/guidance.htm'' is corrected to read ''http://www.fda.gov/cder/guidance/index.htm''.

Dated: July 1, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–18144 Filed 7–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of New York Title XXI State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 29, 1998; 10:00 a.m., Thirty-Eighth floor, 26 Federal Plaza, New York, New York 10278 to reconsider our decision to disapprove New York Title XXI SPA.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, HCFA, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410)–786–2661.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove the New York Title XXI State Plan Amendment (SPA) submitted March 26, 1998.

Section 1116 of the Social Security Act (the Act) and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. These requirements are made applicable under

Title XXI by section 2107(e)(2)(B). The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to the State that informs the State of the time and place of the hearing and the issues to be considered. If we subsequently notify the State of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

New York submitted this SPA on March 26, 1998 to revise its approved Title XXI plan to change the effective date to October 1, 1997, from the previously approved date of April 15, 1998. This change in effective date would permit the State to claim enhanced matching payments for the operation of its Child Health Plus (CHP) program for the period from October 1, 1997 to April 14, 1998. The SPA was disapproved on April 1, 1998.

At issue in this reconsideration is whether the State is entitled to an effective date for its Title XXI plan which included a period during which the State was not operating a program which met the requirements of Title XXI (or the approved State plan). HCFA disapproved this SPA because of two elements of the State's CHP program, as in effect between October 1, 1997 and April 14, 1998, which were inconsistent with the requirements of Title XXI. First, premiums and cost sharing in effect during this period were inconsistent with the requirements of section 2103(e)(3)(A) of the Social Security Act. For example, the State CHP program provided for a $35 copayment for emergency services even if a child's family income was less than 150 percent of the poverty level. Also the CHP program permitted premiums for children with family incomes between 120 percent and 150 percent of the federal poverty level. Both of these charges were in amounts higher than those authorized under section 2103(e)(3)(A), which makes applicable the Medicaid premium and cost sharing limitations. Moreover, the State was not applying procedures to ensure ''that children found through * * * screening to be eligible for medical assistance under the State Medicaid plan under title XIX are enrolled for such assistance under such plan'' as required under section 2102(b)(3)(B) of the Social Security Act and guidance outlined in a letter to States on January 23, 1998.

Section 2106(c)(1) of the Act directs the Secretary to approve plans which ''substantially comply with the requirements'' of Title XXI. Under section 2106(a)(2)(B), a Title XXI plan ''shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than October 1, 1997.'' However, this flexibility is limited by the requirement in section 2106(d)(1) that ''[T]he State shall conduct the program in accordance with the plan (and any amendments) approved under subsection (c) and with the requirements of this title.'' Approval of the October 1, 1997 effective date was not warranted because the State was not operating its program in substantial compliance with the requirements of Title XXI or with the approved State plan during the period October 1, 1997 through April 14, 1998.

Under Section 2106(c) of the Social Security Act, the Secretary may approve, disapprove, or request additional information on a proposed Title XXI State Plan amendment within ninety days.

The Secretary has concluded that the State's amendment to its Title XXI Plan, submitted on March 26, 1998, to change the effective date of the plan, could not be approved because the State program during the period in question did not substantially comply with the requirements of Title XXI. Therefore, HCFA, in consultation with the Secretary, disapproved the amendment.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Barbara A. DeBuono, M.D.; M.P.H., Commissioner, State of New York, Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237.

Dear Ms. DeBuono: I am responding to your request for reconsideration of the decision to disapprove New York Title XXI State Plan Amendment (SPA) submitted March 26, 1998.

At issue in this reconsideration is whether the State is entitled to an effective date for its Title XXI plan which included a period during which the State was not operating a program which met the requirements of Title XXI (or the approved State plan). Specifically, the premiums and cost sharing provisions for the State's Child Health Plus program, in effect during the period in which the State seeks retroactive approval through this amendment, were inconsistent with the requirements of section 2103 (a)(3)(A) of the Social Security Act. In addition, the State was not applying procedures to ensure ''that children found through * * * screening to be eligible for medical assistance under the State Medicaid plan under title XIX are enrolled for such assistance under such plan'' as required under section 2102(b)(3)(B) of the Social Security Act and guidance outlined in a letter to States on January 23, 1998.

I am scheduling a hearing on your request for reconsideration to be held on July 29, 1998 on the Thirty-Eighth Floor, 26 Federal Plaza, New York, New York 10278.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2661.

Sincerely,

Nancy-Ann Min DeParle,

Administrator.

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 29, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–18019 Filed 7–2–98; 10:31 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institute of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* An Evaluation of the NCI Science

Enrichment Program (SEP). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This evaluation will assess the effectiveness of the NCI SEP in meeting its goals of: (1) encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program is a five- to six-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University—in summers 1998–2002. The five-year evaluation is designed as a controlled, longitudinal study, consisting of the five SEP cohorts and two cohorts of control group students who do not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promote or limit the program's effectiveness, the extent to which the program has been implemented as planned, how much the two regional programs vary, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* Semi-annually. *Affected Public:* Individuals or households and Federal Government. *Type of Respondents:* High School and College students and parents. The annualized cost to respondents is estimated at $4,040.00.

The annual reporting burden is as follows:

Type of respondents	Number	Number of responses	Average hours	Annual hours
SEP Participants	342	2	.334	229
Control Group Students	133	3	.334	156
Parents	114	1	.167	19
Total				404

There are no Capital Costs, Operating Costs, and/or Maintenance Cost to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, Executive Plaza South, Room 320, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: fj12i@nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: June 29, 1998.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 98–18130 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6). Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clinical Sciences and Epidemiology.

Date: July 13, 1998.

Open: 8:30 am to 9:20 am.

Agenda: Call to order by Board Chair; presentation by NCI Director regarding the Bypass Budget 2001; and one concept review.

Place: National Institutes of Health, NCI, Board of Scientific Counselors, Bldg 31, ''C'' Wing, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 9:35 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, NCI, Board of Scientific Counselors, Bldg 31, ''C'' Wing, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Judy A. Meitz, PhD, Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard/EPN—Room 609, Rockville, MD 20892–7410, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18135 Filed 7–1–98; 8:45]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine (Telephone Conference Call).

Date: July 14, 1998.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bela J. Gulyas, PhD, Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892, 301–435–0811.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18133 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Pain/Symptom Research Training Software.

Date: July 14–15, 1998.

Time: 7:00 pm to 9:00 am.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Anthony M. Coleho, PhD, NIH, NHLBI, DEA, Review Branch, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18132 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; National and Regional Meetings of the National Reading Panel

Notice is hereby given of the final scheduled regional meeting and one national meeting of the National Reading Panel.

The regional meeting will be held on July 9 at Murrah High School Auditorium, 1400 Murrah Drive, Jackson, MS 39202. This meeting will begin at 10:00 AM and is expected to adjourn at 3:00 or 4:00 PM. The entire meeting will be open to the public. Previous regional meetings were held as announced in Chicago, IL on May 29, Portland, OR on June 5, Houston, TX on June 8, and New York, NY on June 23.

The national meeting will be held on July 24 in Building 31, C-Wing, 6th floor Conference Room area, at National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting is tentatively scheduled to begin at 9:00 AM and is expected to adjourn at 4:00 PM. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel will study the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms at at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the recently announced findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on a review of the literature, the Panel will: determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The purpose of the meetings of the Panel will be to provide an opportunity for interaction between the panel members regarding the Panel's charge and to receive input from experts and the general public regarding that charge. Through these interactions the Panel hopes to make its task clear to others while gaining useful input from those it intends to inform. A period of time will be set aside for members of the public to address the Panel and express their views regarding the Panel's mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., Executive Director, National Reading Panel, c/o Ms. Amy Andryszak and either mail them to the Widmeyer-Baker Group, 1875 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20009, or e-mail them to *amya@twbg.com*, or fax them to 202–667–0902. Requests for addressing the Panel should be received as soon as possible. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral

presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Ms. Amy Andryszak at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Amy Andryszak as soon as possible.

Dated: June 29, 1998.

Duane Alexander,

Director, National Institute of Child Health and Human Development.

[FR Doc. 98–18129 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 9, 1998.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 1998.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 14, 1998.

Time: 11:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 16, 1998.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 1998.

Time: 12:00 pm to 1:00 pm.

Agenda: to review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Ron Schoenfield, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1998.

Time: 10:00 am to 11:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 27, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 98–18131 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Human Immune Resistance to Malaria in Endemic Areas.

Date: July 24, 1998.
Time: 9:00 am to adjournment.
Agenda: To review and evaluate grant applications.
US Embassy-London, 24 Grosvener Square.
Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Solar Building Room 4C37, 6003 Executive Boulevard, Bethesda, MD 20892, 301–435–8536.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–18136 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.
Date: July 16, 1998.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gerald Liddell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, 301–435–1150.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.
Date: July 22, 1998.
Time: 12:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gerald Liddel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, 301–435–1150.

Name of Committee: Clinical Sciences Special Emphasis Panel.
Date: July 28, 1998.
Time: 11:00 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gordon L. Johnson PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, 301–435–1212.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–18134 Filed 7–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in July 1998.

Summaries of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 6–10, 1998.
Place: Sheraton City Centre Hotel and Towers, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Closed: July 6–9, 1998, 9:00 a.m.–5:00 p.m.; July 10, 1998, 9:00 a.m.–adjournment.
Panel: Substance Abuse and Mental Health Services Administration Knowledge Dissemination Conference Grants PA 98–090.
Contact: Dorothy A. Sullivan, Review Administrator, Room 17–89, Parklawn Building, Telephone 301–443–9919; FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 14, 1998.
Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.
Closed: July 14, 1998, 8:30 a.m.–adjournment.
Panel: Center for Substance Abuse Prevention Cooperative Agreement for the Center for the Application of Prevention Technologies (CAPT) to Support the US/Mexico Border Four-State Substance Abuse Initiative SP 98–002.
Contact: Raquel Crider, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

Committee: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 20–22, 1998.
Place: Embassy Suites Hotel, Tenleytown, Room II, 4300 Military Road, NW., Washington, DC 20015.
Closed: July 20–21, 1998—9:00 a.m.–5:00 p.m.; July 22, 1998—9:00 a.m.–adjournment.
Panel: Center for Mental Health Services Cooperative Agreements for an HIV/AIDS Treatment Adherence, Health Outcomes, and Cost Study SM 98–007.
Contact: Phyllis Eveleth, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–2595; FAX: 301–443–3437.

Committee: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 20–24, 1998.
Place: Sheraton City Centre Hotel & Towers, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Closed: July 20–23, 1998—9:00 a.m.–5:00 p.m.; July 24, 1998—9:00 a.m.–adjournment.
Panel: Center for Mental Health Services Community Action Grants for Service Systems Change—Basic Action Grant Program SM 98–003.
Contact: Michael F. Halasz, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–9919; FAX: 301–443–3437.

Committee: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 20–24, 1998.
Place: Sheraton City Centre Hotel & Towers, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Closed: July 20–23, 1998—9:00 a.m.–5:00 p.m.; July 24, 1998—9:00 a.m.–adjournment.
Panel: Center for Mental Health Services Community Action Grants for Service Systems Change—Hispanic Priority Initiative SM 98–003.
Contact: Marco Montoya, Ph.D., Review Administrator, Room 17–89, Parklawn

Building, Telephone: 301–443–7249; FAX: 301–443–3437.

Committee: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: July 27–31, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: July 27–30, 1998—8:30 a.m.–5:00 p.m.; July 31, 1998—8:30 a.m.–adjournment.

Panel: Center for Substance Abuse Treatment Cooperative Agreements to Study Women with Alcohol, Drug Abuse, and Mental Health (ADM) Disorders Who Have Histories of Violence TI 98–004 (Study Sites).

Contact: Allen Smith, Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–2595; FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 1, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–18035 Filed 7–7–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in July 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: July 20–22, 1998.

Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: July 20–21, 1998, 9:00 a.m.–5:00 p.m.; July 22, 1998, 9:00 a.m.–adjournment.

Contact: Michael Koscinski, Review Administrator, Room 17–89, Parklawn Building, Telephone: (301) 443–3042 and FAX: (301) 443–3437.

Dated: July 1, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–18045 Filed 7–7–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in August 1998.

Summaries of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 3–7, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: August 3–6, 1998 9:00 a.m.–5:00 p.m.; August 7, 1998 9:00 a.m.–adjournment.

Panel: Center for Mental Health Services Statewide Family Network Grants SM 98–014.

Contact: George T. Lewis, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone 301-443–9919; FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 4–5, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: August 4, 1998, 9:00 a.m.–5:00 p.m.; August 5, 1998, 9:00 a.m.–Adjournment.

Panel: Center for Mental Health Services National TA Centers SM 98–012.

Contact: Barbara Bates, Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Committee: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 6–7, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Closed: August 6, 1998—8:30 a.m.–5:00 p.m.; August 7, 1998—8:30 a.m.–adjournment.

Panel: Center for Substance Abuse Treatment Cooperative Agreements to Study Women with Alcohol, Drug Abuse and Mental Health (ADM) Disorders Who Have Histories of Violence TI 98–004 (Coordinating Centers).

Contact: Allen Smith, Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–2595; FAX: 301–443–3437.

Dated: July 1, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–18046 Filed 7–7–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–26]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 7, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should

refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Technical Suitability of Product Program, Section 521 of the National Housing Act.

Office: Housing.

OMB Approval Number: 2502–0313.

Description of the Need for the Information and Its Proposed Use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. The respondents are the product manufacturers seeking acceptance.

Form Number: HUD Handbook 4950.1.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	50		1		41		2,050
Recordkeeping	50		1		3		150

Total Estimated Burden Hours: 2,200.

Status: Reinstatement without Changes.

Contact: Marion Connell, HUD, (202) 708–6409, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 30, 1998.

[FR Doc. 98–18050 Filed 7–7–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4373–N–01]

Utility Allowances for Use by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Utility Allowances.

SUMMARY: This notice announces that the Department has established utility allowances in accordance with the Secretary's authority to regulate the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''). (Each enterprise is also referred to as a ''Government Sponsored Enterprise'' or ''GSE''). These allowances are used to determine whether rental units financed by GSE mortgage purchases are affordable and may count toward the achievement of the income-based housing goals established by the Secretary. For these purposes, the allowances in this notice shall be added to the contract rent for rental units in which: (1) tenant income is not available; (2) contract rent does not include the cost of utilities; and (3) the GSE does not use the HUD Section 8 utility allowances.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Tasker, Director, Office of Government-Sponsored Enterprises Oversight, Department of Housing and Urban Development, Room 6154, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–2224. (This is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 (1) of the HUD regulation, the policies and procedures contained in this notice relate only to cost determinations that do not affect the physical condition of any building and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L.102–550, approved October 28, 1992, codified generally at 12 U.S.C. 4501–4561) (''the Act'')[1] requires the Secretary, *inter alia*, to establish and monitor the performance of the GSEs in meeting annual goals for mortgage purchases on housing for low- and moderate-income families and

[1] Unless otherwise specified, all sections cited herein are in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–1336 of that Act are codified at 12 U.S.C. 4561–66.

special affordable housing, i.e., housing meeting the needs of, and affordable to, low-income families in low-income areas and very low-income families. On January 2, 1996, the Secretary's regulation on the GSEs, codified at 24 CFR, part 81, became effective. (See 60 FR 61846, Dec. 1, 1995).

Under the Act and regulations, in considering whether a rental dwelling unit that is financed by a GSE mortgage purchase is affordable and counts toward any housing goal, the Secretary must consider the income of tenants if income information is available. Where income information is not available, rent on the dwelling unit is used as a proxy and compared to the rent levels affordable to very low-, low-, and moderate-income families and families whose incomes do not exceed 50 percent of the area median income (''especially low-income families'').[2] To be considered affordable and count under the goal, the rent cannot exceed 30 percent of the maximum income level of the family's classification, with adjustments for unit size.[3]

Under the regulation, ''rent'' is defined as contract rent, but only where the contract rent includes the cost of all utilities.[4] In all other instances, rent is contract rent plus (1) the actual cost of utilities or (2) a utility allowance.[5] The regulation allows the GSEs to choose from two different utility allowances—the allowances used in the HUD Section 8 Program or the utility allowances derived from the American Housing Survey (AHS) and issued annually by the Secretary.[6]

On May 1, 1996, a notice was issued establishing the utility allowances for 1996 and 1997 (61 FR 19466). Those utility allowances were based on the Department's analysis of data from the 1993 AHS.

This notice announces the AHS-derived utility allowances for 1998 and 1999. In establishing these allowances, the Department analyzed 1995 AHS data on the mean costs, based on unit type (i.e., number of bedrooms), paid by renters in both multifamily and single-family properties for electricity, gas, oil, water, and other utilities.[7]

The GSEs were advised by letter dated May 12, 1998, that these allowances would be published in the **Federal Register** and that they would become effective on July 1, 1998, but could be implemented sooner at the GSEs' option.

The Utility Allowances

In accordance with sections 1321, 1331–33, and 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act (12 U.S.C. 4541, 4561–63, and 4566), and as provided in paragraph (1) under the definition of ''utility allowance'' in section 81.2(b) of Title 24 of the Code of Federal Regulations, the AHS-derived utility allowances for 1998 and 1999 are as follows:

Type of property	Number of bedrooms in dwelling unit			
	Efficiency	1	2	3 or more
Multifamily	$51	$61	$79	$105
Single family	61	81	111	145

These utility allowances are applicable to the GSEs' determination of eligibility of rental units to count toward their annual housing goals and not to other programs or regulatory functions of the Department of Housing and Urban Development.

Effect of Notice Beyond 1999

For 2000 and thereafter, the Secretary shall establish AHS-derived utility allowances by subsequent notice. Pending establishment of such allowances for 2000 and thereafter, the allowances in this notice shall continue to be used by the GSEs.

Dated: July 1, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–18094 Filed 7–7–98; 8:45 am]

BILLING CODE 4210–27–P

[2] Sections 1332(c) and 1333(c).

[3] Sections 1332(c)(2) and 1333(c)(2).

[4] 24 CFR 81.2.

[5] *Id.*

[6] *Id.*

[7] The AHS means have been adjusted to reflect the 5.7 percent increase in the Consumer Price Index for Fuel and Other Utilities (CPIFOU) between the fourth quarter of 1995 (the approximate midpoint of August 1995–February 1996, the period when the 1995 AHS was conducted) and the fourth quarter of 1997 and the projected 0.3 percent decrease in the CPIFOU between the fourth quarter of 1997 and the fourth quarter of 1998, as projected by Data Resources, Inc.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–844265

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to export four captive-hatched Andean condors (*Vultur gyphus*) to Columbia to enhance the survival of the species through reintroduction into the wild.

PRT–843149

Applicant: International Snow Leopard Trust, Seattle, WA.

The applicant requests a permit to import and re-export non-invasively collected biological samples from endangered and threatened mammals in Asia, for the purpose of scientific research.

PRT–843877

Applicant: White Oak Conservation Center, Yulee, FL.

The applicant requests a permit to import six captive-held visayan deer (Cervus alfredi) from the Phillippines to enhance the survival of the species through captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North

Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 2, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–18090 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop the ''NSDI Framework Road Data Model Standard'' as a Federal Geographic Data Committee Standard

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''NSDI Framework Road Data Model Standard.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process and will be considered for adoption by the FGDC.

In its assigned federal leadership role in the development of the National Spatial Data Infrastructure (NSDI), the Committee recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before July 25, 1998.

CONTACT AND ADDRESSES: Comments may be submitted via Internet mail or by submitting electronic copy on diskette. Send comments via internet to: gdc-rdmod@www.fgdc.gov.

A soft copy version, on a 3.5 x 3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments may be sent to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''NSDI Framework Road Data Model Standard''.

Project Title: NSDI Framework Road Data Model Standard

Submitting Organization: FGDC Ground Transportation Subcommittee

Point of Contact: Bruce D. Spear, U.S. Department of Transportation, Bureau of Transportation Statistics (BTS), (202) 366–8870, bruce.spear@bts.gov

Objectives

To provide a logical data model for identifying unique road segments which are independent of cartographic or analytic network representation. These road segments will form the basis for maintenance of NSDI framework road data (through transactions or other means), and for establishing links among road segments and attribute data.

Scope

In accordance with the *FGDC Standards Reference Model,* the NSDI Framework Road Data Model is being proposed under the classification of a data content standard. However, it also includes mandatory standards for assigning and reporting identification codes as well as voluntary guidelines for data collection under the classification of a process standard.

This standard will specify a conceptual model for identifying physical road segments that are temporally stable and independent of any cartographic representation, scale, level of detail or network application, and a process for combining the road segments to create topologically connected analytical networks. The model will include a set of locational descriptors for each road segment included in the NSDI framework road layer, and a format for a unique identification code to be assigned to each identified segment. The standard will also specify a process for assigning, modifying and recording road segment identification codes.

Guidelines for selecting and locating the end points of appropriate road segments will be included as an informative appendix. The user of the standard does not have to follow the guidelines to be in conformance with the standard.

The basic road data model can be extended to cover other transportation networks including railroads, commercial waterways, pipelines, and public transit guideways. Other network layers may require different process standards for assigning and recording identification codes. These additional process standards are not included as part of this initial standard.

Justification/Benefits

There are currently no national standards for identifying, segmenting, or representing road segments in digital geo-spatial databases. Database developers segment road networks to satisfy their specific application needs; however, the specific segmentation scheme may not be appropriate for other applications. Furthermore, there is no standard approach for documenting the relationship between a digitized road segment and the physical road feature that it represents. Consequently, the exchange of attribute information between two different road databases representing the same geographic area is difficult, time consuming and error prone.

A national standard for identifying and documenting road segments will facilitate data exchange among different users by providing well defined, common reference segments that are tied to the physical road feature, rather than to any cartographic or network abstraction of that feature. Furthermore, the proposed standard road data model will allow users to create customized topological networks from the reference segments without modifying the properties of the reference segments themselves. This will facilitate transactional updates to framework road databases by allowing new road features to be added without changing existing road segments.

Development Approach

A Road Data Model Team will be assembled to review the technical development of the standard and to provide appropriate outreach to the transportation community. (See POTENTIAL PARTICIPANTS, below.)

An initial draft of the road data model will be prepared under contract, funded by BTS (in progress). The initial draft will be based, in large part, on the preliminary road data models emerging from the NSDI Framework Road Data Modeling Workshop, held at Wrightsville Beach, NC, in December 1997. These preliminary data models are compatible with the generic linear data model developed under the National Cooperative Highway Research Program (NCHRP) Project 20–27.

The initial draft will be reviewed by the Road Data Model Team and revised based on concerns and recommendations expressed by team members. Depending on the nature of the review comments, one or more meetings may be convened to resolve differences among the team. Team members will also be responsible for informing their constituencies about the road data model standard and for collecting and summarizing the requirements of their respective stakeholders groups.

The road data model development effort will be closely coordinated with NCHRP Project 20–27 (Phase 3), which focuses in the development of implementation guidelines for multimodal transportation location reference systems. It will also provide a focus for possible follow-up workshops to Wrightsville Beach.

Once there is general agreement among the Road Data Model Team that the model meets agreed-upon requirements, the model will be submitted for formal public review through the FGDC's Standards Development Process.

Development and Completion Schedule

- Solicitation and selection of Road Data Model Team—May 1998.
- Initial draft of road data model by BTS contractor—June 1998.
- Review and revisions to road data model—summer and fall 1998.
- At least one meeting of the full team will take place after the initial road data model has been delivered and distributed to team members.
- Team members will be responsible for informing and soliciting feedback from their constituencies about the standards development effort through presentations at annual meetings, articles in newsletters, etc.
- The road data model will be prototyped on one or more road databases to assess implementation and maintenance issues, requirements for additional tools, etc.
- Revised draft of road data model prepared by BTS contractor and approved by majority of road data model team—December 1998
- Road Data Model Standard submitted for public review through FGDC—January 1999
- Informational presentations on road data model to be made at major transportation and GIS conferences, including TRB, GIS–T Symposium, etc.
- Final Road Data Model Standard approved as FGDC standard—June 1999.

Resources Required

Funding support for contractor to prepare initial road data model and to revise model in response to review comments will be borne by the Bureau of Transportation Statistics.

Participation on the Road Data Model Team will be on a voluntary basis. Time spent by team members to familiarize themselves with the NSDI framework and linear data models, review draft documents, participate in team meetings, and serve as liaison to their respective constituencies will be borne by each member's agency or organization. Some additional FGDC funding may be needed to support travel to meetings for some team members.

Potential Participants

Team members will include representatives from the FGDC Ground Transportation Subcommittee, Facilities Working Group, Base Cartographic Subcommittee, Cultural and Demographic Subcommittee, and Framework Focus Group. Additional representation will be sought from key transportation and spatial data stakeholders, including the Transportation Research Board (TRB) GIS–T Task Force, the Intelligent Transportation Systems (ITS) standards working group, the American Association of State Highway and Transportation Officials (AASHTO), the Open GIS Consortium (OGC) Transportation Work Group, NSGIC, NaCO, and other interested stakeholders.

Related Standards

There are a number of standards for roads and other transportation currently being promulgated by different stakeholders. In general these standards have been designed to meet the specific requirements of the stakeholder groups sponsoring their development, and do not generally satisfy the basic NSDI requirements for database sharing and transactional updating. Nevertheless, these standards will be investigated as part of this development effort to determine commonalities and opportunities for integration.

The ITS Standards and Protocol Subcommittee has proposed adoption of the Geographic Data Files (GDF) as its standard for digital road databases. This standard does not meet all of the requirements of the broader GIS for transportation (GIS–T) community, particularly with respect to location referencing.

The DIGEST/Vector Product Format standard is an interchange standard for spatial data used by the U.S. Department of Defense, NATO, and the Transportation Association of Canada. DIGEST/VPF. This standard, like GDF does not meet all of the requirements of the GIS–T community.

A draft Transportation Network Profile (TNP) was developed for the Spatial Data Transfer Standard (SDTS) several years ago, but was never submitted for formal adoption due to a number of unresolved issues. Adoption of a standard road data model may help resolve many of these outstanding issues, and lead to resumption of the SDTS TNP development.

A Ground Transportation Data Content Standard is being proposed to provide a common set of entity/attribute/domain definitions for transportation features. These two efforts will be closely coordinated, and the road data model will provide the foundation on which transportation features in the content standard will be defined.

ITS is also proposing the establishment of a national linear datum, consisting of well defined and accurately located control points from which linear measurements can be made along a road segment. The proposed road data model is compatible with the ITS linear datum. Every effort will be made during the development of the road data model to maintain this compatibility so that framework road segments can fully utilize the linear datum, if it is actually implemented.

Other Targeted Authorization Bodies

None at this time. However, depending on the acceptance of the proposed road data model by the transportation community, it may be appropriate to submit it to ANSI and ISO at a later date.

Dated: June 29, 1998.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 98–18071 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) in accordance with the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) is soliciting comments on the proposed information collection for the Housing Improvement Program.

DATES: The agency must receive comments on or before September 8, 1998.

ADDRESSES: Mail comments and suggestions on the requirements to Mrs. June Henkel, Bureau of Indian Affairs, Office of Tribal Services, 1849 C Street, NW, MS–4603–MIB, Washington, DC 20240. Telephone (202) 208–3667.

FOR FURTHER INFORMATION CONTACT: Copies of the documents contained in the information collection request may

be obtained by contacting Mrs. June Henkel, 202–208–3667.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Housing Improvement Program (HIP) Annual Program Performance Report, OMB No. 1076-(new) information collection complies with the requirements of 25 CFR Part 256, the Housing Improvement Program. The information is collected from tribes and BIA agencies and consolidated at the area office for the purpose of gathering data to determine the number and types of housing assistance provided. The data is also used by the administering agency or tribe to review program implementation, to benchmark program service population and to identify areas in need of additional services. The headquarters office uses the data to prepare the annual program budget justification.

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.

II. Request for Comments

We specifically request your comments concerning:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;
2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and,
4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

III. Data

Title of the Collection of Information: U. S. Department of the Interior, Bureau of Indian Affairs, Housing Improvement Program, Annual Program Performance Report.

OMB Number: 1076-(new).

Affected Entities: Individual members of Indian tribes who are living on or near a reservation or in a legislatively mandated service area.

Frequency of Response: Annual.

Estimated Number of Annual Responses: 520.

Estimated Time per Application: 1 hour.

Estimated Total Annual Burden Hours: 520 hours.

Dated: June 22, 1998.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 98–17983 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410; OMB Approval Number 1004–0160]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On April 7, 1998, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (63 FR 17013) requesting comments on the collection. The comment period ended June 8, 1998. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0160), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW., Room 401 LS Bldg., Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
14. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Geothermal Leasing Reports.

OMB Approval Number: 1004–0160.

Abstract: Information on diligent efforts toward utilization of geothermal resources, bona fide efforts to produce geothermal resources, and/or significant expenditures of funds made on geothermal leases is needed to comply with the provisions of the Geothermal Steam Act Amendments of 1988 (P.L. 100–443). The information is needed to determine if a geothermal lessee qualifies for lease extensions.

Form Numbers: N/A.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: 2 hours each form.

Annual Responses: 75.

Annual Burden Hours: 150.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Dated: June 27, 1998.

Carole Smith,

Bureau Clearance Officer.

[FR Doc. 98–18067 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–61075]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 33, Lots 52, 53, 59, 60.

Containing 20.0 acres, more or less, located at Gilespie St. and Chartan Ave.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–3281 under the Act of February 15, 1901 (43 USC 959).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for park sites. 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 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 BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the 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 in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 1, 1998.

Cheryl A. Ruffridge,

Acting Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 98–18030 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–60836, N–60970]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for public parks.

N–60836

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 28, Lots 1–4, 14–16, 18–21, 31–34.

Containing 37.5 acres, more or less, located at Silverado Ranch Blvd. and Gilespie St.

N–60970

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 5, NE¼SW¼.

Containing 40.0 acres, more or less, located near Warm Springs Road and Durango Road.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe

and for N–60836 will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for distribution line purposes which have been granted to Sprint Central Telephone and Nevada Power Company by Permit No. N–32014 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for distribution line purposes which have been granted to Southern Nevada Water Authority by Permit No. N–60613 under the Act of October 21, 1976 (43 U.S.C. 1761).

and for N–60970 will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for park sites. 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 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 BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for park sites.

Any adverse comments will be reviewed by the 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 in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 1, 1998.

Cheryl A. Ruffridge,

Acting Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 98–18031 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–1220–00; 8371]

California: Elimination of Dunes Vista Long Term Visitor Area

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, El Centro Field Office will eliminate Dunes Vista as one of the designated Long-Term Visitor Areas available in the California Desert District.

EFFECTIVE DATE: September 15, 1998.

FOR FURTHER INFORMATION CONTACT: Elayn Briggs, Operations Staff Chief, at the Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243, e-mail at ebriggs@ca.blm.gov, or call (760) 337–4440.

Dated: June 29, 1998.

Terry A. Reed,

Field Manager.

[FR Doc. 98–18069 Filed 7–7–98; 8:45 am]

BILLING CODE 4710–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CA–067–7123–00–6683)

Imperial Sand Dunes Recreation Area, Imperial County, CA; Planning Initiation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, El Centro Field Office will initiate a planning effort for the Imperial Sand Dunes Recreation Area in Imperial County, CA as of [the date of this publication]. This plan will replace the outdated existing Imperial Sand Dunes Recreation Area Management Plan written in 1987. The first stage of the planning effort will be to conduct open houses to gather public comments and concerns. Open houses are tentatively scheduled for San Diego, CA., Orange County, CA., and Phoenix, AZ. The Written comment period has been extended. Comments will be accepted through July 31, 1998 at the address below.

DATES: Dates and times will be published in local newspapers.

ADDRESSES: Locations will be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Elayn Briggs, Operations Staff Chief, at the Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243, e-mail at ebriggs@ca.blm.gov, or call (760) 337–4400.

Dated: June 29, 1998.

Terry A. Reed,

Field Manager.

[FR Doc. 98–18068 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62297]

Notice of Proposed Withdrawal and Intent To Prepare a Planning Amendment to the Lahontan Resource Management Plan; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 15,757.14 acres of reserved Federal minerals from mining and 166,906.28 acres of public lands from surface entry and mining, but not from sales, exchanges, recreation and public purposes, or mineral leasing to protect scenic and recreation values. This notice closes the lands from settlement, sale, location, and entry under the general land laws, including the mining laws, but not from sales, exchanges, recreation and public purposes, or mineral leasing. In addition, any non-Federal lands acquired through exchange, donation, or purchase within the boundaries of the described plan area would be closed to surface entry and mining during the 2-year period and would become part of the proposed withdrawal.

The Carson City District of the Bureau of Land Management proposes to amend the Lahontan Resource Management Plan to address future management of these same lands. The resource management plan amendment process will serve as the basis for decisions on resource protection and development and the need for a withdrawal. The Bureau of Land Management and Washoe County are cooperating in the preparation of this resource management plan amendment.

DATES: Comments should be received on or before October 6, 1998.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520 or the Carson City Field Office Manager, 5665 Morgan Mill Road, Carson City, Nevada 89701.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532 or Jo Ann Hufnagle, BLM Carson City Office, 702–885–6000.

SUPPLEMENTARY INFORMATION: On June 19, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described reserved Federal minerals from location and entry under the mining laws and the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, but not from conveyances under Sections 203 and 206 of the Federal Land Policy and Management Act of 1976, as amended, the Recreation and Public Purposes Act, as amended, and the mineral leasing laws:

Mt. Diablo Meridian

(a) Public Lands

T. 20 N., R. 18 E.,
- Sec. 2, lots 1–4, inclusive, S½N½ (that portion north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 21 N., R. 18 E.,
- Sec. 4, lots 1–4, inclusive, S½NW¼, SW¼;
- Sec. 6, lots 11–14, inclusive;
- Sec. 8;
- Sec. 10;
- Sec. 12, N½, NW¼SW¼, S½SW¼, SW¼SE¼;
- Sec. 14;
- Sec. 18, lots 9–12, inclusive;
- Sec. 22;
- Sec. 26, lots 1 and 2, W½NW¼NE¼, NW¼, N½SW¼, W½SE¼;
- Sec. 27, W½NE¼, N½NW¼, SE¼NW¼;
- Sec. 34, NE¼, E½NW¼, E½W½NW¼, SW¼SW¼NW¼, N½N½SW¼,

N½SE¼ (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 22 N., R. 18 E.,
Sec. 1, lots 1–4, inclusive, S½N½, S½;
Sec. 2, lots 1–4, inclusive, S½N½, S½;
Sec. 3, lots 1–4, inclusive, S½N½, S½;
Sec. 4, lots 5–20, inclusive;
Sec. 5, lots 5–8, inclusive, S½N½,S½;
Sec. 6, lots 3–6, inclusive;
Sec. 8, lots 1–12, inclusive, SW¼;
Secs. 9–11, inclusive;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14, lots 1–8, inclusive, W½;
Secs. 15 to 17, inclusive;
Sec. 18, lots 1–4, inclusive;
Sec. 20, lots 1–8, inclusive, S½;
Sec. 21;
Sec. 22, lots 1–4, inclusive, NE¼, S½;
Sec. 23;
Sec. 24, lots 1–4, inclusive, SW¼;
Sec. 25, W½;
Secs. 26–29, inclusive;
Sec. 30, lots 1–4, inclusive;
Sec. 31, lots 3–7, inclusive;
Sec. 32, lots 1–6, inclusive, E½, E½NW¼, NE¼SW¼, S½SW¼;
Sec. 33;
Sec. 34, lots 1–8, inclusive, N½;
Sec. 35;
Sec. 36, lots 1–8, inclusive.

T. 23 N., R. 18 E.,
Sec. 7, lots 2–4, inclusive;
Sec. 8, lots 2–7, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 9, lots 1–4, inclusive;
Sec. 12, lots 1–4, inclusive, S½NE¼, SE¼NW¼, E½SW¼;
Sec. 13, lots 1–10, inclusive, E½NW¼, SW¼SW¼;
Sec. 16, lots 1–10, inclusive, E½SE¼;
Sec. 17;
Sec. 18, lots 1–4, inclusive;
Sec. 19, lots 1–4, inclusive;
Sec. 20;
Sec. 21, lots 1–10, inclusive, NE¼NE¼;
Sec. 22, SE¼SW¼, SE¼;
Sec. 24, lots 1–6, W½NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 25;
Sec. 26, lots 1–4, SE¼NE¼;
Sec. 27, NE¼, E½NW¼, S½;
Sec. 28, lots 1–12, inclusive, W½NE¼, SE¼NE¼;
Sec. 29;
Sec. 30, lots 1–4, inclusive;
Sec. 31, lots 1–4, inclusive;
Sec. 32, lots 1–4, inclusive, N½, N½S½;
Sec. 33, lots 1–12, inclusive, SE¼;
Sec. 34, lots 1–7, N½, SW¼SE¼;
Sec. 35, lots 1–6, inclusive, NE¼;
Sec. 36, lots 1–8, inclusive, N½.

T. 17 N., R. 19 E.,
Sec. 12, lots 1 and 2, NE¼, E½NW¼, S½SW¼, N½SE¼.

T. 20 N., R. 19 E.,
Sec. 1, W½ Lot 1 in NE¼, lot 2 in NE¼, lots 1 and 2 in NW¼;
Sec. 2, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, S½;
Sec. 4, S½SW¼;
Sec. 10, NW¼NE¼, N½NW¼;
Sec. 12;
Sec. 24, lots 1 and 4–8, inclusive, W½NE¼, E½SW¼, W½SE¼.

T. 21 N., R. 19 E.,
Sec. 1, lots 1–4, inclusive, S½N½, S½;
Sec. 2, lots 1–4, inclusive, S½N½, S½;
Sec. 8, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 10;
Sec. 11, SW¼NE¼, W½NW¼, NE¼SW¼, W½SE¼;
Sec. 12;
Sec. 13;
Sec. 14; N½;
Sec. 16, N½,SE¼;
Sec. 22, SW¼;
Sec. 24, SE¼NW¼, SW¼;
Sec. 25;
Sec. 26, E½NE¼, NE¼SE¼;
Sec. 28, NE¼, N½SE¼, SE¼SE¼;
Sec. 36.

T. 22 N., R. 19 E.,
Sec. 1, lots 3–11, inclusive, SE¼NW¼, NE¼SW¼;
Sec. 2, lots 1–4, inclusive, S½N½, S½;
Sec. 3, lots 2–4, inclusive;
Sec. 4, lots 1–11, inclusive, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 5, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 1–7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, lots 1–4, inclusive, E½, E½W½;
Sec. 10;
Sec. 12;
Sec. 14, SE¼SW¼;
Sec. 15 W½;
Sec. 16, lots 1–4, inclusive, E½, E½W½;
Sec. 22;
Sec. 24;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, SW¼SE¼;
Sec. 36.

T. 23 N., R. 19 E.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 6–7, inclusive, E½SW¼, SE¼;
Sec. 7, lots 1–4, inclusive, E½, E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1–4, inclusive, E½, E½W½;
Sec. 19, lots 1–4, inclusive, E½, E½W½;
Secs. 20–29, inclusive;
Sec. 30, lots 1–4, inclusive, E½, E½W½;
Sec. 31, lots 1–7, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1–4, inclusive, N½, N½S½;
Sec. 33, lots 1–4, inclusive, N½, N½S½;
Sec. 34, lots 1–4, inclusive, N½, N½S½;
Sec. 35, N½;
Sec. 36, lots 1–7, inclusive, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 16 N., R. 20 E.,
Sec. 1, E½ of lot 2 in NE¼, lot 3;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in NW¼, N½S½, S½SW¼;
Sec. 3, lot 2 in NE¼, lot 2 in NW¼;
Sec. 4, lots 1 and 2 in NE¼, S½;
Sec. 10;
Sec. 11, N½NE¼NE¼, SE¼NE¼NE¼;
Sec. 14, irregular Washoe County portion within W½W½;
Sec. 16, SE¼SE¼;
Sec. 20, E½, E½SW¼, SW¼SW¼;
Sec. 30, lot 1 in NW¼, S½ of lot 2 in NW¼, lots 1 and 2 in SW¼, E½.

T. 17 N., R. 20 E.,
Sec. 1, lot 2 in NE¼, lot 2 in NW¼, SW¼SE¼;
Sec. 2, E½ of lot 1 in NE¼, lot 2 in NE¼, W½ of lot 1 in NW¼, lot 2 in NW¼, SW¼, W½SE¼;
Sec. 8, E½, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 10, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 12, E½, S½NW¼, SW¼;
Sec. 14;
Sec. 16;
Sec. 18, E½E½, E½NE¼SW¼, NE¼SE¼SW¼, NE¼SE¼SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, S½SW¼SE¼;
Sec. 20, lots 1 and 2, N½, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 21, SW¼NW¼SW¼, NW¼SW¼SW¼;
Sec. 22;
Sec. 24;
Sec. 25, S½NE¼, SE¼;
Sec. 26;
Sec. 28;
Sec. 29, lots 2 and 3;
Sec. 30, N½ of lot 1 in SW¼; E½;
Sec. 32, N½N½, SE¼NE¼, SW¼NW¼, E½SE¼;
Sec. 33, SW¼SW¼;
Sec. 34, lots 1 and 2, N½, SW¼, W½SE¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, SE¼;
Sec. 36, lots 1–16, inclusive.

T. 18 N., R. 20 E.,
Sec. 4, lots 3–6, inclusive;
Sec. 26, SW¼SW¼;
Sec. 28, SW¼SW¼;
Sec. 33, NE¼NW¼;
Sec. 34, E½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NW¼, W½SE¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, N½N½NE¼SE¼, N½SW¼NE¼SE¼, S½SE¼NE¼SE¼, W½SW¼SW¼SE¼, W½SE¼SW¼SW¼SE¼, E½E½SE¼SW¼SE¼, NE¼NE¼SE¼SE¼, W½SE¼SE¼, S½SE¼SE¼SE¼.

T. 19 N., R. 20 E.,
Sec. 12, SE¼SW¼, SW¼SE¼;
Sec. 14, SE¼NE¼, SE¼;
Sec. 32, SE¼NE¼, S½S½NE¼SE¼, S½SE¼;
Sec. 34, W½NW¼NW¼NE¼NE¼, S½NW¼NE¼NE¼, W½SW¼NE¼NE¼, SE¼NE¼NE¼, E½NE¼NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, E½NW¼NW¼NE¼, S½NW¼NE¼, NE¼NE¼SW¼NE¼, E½NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, W½NE¼NW¼SW¼NE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, W½NE¼SW¼SW¼NE¼, W½SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, N½NW¼, NE¼SE¼NW¼, W½NW¼SE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼, W½SW¼SE¼.

T. 20 N., R. 20 E.,
Sec. 5, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 2 and 3, and 8–11, inclusive, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 7, lots 1 and 2, 5–10, inclusive, W½NE¼, E½W½, E½W½SW¼;

Sec. 8, lot 1;
Sec. 9, SW¼;
Sec. 14, lots 4–5, E½SW¼, SE¼;
Sec. 16, N½NE¼, SW¼NE¼, W½, NW¼SE¼;
Sec. 20, S½NE¼, E½SW¼, SE¼;
Sec. 21, lots 3 and 4, NE¼SW¼;
Sec. 28, lots 15 and 16, lots 21–24, inclusive, 26, 29, lots 31–41, inclusive, SW¼NE¼, SW¼NW¼, SE¼;
Sec. 29, lots 9–15, N½NE¼, SE¼NE¼, NE¼SE¼, SW¼SE¼.

T. 21 N., R. 20 E.,
Sec. 2, lots 3–7, inclusive, SE¼NW¼, E½SW¼;
Sec. 3, lots 1–4, inclusive, S½N½, S½;
Sec. 5, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 1–7, inclusive, S½NE¼, SW¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4, inclusive, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 8;
Sec. 10, lots 1–4, inclusive, W½E½, W½;
Sec. 12, lots 1 and 2;
Sec. 15, lots 3–5, inclusive, W½NE¼, E½SE¼NW¼, NE¼SW¼;
Sec. 17;
Sec. 18, lots 1–4, inclusive, E½, E½W½;
Sec. 19, lots 1–4, inclusive, E½, E½W½;
Sec. 20;
Sec. 22, lots 2–11, inclusive, SE¼NW¼, NE¼SW¼;
Sec. 28;
Sec. 29;
Sec. 30, lots 1–4, inclusive, E½, E½W½;
Sec. 31, lots 1–5, inclusive, E½, E½NW¼, NE¼SW¼;
Sec. 32.

T. 22 N., R. 20 E.,
Sec. 3, lots 3–7, inclusive, SE¼NW¼, E½SW¼;
Sec. 4, lots 1–4, inclusive, S½N½, S½;
Sec. 5, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 1–7, inclusive, E½, E½W½;
Sec. 7, lots 1–4, inclusive, E½, E½W½;
Sec. 8;
Sec. 9;
Sec. 10, lots 1–4, inclusive, 8 and 9, SE¼NW¼, NE¼SW¼;
Sec. 15, W½;
Sec. 16;
Sec. 17;
Sec. 18, lots 1–4, inclusive, E½, E½W½;
Sec. 19, lots 1–4, inclusive, E½, E½W½;
Secs. 20–22, inclusive;
Sec. 23, lots 1–7, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 26, lots 1–4, inclusive, W½E½, W½;
Sec. 27, lots 2–4, inclusive, N½, SW¼, N½SE¼, and all unpatented mining claims;
Sec. 28;
Sec. 29;
Sec. 30, lots 1–4, inclusive, E½, E½W½;
Sec. 31, lots 1–4, inclusive, E½, E½W½;
Secs. 32–34, inclusive;
Sec. 35, lots 5–7, 9 and 11–13, inclusive, N½N½, and all unpatented mining claims;

T. 23 N., R. 20 E.,
Sec. 7, S½, unsurveyed;
Sec. 8, S½;
Sec. 9, S½, partly unsurveyed;
Sec. 10, S½;
Sec. 11, N½SW¼, SW¼SW¼, E½SE¼;
Sec. 12, S½;
Sec. 14, S½NW¼, N½SW¼;
Sec. 15, S½NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, N½SE¼, SW¼SE¼;
Secs. 16–21, inclusive, unsurveyed;
Sec. 22, lots 2 and 3, lots 5–11, inclusive, SW¼SW¼;
Sec. 27, lots 1–7, inclusive, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Secs. 28–30, inclusive, unsurveyed;
Sec. 31, lots 1–4, inclusive, E½, E½W½;
Sec. 32;
Sec. 33, lots 1 and 2, W½NE¼, W½, SE¼;
Sec. 34.

T. 19 N., R. 21 E.,
Sec. 6, lots 1–6, inclusive, S½NE¼, SE¼;
Sec. 8, lots 1–4, inclusive, N½, N½S½;
Sec. 10, N½, N½SW¼, E½NW¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, NW¼SE¼;
Sec. 16, NE¼, N½NW¼, SE¼NW¼;
Sec. 18, lot 1, N½NE¼.

T. 20 N., R. 21 E.,
Sec. 2, lots 1–4, inclusive, S½N½, S½;
Sec. 4, lots 1–4, inclusive, S½N½, S½;
Sec. 8,
Sec. 10;
Secs. 12–16, inclusive;
Sec. 18, lots 1–4, inclusive, N½NE¼, SW¼NE¼, W½SE¼, SE¼SE¼;
Secs. 20–29, inclusive;
Sec. 30, lots 1–4, inclusive, E½;
Sec. 31, lots 1–4, inclusive, E½;
Sec. 32;
Sec. 33, N½;
Sec. 34;
Sec. 35, N½N½, SE¼NE¼;
Sec. 36, lots 1, 4, 5, inclusive, N½, N½SW¼, NW¼SE¼.

T. 21 N., R. 21 E.,
Sec. 6, lot 7, SE¼SW¼;
Sec. 7, lot 1, NE¼NW¼;
Sec. 36.

T. 22 N., R. 21 E.,
Sec. 7, lot 5.

T. 23 N., R. 21 E.,
Sec. 7, lots 3–4, inclusive, E½SW¼, SE¼;
Sec. 8, N½SW¼, SE¼SW¼, SE¼;
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, lots 1–3, inclusive, and 12, SW¼;
Sec. 14,
Sec. 15, lots 1 and 2, N½, W½SW¼, N½SE¼, SE¼SE¼, (excluding MS 37A, S 37B, MS 38, MS 39A, MS 39B, MS 3177A);
Sec. 16, excluding MS 3018A, MS 3018B, MS 3177A, MS 3465A, MS 3465B;
Sec. 17, NE¼, E½NW¼, S½, (excluding MS 3018A, MS 3018B, MS 3019A, MS 3019B, MS 3176A, MS3176B, MS 3465A, MS3465B);
Sec. 20, NE¼, E½SE¼, (excluding MS 3019A, MS 3019B, MS 3465A, MS3465B);
Sec. 21, N½, NE¼SW¼, N½SE¼, (excluding MS 3019A, MS 3019B, MS 3177A, MS 3465A, MS 3465B);
Sec. 22, lots 1–6, inclusive, NW¼NW¼, S½NW¼, N½SW¼, SE¼, (excluding MS 37A, MS 37B, MS 38, MS 39A, MS 39B, MS 3176A, MS 3176B, MS 3177A);
Sec. 23, lots 1 and 2, NE¼, NE¼NW¼, S½, (excluding MS 37A, MS 37B, MS 39A, MS 39B, MS 3174A, MS 3175A), MS 3176A, MS 3176B, MS 3177A);
Sec. 24, SW¼NW¼, W½SW¼, SE¼SW¼.

T. 20 N., R. 22 E.,
Sec. 2, lots 1–4, inclusive, S½N½, S½;
Sec. 4, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 1–7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 18, lots 1–4, inclusive, E½, E½W½;
Sec. 19, lots 1–4, inclusive, E½, E½W½;
Sec. 20;
Sec. 22;
Sec. 24, N½NE¼, irregular Washoe County portion within W½;
Sec. 26, N½, N½S½;
Sec. 30, lots 1–4, inclusive, NE¼, E½W½.

T. 21 N., R. 22 E.,
Sec. 32;
Sec. 34;
Sec. 36.

T. 22 N., R. 22 E.,
Sec. 1, lots 1–3, inclusive, S½.

T. 20 N., R. 23 E.,
Sec. 6, lots 1–7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8;
Sec. 18, lots 1–7, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, N½N½, irregular Washoe County portion within SE¼NW¼.

T. 21 N., R. 23 E.,
Sec. 29, lots 5–10, inclusive, 12–13, inclusive, 16–18, inclusive, 21, 24, 27, 29 and 32;
Sec. 30, lots 5–10, inclusive, 13, 16–20, inclusive;
Sec. 32, lots 2–16, inclusive, and 18.

The area described aggregates 166,906.28 acres in Washoe County, Nevada.

(b) Reserved Federal Minerals

T. 22 N., R. 18 E.,
Sec. 12, E½;
Sec. 24, E½;
Sec. 36, E½.

T. 23 N., R. 18 E.,
Sec. 15, NE¼, E½NW¼, SE¼;
Sec. 16, W½NE¼, SE¼NE¼;
Sec. 22, NE¼, SE¼NW¼, NE¼SW¼;

T. 20 N., R. 19 E.,
Sec. 25, lots 1–7, inclusive, and 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 21 N., R. 19 E.,
Sec. 4, lots 1–4, inclusive, S½N½, S½;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

T. 22 N., R. 19 E.,
Sec. 8;
Sec. 13, SW¼NE¼;
Sec. 14, E½, NW¼, N½SW¼, SW¼SW¼;
Sec. 18, lots 1–4, E½, E½W½;
Sec. 20;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, SE¼SE¼;
Sec. 28;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 31, lots 3 and 4, E½SW¼, SE¼;
Sec. 32;
Sec. 34.

T. 17 N., R. 20 E.,

Sec. 18, lots 3–11, inclusive, W½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, W½NE¼NW¼SE¼, W½NW¼NW¼SE¼, NW¼SW¼SE¼.
T. 18 N., R 20 E.,
Sec. 34, NE¼SE¼NE¼, W½NW¼SE¼NE¼, NE¼SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼, E½SE¼SW¼NW¼, E½SW¼, NE¼NW¼SW¼, S½N½NE¼SE¼, S½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½SW¼SE¼, NE¼SW¼SW¼SE¼, E½SE¼SW¼SW¼SE¼, W½SE¼SW¼SE¼, W½E½SE¼SW¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, N½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 2, SE¼SE¼;
Sec. 11, SW¼NE¼;
Sec. 26, W½E½, W½;
Sec. 32, W½NE¼;
Sec. 34, NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NE¼NE¼, W½NE¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, W½NW¼NE¼SW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, W½W½SE¼NE¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, E½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 14, lots 1–3, inclusive, SW¼NE¼;
Sec. 26, SW¼SE¼SW¼, W½SE¼SE¼SW¼;
Sec. 28, E½SE¼SW¼NE¼NW¼, W½SW¼SE¼NE¼NW¼;
Sec. 29, lot 8, NW¼SW¼, SE¼SW¼;
Sec. 30, W½NE¼SE¼, SW¼SE¼.
T. 21 N., R. 20 E.,
Sec. 1, lots 5–7, inclusive, and 10–22, inclusive;
Sec. 2, lots 2, 8–46, inclusive, SW¼NE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE, N½SE¼SE¼;
Sec. 12, lots 3–12, inclusive, SW¼;
Sec. 13, lots 1 and 4.
T. 22 N., R. 20 E.,
Sec. 10, lots 5–7, inclusive, NE¼, NW¼SE¼;
Sec. 14, lots 5–7, inclusive;
Sec. 24, W½W½;
Sec. 36, S½SE¼.
T. 23 N., R. 20 E.,
Sec. 11, SE¼SW¼, W½SE¼;
Sec. 14, W½E½, N½NW¼;
Sec. 15, N½NE¼, E½NE¼NW¼;
T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, SW¼SW¼SW¼SW¼.
T. 21 N., R. 21 E.,
Sec. 8, SE¼SW¼NE¼, S½SE¼NE¼, S½;
Sec. 18, lots 1 and 2, S½NE¼NE¼, SE¼NE¼;
Sec. 20, NE¼NW¼, SW¼NW¼.
T. 23 N., R. 21 E.,
Sec. 8, SW¼SW¼;
Sec. 17, W½NW¼, SW¼;
Sec. 18, lot 1, E½NE¼, NW¼NE¼, NE¼NW¼;
Sec. 19, lots 3 and 4, E½E½, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, W½;
Sec. 29, NW¼.
T. 22 N., R. 22 E.,
Sec. 4, lots 1–4, S½N½, S½.

The federally owned minerals area described aggregates 15,757.14 acres in Washoe County, Nevada.

In addition, if any of the non-Federal lands in Washoe County within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be included in this application and would be closed to surface entry and mining if acquired during the 2-year segregative period:

T. 21 N., R. 18 E., (on north and east side of U.S. Highway 395).
T. 22 N., R. 18 E.,
T. 23 N., R. 18 E., excepting sec. 1–5, inclusive, and the N½N½ of sec. 9–12, inclusive.
T. 20 N., R. 19 E., (on north and east side of U.S. Highway 395).
T. 21 N., R. 19 E.,
T. 22 N., R. 19 E.,
T. 23 N., R. 19 E., excepting sec. 4.
T. 16 N., R. 20 E.,
T. 17 N., R. 20 E., (on east side of U.S. Highway 395).
T. 18 N., R. 20 E., (on east side of U.S. Highway 395).
T. 19 N., R. 20 E., (on east side of U.S. Highway 395).
T. 20 N., R. 20 E.,
T. 21 N., R. 20 E.,
T. 22 N., R. 20 E.,
T. 23 N., R. 20 E., excepting sec. 2, 4 and 12.
T. 17 N., R. 21 E.,
T. 19 N., R. 21 E.,
T. 20 N., R. 21 E.,
T. 21 N., R. 21 E.,
T. 22 N., R. 21 E.,
T. 23 N., R. 21 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 22 E.,
T. 21 N., R. 22 E.,
T. 22 N., R. 22 E.,
T. 23 N., R. 22 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 23 E., sec. 5, 7, 17, 19 and 20.
T. 21 N., R. 23 E., sec. 28–32, inclusive.

The purpose of the withdrawal is to protect resource values in the open and mountainous terrain in the southern Washoe County urban, suburban and rural residential area. Washoe County has recently developed an Open Space System that identifies a large acreage of public lands as having open space values. Much of this acreage is identified in BLM's resource management plan for disposal for community expansion. The joint land use plan amendment will address future management of these lands and the need for a protective withdrawal.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR Part 2300. Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** 30 days before the scheduled date of the meeting.

The public is invited to participate in the identification of issues related to the management of public lands within the Washoe County Urban Interface Plan Area located generally in southern Washoe County. Anticipated issues for the plan amendment are:

- Identification of public lands to be retained as open space
- Identification of public lands available to state or local agencies for recreation and public purposes
- Identification of public lands available for exchange
- Identification of lands with potential for future acquisition
- Developments and facilities consistent with open space
- Public workshops for the plan amendment will be announced in mailings and local newspapers.

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 plan amendment may present their views in writing to either the State Director or Field Office Manager.

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 cancelled or the withdrawal is approved prior to that date. Rights-of-way, leases, permits and other discretionary temporary land uses will be considered by the authorized officer during this segregative period.

Planning documents and other pertinent materials may be examined at the Bureau of Land Management office in Carson City, 5665 Morgan Mill Road, between 7:30 a.m. and 5:00 p.m. Monday through Friday.

Dated: June 30, 1998.

William K. Stowers,

Lands Team Lead.

[FR Doc. 98–18016 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0058).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATE: Submit written comments by September 8, 1998.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart I, Platforms and Structures, (1010–0058).

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on offshore resources in the OCS; and preserve and maintain free enterprise competition. Specifically, the OCS Lands Act (43 U.S.C. 1356) requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply, * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes; * * *'' The OCS Lands Act (43 U.S.C. 1332(6)) also states, ''operations in the outer Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

To carry out these responsibilities, the Minerals Management Service (MMS) has issued rules governing structural safety of platforms and structures used in the OCS and their subsequent abandonment and site clearance. These rules and the associated information collection requirements are contained in 30 CFR part 250, subpart I, Platforms and Structures. In addition, MMS issues Notices to Lessees and Operators (NTLs) that clarify, explain, or interpret regulations and standards.

The MMS OCS Regions use the information submitted under subpart I to determine the structural integrity of all offshore structures and ensure that such integrity will be maintained throughout the useful life of these structures. The MMS uses the information to ascertain, on a case-by-case basis, that the platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and pollution prevention. The information is also necessary to assure that abandonment and site clearance are properly performed. More specifically, MMS uses the information to:

a. Review information concerning damage to a platform to assess the adequacy of proposed repairs.

b. Review plans for platform construction (construction is divided into three phases—design, fabrication, and installation) to ensure the structural integrity of the platform.

c. Review verification plans and reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the design, fabrication, and installation phases of platform construction.

d. Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved plans.

e. Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

f. Ensure that any object (wellheads, platforms, etc.) installed on the OCS is properly removed and the site cleared so as not to conflict with or harm other users of the OCS.

The currently approved information collection for Subpart I includes the burden for a proposed rule to add a § 250.145, Seismic Reassessment of California OCS Platforms. After considering the comments received on the proposed rule, MMS has decided to take no further action this proposed rule. We will formally announce this decision in the next publication of the Unified Agenda.

The MMS will protect proprietary information submitted with the plans in accordance with the Freedom of Information Act; 30 CFR 250.18, Data and information to be made available to the public; and 30 CFR Part 252, OCS Oil and Gas Information Program. No items of a sensitive nature are collected. Responses are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion and varies by subpart I regulatory section.

Estimated Annual Reporting and Recordkeeping Hour Burden: 24,743 reporting burden hours; 7,150 recordkeeping burden hours. The estimated average annual burden per respondent is approximately 245 hours. This estimate: (a) reflects the elimination of the proposed burden for § 250.145, (b) updates the average number of annual responses, and (c) includes previously omitted burden estimates for current subpart I requirements.

Estimated Annual Reporting and Recordkeeping Cost Burden: In the previous request to OMB to approve this collection of information, we included a reporting cost burden associated with adding proposed § 250.145. The decision is take no further action on that proposed rule eliminates the estimated cost burden. We have identified no other information collection cost burdens for this collection of information.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. As a result of comments we receive and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, MMS assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary and took that into account in estimating the burden.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have any. Your response should split the cost estimate into two components: (a) total capital and startup cost component; and (b) annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 29, 1998.

William S. Cook,

Acting Chief, Engineering and Operations Division.

[FR Doc. 98–18070 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service; Special Park Uses.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–14, 44 U.S.C. 3507) and 5 CFR, Part 1320, Reporting and Recordkeeping Requirements, the NPS invites public comments on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. It includes the actual information collection instruments. Copies of the ICR may be obtained from the NPS by calling Chip Davis at 202–208–5760.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information.

DATES: Public comments will be accepted on or before August 7, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to Chip Davis, Department of the Interior, National Park Service, phone 202/208–5760.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days.

FOR FURTHER INFORMATION CONTACT: Chip Davis, Ranger Activities Division, National Park Service, 18th & C Streets, NW., Washington, DC 20240. Telephone 202/208–5760.

SUPPLEMENTARY INFORMATION: These information collections are associated with permits implementing provisions of agency regulations pertaining to the use of public lands (OMB control number 1024–0026). NPS form 10–114 (Special Use Permit) is the primary form used to apply for, consider, permit, and limit, uses of public lands. The uses considered under this information collection generally include those which make short term commercial use of park resources or which regulate activities not generally available to the public. Permitted activities include use of commercial vehicles in park areas and grazing in parks where permitted by law.

Title: Special Park Uses.

Estimated annual reporting burden: 27,050.

Estimated average burden hours per response: 1 hour.

Estimated average number of respondents: 28,250.

Diane M. Cooke,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 98–18025 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Fourth public meeting of the Advisory Council to the Partnership of the Boston Harbor Islands National Recreation Area to be held July 7, 1998, 4:00 p.m.–6:00 p.m. in the Piemonte Room, 5th Floor, Boston City Hall.

FOR FURTHER INFORMATION CONTACT: Mr. George Price, Project Manager, Boston Harbor Islands National Recreation Area, at 617–223–8666. Written comments can be addressed to George Price, Project Manager, Boston Harbor Islands National Recreation Area, 408 Atlantic Ave., Suite 228, Boston, MA 02110–3316.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes: Chairman's report; approval of the minutes of the July 16 and June 4 meetings; reports by the Advisory Council representatives to the Boston Harbor Islands Partnership; report on the Partnership Management Plan; reports from the National Park Service and the Island Alliance; other committee reports; public comment; old business; new business; and future meeting dates.

Public garages are located next to Quincy Market, or at the Government Center Garage. Nearby MBTA stations are Government Center, Haymarket, and State Street. Street-level handicapped access to City Hall is located at the entrance on Congress Street.

The 28 Advisory Council members were appointed by the Director of the National Park Service and represent: business, educational, cultural, and environmental entities; municipalities surrounding the harbor; and Native American interests. The Advisory Council was formed to advise and make

recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of the Integrated Management Plan and the operation of this new national park area.

In 1996 Congress created the Boston Harbor Islands National Recreation Area to recognize the rich natural and cultural resources and history found on the 30 islands located in Boston Harbor. The legislation (P.L. 104–333) established a thirteen-member partnership to jointly manage the Islands. The 13-member Partnership represents city, state, federal and private agencies with responsibilities for the harbor islands.

Dated: June 30, 1998.

Bruce Jacobson,

Acting Project Manager, Boston Harbor Islands National Recreation Area.

[FR Doc. 98–18026 Filed 7–7–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–35; Exemption Application Nos. D–10546]

Grant of Amendment to Prohibited Transaction Exemption (PTE) 97–35 Involving the Amalgamated Bank of New York (the Bank) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of Amendment to PTE 97–35.

SUMMARY: This document contains a final exemption which amends PTE 97–35 (62 FR 41088, July 31, 1997), an individual administrative exemption involving the provision of banking services by the Bank to 22 employee benefit plans (the Plans) listed in the exemption, all of which are affiliated with the Union of Needletrades, Industrial and Textile Employees (UNITE), which is the majority and controlling shareholder in the Bank. These transactions are described in a notice of pendency that was published in the **Federal Register** on March 30, 1998 at 63 FR 15228.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date is January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date is December 8, 1997; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date is July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Willett, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 30, 1998, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) in the **Federal Register** (63 FR 15228) to amend PTE 97–35. PTE 97–35 provides an exemption from certain prohibited transaction restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 as amended (the Act), and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 as amended (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code. The Notice was requested in an application filed on behalf of the Bank pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B(55 FR 32836, August 10, 1990) (the Procedures). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 USC App.1, 1996) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

WRITTEN COMMENTS: The Notice gave interested persons the opportunity to comment and to request a public hearing on the matters described therein. The Department received one written comment and no hearing requests from interested persons following the dissemination of the Notice and supplemental statement.

The written comment received by the Department was submitted on behalf of the Bank concerning the effective date of a portion of the requested exemption, as proposed in the Notice. In this regard, the Notice proposed that the effective date for the final exemption be described as follows:

Effective Date: This exemption will be effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date will be January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date will be the date on which the final amended exemption, if granted, is published in the Federal Register; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date will be the date on which the final amended exemption, if granted, is published in the **Federal Register**.

The Bank states that in its exemption application a request was made for the final exemption to be effective as of the date the application was filed with the Department (i.e., December 4, 1997) with respect to Plan investments in the LongView 500 Fund (the 500 Fund), because the Bank had expected that Plan investments in the 500 Fund would occur shortly after such filing. However, in the Notice, the proposed effective date with respect to Plan investments in the 500 Fund was inadvertantly described as the date on which the final exemption, if granted, would be published in the Federal Register. In its comment, the Bank explains that the actual date of the first investment made by a Plan in the 500 Fund was December 8, 1997, when the ILGWU Death Benefit Plan (one of the Plans covered by PTE 97–35) made such an investment. Therefore, the Bank requests that the final exemption for Plan investments in the 500 Fund be effective as of December 8, 1997. In the final exemption, the Department has stated the effective date in accordance with the Bank's request, by inserting a reference to the appropriate date in both the definition of ''Banking Services'' in Section IV(c) and the effective date paragraph for this Grant notice.

Based on the entire application record, including the Bank's written comment regarding the Notice, the Department has determined to grant the amendment to PTE 97–35 with the modification to the effective date requested by the Bank.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participant and beneficiaries;

(4) This exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the proposed exemption relating to PTE 97–35, as amended by this grant notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures cited above, the Department hereby amends PTE 97–35.

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 1, 1995 [except as otherwise indicated herein], to—

(A) The provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the former International Ladies Garment Workers Union (ILGWU), which merged on July 1, 1995 with the Amalgamated Clothing and Textile Workers Union to form the Union of Needletrades, Industrial and Textile Employees (UNITE);

(B) The purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) The deposit of Plans' assets in money market or other deposit accounts established by the Bank; provided that the applicable conditions of Section II and Section III are met.

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) On a periodic basis, not less frequently than annually, an Authorizing Plan Fiduciary (as defined below in section IV(A)) with respect to each Plan authorizes the representation of the Plan's interests by the Independent Fiduciary and determines that the Banking Services and any CDs and depository accounts utilized by the Plan are necessary and appropriate for the establishment or operation of the Plan.

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction.

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the ILGWU into UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) a listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business; and

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or terminate, without any penalty to any Plan (other than the payment of

penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) the provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) the representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank, the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (B) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this Section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of section (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) ''Authorizing Plan Fiduciary'' means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) ''Bank'' means the Amalgamated Bank of New York;

(C) ''Banking Services'' means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, (c) effective December 8, 1997, the LongView 500 Index Fund, and (d) effective January 3, 1998, the LEI Fund maintained by the Bank.

(D) ''Independent Fiduciary'' means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five (5) percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) ''Plans'' means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund;
Local 99 Norstan Apparel Shops, Inc. Severance Fund; and
UNITE Staff Retirement Plan, ILGWU Unit.

(F) ''UNITE'' means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date is January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date is December 8, 1997; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date is July 8, 1998.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the

exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption (i.e., the Notice) and the prior grant notice for PTE 97–35, which are cited above.

Signed at Washington, D.C., this 1st day of July, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–18011 Filed 7–7–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Withdrawal of Notice of Proposed Amendments to Prohibited Transaction Exemption (PTE 93–69) Involving the Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

[Exemption Application Nos. D–10470 and D–10576]

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: On June 19, 1998 the Department of Labor (Department) published a notice of proposed amendments (the Notice) to PTE 93–69 (63 FR 33732). The Notice concerned proposed amendments to PTE 93–69 to permit the Supplemental Benefit Program Trust (Trust) to sell Navistar International Corporation (NIC) common stock to either NIC or Navistar after the expiration of the lockup period (July 1, 1998) and to allow William Craig, a member of the Supplemental Program Committee, to serve on the NIC board of directors.

In a comment letter dated June 18, 1998, Navistar's representative informed the Department that the Trust sold all of the shares which would have been the subject of the amendments. Since the Trust no longer holds the stock it no longer has the right to appoint any members of the board of directors of NIC.[1]

Due to the above noted changes regarding the facts and representations contained in the applications, the Department has determined to withdraw this notice of proposed amendments from the **Federal Register**. Accordingly, this notice of pendency is hereby withdrawn.

Signed at Washington, DC this 30th day of June, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–18009 Filed 7–7–98; 8:45 am]

BILLING CODE 4510–29–P

[1] PTE 93–69 provided, in part, an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan of shares of Class B common stock and Series A preference stock of NIC.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10438, et al.]

Proposed Exemptions; Toyota Motor Credit Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Toyota Motor Credit Corporation and Certain of its Affiliates, Located in Torrance, California

[Application No. D–10438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. If the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply as of September 1, 1997, to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. If the proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply as of September 1, 1997, to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. If the proposed exemption is granted, the restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply as of September 1, 1997 to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement; and

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by the servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S. below.

D. If the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply as of September 1, 1997, to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps Inc., or Fitch Investors Service, Inc. (collectively, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the Pooling and Servicing Agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933;

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed on the date of the issuance of certificates by the trust, additional leases may be added during a period of no more than 15 consecutive months from the closing date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) all such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an ''eligible lease'' (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) must be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. below) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular portfolio, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other portfolios;

(11) The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(12) The Pooling and Servicing Agreement and other governing documents require that funds collected by the servicer with respect to trust assets be deposited on a monthly basis in a trust account, even though distributions on the certificates may be scheduled to be made less frequently than monthly, and invested in certain highly rated debt instruments known as ''permitted investments'; and

(13) The Pooling and Servicing Agreement expressly provides that funds collected by the servicer with respect to trust assets are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt is no longer rated P–1 by Moody's Investors Service and A–1 by Standard & Poor's Ratings Services (or successors thereto), unless such Rating Agencies accept an alternative arrangement.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. Toyota Motor Credit Corporation (TMCC) and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) A certificate.

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A.(1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this proposed exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either.

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;[4]

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the Pooling and Servicing Agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest categories by the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called ''asset-backed'' securities that is substantially similar in format and structure to this proposed exemption (the Underwriter Exemptions);[5] or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means an entity affiliated with Toyota Motor Corporation that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means TMCC or an entity affiliated with TMCC that is a party to the Pooling and Servicing Agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means TMCC or an entity affiliated with TMCC which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means TMCC or an entity affiliated with TMCC which services leases contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means an entity that is independent of TMCC and its Affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments for a lease in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or

(7) Any Affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person shall be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to

[4] It is the Department's view that the definition of ''Trust'' contained in Section III.B. includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[5] For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption applicable to sales are met.

Q. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing for the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the trust shall not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. ''Pooling and Servicing Agreement'' means, collectively, (i) the securitization trust agreement between a sponsor and the trustee establishing a trust, (ii) the trust and servicing agreement relating to an origination trust and the servicing supplement thereto, and (iii) the supplemental agreement establishing a beneficial interest in certain specified origination trust assets (referred to herein as a ''special unit of beneficial interest'' or ''SUBI''). In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

V. ''Lease Rate'' means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a ''Lease Rate'', each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. ''Average Lease Rate'' means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. ''Eligible Lease'' or ''Eligible Lease Contract'' means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

Y. ''Permitted Investments'' means investments which: (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

Effective Date: This proposed exemption, if granted, will be effective for all transactions described herein which occur on or after September 1, 1997.

Summary of Facts and Representations

1. TMCC is a California corporation that has 34 branches in various locations in the United States. TMCC's primary business is providing retail leasing, retail and wholesale financing and certain other financial services to authorized Toyota and Lexus vehicle and Toyota industrial equipment dealers and their customers in the United States (excluding Hawaii). TMCC is a wholly-owned subsidiary of Toyota Motor Sales, U.S.A., Inc. (TMS), which is primarily engaged in the wholesale distribution of automobiles, light duty trucks, industrial equipment and related replacement parts and accessories throughout the United States (excluding Hawaii). Substantially all of TMS's products are either manufactured by its Affiliates or are purchased from Toyota Motor Corporation (TMC), which indirectly wholly owns TMS, or its Affiliates.

Toyota Leasing, Inc. (TLI) will be formed as a California corporation, and will be a wholly-owned, special purpose subsidiary of TMCC.

2. TMCC and its Subsidiaries,[6] including TLI (collectively, the Applicant) seek an exemption to permit employee benefit plans to invest in certificates indirectly representing undivided interests in a trust which contains motor vehicle leases and the motor vehicles related to those leases. The exemption TMCC seeks is substantially similar to the Underwriter Exemptions granted by the Department to various broker-dealers and banks to permit investments in, among other things, motor vehicle receivable investment trusts. In the exemption sought by TMCC, the primary asset of the trust in which investors have beneficial interests (i.e. the Securitization Trust) is a special unit of beneficial interest (SUBI) in a separate trust that actually holds the motor vehicle leases and related motor vehicles (i.e., the Origination Trust). The Underwriter Exemptions may also include such a two-tier trust structure (as noted above in Footnote 4). However, unlike the trusts described in the Underwriter Exemptions, the Securitization Trusts established by TMCC will not contain beneficial interests in fixed pools of assets (i.e. qualified motor vehicle leases and related motor vehicles) for at least a

[6] For purposes hereof, the term ''Subsidiary'' means any corporation, partnership or other business entity controlled by TMCC.

year, as discussed further below. TMCC states that the Securitization Trusts meet all other requirements of the Underwriter Exemptions. Such requirements include: (i) that investor certificates covered by the exemption have received a rating from one of the Rating Agencies that is in one of the three highest generic rating categories; (ii) that there be no subordination of investor certificates purchased by employee benefit plans to the rights and interests evidenced by other certificates of the same trust; and (iii) that there be a pass-through of principal, interest and other payments received by the trust relating to the receivables beneficially owned by the trust, less certain specified servicing fees which are disclosed and approved by the investors prior to the acquisition of any trust certificates.

3. The Origination Trust is formed pursuant to a trust agreement between the sponsor of the Origination Trust and its trustee (the Origination Trustee). The sponsor of the Origination Trust is currently TLI, but could be another entity affiliated with TMC. The Origination Trustee is a wholly-owned subsidiary of an independent entity qualified to provide trust services, and in fact provides such services to the Origination Trust under contract with its subsidiary (i.e. the Trust Agent). TMCC represents that the Trust Agent will be a financial institution that is not affiliated in any way with TMCC, other than as a service provider. TMCC or an Affiliate acts as servicer (the Servicer) for all of the leases and leased vehicles owned by the Origination Trust, pursuant to an amended and restated trust and servicing agreement (the Origination Trust Agreement) with the Origination Trustee and one or more servicing supplements to the Origination Trust Agreement (collectively, the Servicing Agreement).

4. The assets of the Origination Trust include retail closed-end automobile and light-duty truck lease contracts assigned to the Origination Trust by certain dealers, the automobiles and light duty trucks relating thereto, all proceeds thereof (including any sale of such vehicles), payments made under certain insurance policies relating to such leases or the related lessees or leased vehicles, and all security deposits with respect to such lease contracts to the extent due to the lessor thereunder. TMCC is the initial holder of a sole beneficial interest (i.e. the ''Undivided Trust Interest'' or ''UTI'') in the Origination Trust.

The Origination Trust is open-ended; that is, as leases are originated by dealers, they will be assigned by the dealers directly to the Origination Trust and the Origination Trust will be listed as the owner of the related vehicles on the related certificates of title. When the aggregate dollar amount of leases and leased vehicles in the Origination Trust grows large enough to justify a securitization, TMCC, as holder of the UTI, may direct the trustee of the Origination Trust to segregate from among all the leases and leased vehicles within the Origination Trust a specified portfolio of leases and related leased vehicles. Pursuant to a supplement to the Origination Trust Agreement (known as a ''SUBI'' Supplement), the trustee then issues to TMCC a separate certificate representing a ''Separate Unit of Beneficial Interest'' or ''SUBI'' in that segregated portfolio. It is this SUBI that becomes the basis for a securitization and the creation of a separate Securitization Trust.

Any leases and leased vehicles held by the Origination Trust that are not included in a SUBI portfolio at the time of such segregation, as well as any new leases and related vehicles acquired subsequent to the specified date on which the new SUBI portfolio is identified, remain part of the UTI portfolio, and the original UTI continues to represent a beneficial interest therein.

New leases and related leased vehicles are added to the SUBI's segregated portfolio by TMCC in an aggregate amount approximately equal to principal collections on the leases and leased vehicles already allocated to the SUBI,[7] for a fixed period (which will be no more than fifteen consecutive months) after the closing date used for the initial allocation of leases made to create the SUBI portfolio. (This period is referred to hereafter as the ''revolving period''). The applicant represents that this fixed ''revolving period'' for principal collections on the leases and leased vehicles is established so that the investor certificates issued by the Securitization Trust are treated as debt for Federal and state income tax purposes, but does not affect the characterization of those certificates as beneficial interests in the Securitization Trust property for accounting and other state law purposes.

After the ''revolving period'', the pool of leases and leased vehicles allocated to the SUBI (i.e. the SUBI portfolio) remains fixed. Any leases which are added to the SUBI portfolio during the ''revolving period'' must meet the same terms and conditions for eligibility as the original leases in the portfolio, as described in the prospectus or private placement memorandum, which terms and conditions have been approved by the Rating Agencies prior to the ''revolving period''. However, TMCC states that the terms and conditions for an ''eligible lease'' (as defined in Section III.X above) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies. Further, under the conditions of the proposed exemption, TMCC must ensure that the additional leases added to the SUBI portfolio do not result in the certificates receiving a lower credit rating from the Rating Agencies at the end of the ''revolving period'' than the rating that was obtained at the time of the initial issuance of the certificates by the trust (see Section II.A.(7)(b) above).

TMCC states that for the duration of the ''revolving period'', principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. above) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth (i.e. on a ''FIFO basis), beginning with any lease contracts that have been reserved by TMCC specifically for such purposes at the time of the initial allocation of leases to the particular SUBI portfolio. However, those lease contracts reserved for allocation to, or actually allocated to, other pools of leases (i.e. other SUBI portfolios used to create different trusts) will be excluded from the available additional leases to be added to the particular SUBI portfolio. TMCC states that no adverse selection procedures may be employed in selecting leases during the ''revolving period''. Thus, TMCC represents that it will not be able to manipulate the order in which leases are added to a particular SUBI portfolio during the ''revolving period'' in order to improve its economic position with respect to the assets held in a particular SUBI portfolio. TMCC states further that at all times there will be a clear identification within the Origination Trust of which leases and leased

[7] TMCC represents that the aggregate amount of new leases added to a SUBI portfolio is approximately equal, rather than exactly equal, to principal collections on the existing leases because, when additional leases are added, the outstanding principal balance of the new leases is not always equal to the principal collections available for reinvestment. The uninvested principal amounts are held by the Securitization Trust in a cash account and temporarily invested in short-term investments, with interest thereon accruing to the Securitization Trust, until such amounts can be reinvested in additional leases for the SUBI portfolio. TMCC states that any uninvested principal amounts, and interest on such amounts, held by the Securitization Trust are distributed to the certificateholders once principal payments on the leases in the SUBI portfolio are passed-through to investors.

vehicles belong in each SUBI portfolio and which belong in the UTI or ''residual'' portfolio. The holders of beneficial interests in each SUBI have also agreed in writing to rely solely upon the assets contained within their respective portfolios to satisfy any payment obligations.

This ''revolving period'' arrangement differs from the arrangements considered in the Underwriter Exemptions wherein each trust contains a ''fixed pool'' of assets and substitution of receivables by the trust sponsor is permitted only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. The Applicant states that during any ''revolving period'', the outstanding principal balance of the SUBI's portfolio of leases remains unchanged and the certificateholders receive only interest payments with respect to their certificates. Once the ''revolving period'' ends, principal payments are no longer reinvested but rather are paid out to certificateholders.

To the extent that leases added to the SUBI portfolio during the ''revolving period'' have a higher Lease Rate (as defined in Section III.V. above) than do the original leases in the SUBI portfolio at the time of the initial offering of the certificates to investors, total returns on the ultimate lease pool in excess of that promised to investors on the trust certificates may inure to affiliates of the Servicer. However, TMCC states that the Average Lease Rate (as defined in Section III.W. above) for the pool of leases allocated to a SUBI portfolio owned by a particular Securitization Trust, after accounting for all the leases added to the SUBI portfolio during the ''revolving period'', shall not be more than 200 basis points (i.e. 2 percent) greater than the Average Lease Rate for the leases in the SUBI portfolio on the closing date used for the initial allocation of leases to the SUBI portfolio owned by the Securitization Trust.

The Average Lease Rate for the leases in the trust at the time of the initial offering of the certificates is described in the prospectus or offering memorandum provided to investors. The Applicant represents that changes to the Average Lease Rate based on new leases added to a trust during the ''revolving period'' depend on current interest rates and market conditions as well as the amount of lessee prepayments and repossessions on the leased vehicles. Thus, potential plan investors at the time of the initial offering of trust certificates know the total dollar amount of leases in the trust, the Average Lease Rate on those leases, the fact that principal received by the trust during the ''revolving period'' is used to invest in additional leases, and the length of the ''revolving period''. Under the terms of the proposed exemption, potential plan investors shall also be provided with a statement disclosing the fact that the relief provided by the exemption shall be available to the Servicer and its affiliates only if the additional leases do not cause the Average Lease Rate for the leases in the pool after the ''revolving period'' to increase by more than 200 basis points.

5. Pursuant to the Servicing Agreement, TMCC, acting as Servicer on behalf of the Origination Trustee, selects the assets to be represented by each SUBI (as discussed above). Certificates representing the entire beneficial interest in each SUBI are issued to the sponsor of the Securitization Trust. The sponsor will be TLI, or another wholly-owned subsidiary of TMC (or a limited liability company or partnership in which a TMC subsidiary is a member). The sponsor creates the Securitization Trust and transfers a certificate representing the beneficial interest in the SUBI to the Securitization Trust, pursuant to a trust agreement between the sponsor and the trustee of the Securitization Trust (the Securitization Trustee).[8] The Securitization Trustee is an unrelated commercial institution with trust powers, meeting certain specified requirements. In addition, pursuant to the Securitization Trust Agreement, the Securitization Trust issues to its sponsor investor certificates representing fractional undivided interests in the Securitization Trust, the assets of which include the SUBI, which itself represents a beneficial interest in a portfolio of motor vehicle leases and related leased motor vehicles held by the Origination Trust.

6. The sponsor of the Securitization Trust sells the investor certificates to various outside investors, including employee benefit plans subject to the Act. In order to achieve the desired rating for such certificates, the sponsor may retain a subordinated interest in the Securitization Trust, as required by the Rating Agencies, so that unanticipated losses with the SUBI portfolio will first by borne by TMCC. With respect to the certificates sold to outside investors, there may be two or more classes of securities. The investor certificates are either publicly or privately offered.[9] Except under rare circumstances, physical certificates will not be issued to investors in a public senior class of certificates. Instead, the Securitization Trust will use a book-entry registration system through the Depository Trust Company (DTC), a limited-purpose trust company organized under New York law, which is a member of the Federal Reserve System, and a clearing agency under Section 17A of the Securities Exchange Act of 1934.

Investors are entitled to receive periodic payments of interest at a fixed certificate rate, and after the ''revolving period'' described above, payments of principal. Principal payments on the investor certificates will be made on each distribution date (i.e., monthly, quarterly, semi-annually or annually), based on formulas allocating among the classes of certificates the maximum amount distributable thereto on each such date and in each case subject to the amount actually collected on the receivables. All net collections collected for the assets underlying each SUBI, including all net proceeds from the sale of a vehicle upon repossession, early lease termination or maturity of the related lease, and, if so specified in the governing documents, earnings derived from temporary investment of trust funds prior to the next scheduled distribution date, are available to make payments on the investor certificates.

The price of the investor certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand. Certificate interest rates are set at the

[8] TMCC or an affiliate retains a de minimis interest in each SUBI portfolio, which represents a subordinated interest in the portfolio, under requirements established by the Rating Agencies, in order to meet certain Federal tax code objectives.

[9] TMCC is not requesting an exemption for the purchase of any subordinated class of certificates by employee benefit plans. However, the applicant is requesting relief for prohibited transactions that may occur as a result of the investments in a trust made by an insurance company's general account which are considered to be ''plan assets'' under the recent U.S. Supreme Court decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993) (Harris Trust). As a result of the decision in *Harris Trust* and the Department's plan assets regulation (see 29 CFR 2510.3–101), an insurance company investing general account assets could be viewed as a ''benefit plan investor'' for purposes of calculating the 25 percent significant participation test in section 2510. 3–101(f)(1) of the regulation.

The Department notes that Section III of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (PTE 95–60, 60 FR 35925, July 12, 1995) provides an exemption for transactions in connection with the operation of asset pool investment trusts notwithstanding that the certificates acquired by the general account are subordinated to the rights and interests evidenced by other certificates of the same trust. In this regard, the Department has included a paragraph at the end of the operative language of the proposed exemption which states that this exemption, if granted, will be included within the definition of the term ''Underwriter Exemption'' under Section V(h) of PTE 95–60. Therefore, the exemptive relief provided by PTE 95–60 will be available for subordinated investments in a trust described herein by insurance company general accounts.

time of the pricing of each securitization. While the Average Lease Rate for the particular lease portfolio is a factor in the interest rates a Securitization Trust will be able to pay, the actual interest rate set for the certificates issued is determined by a combination of additional factors. Specifically, these factors include: (a) the then-current yields on U.S. Treasury Notes with a remaining term equivalent to the anticipated average life of the particular Securitization Trust, and (b) the then-current ''spreads'' on similarly-rated competitive investments available in the marketplace, as determined by the Rating Agencies. Once the certificate rate is set for the certificates issued by the Securitization Trust, that rate remains fixed for its duration, regardless of any changes to the Average Lease Rate of the SUBI portfolio occurring during the ''revolving period''. The price of an investor certificate and the certificate rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the certificate rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

7. TMCC represents that the certificates issued by a Securitization Trust may involve multi-class certificates. Such multi-class certificates may be one of two types: (i) ''strip'' certificates; and (ii) ''fast-pay/slow-pay'' certificates.

''Strip'' certificates are a type of security in which the stream of interest payments on the underlying receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. The only difference between these multi-class certificates and the single-class certificates is the order in which distributions are made to certificateholders.

The Applicant represents that any ''strip'' or ''fast-pay/slow-pay'' certificates issued by a trust will be the same as the type described in the Underwriter Exemptions previously granted by the Department. TMCC emphasizes that the rights of a plan purchasing such certificates will not be subordinated to the rights of another certificateholder in the event of default on any payment obligations for the certificates. With respect to ''fast-pay/slow-pay'' certificates, TMCC states that if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions would share in the amount distributed on a pro rata basis. Thus, if a trust issues subordinate certificates, holders of such subordinate certificates would not be able to share in the amount distributed on a pro rata basis.[10]

8. TMCC enters into arrangements with certain dealers allowing it to cause the assignment of leases and related vehicles originated by those dealers either directly to TMCC or to any other specified entity, including the Origination Trust. Once such leases and related vehicles are assigned to the Origination Trust for ultimate inclusion in a portfolio of SUBI assets for securitization as described above, TMCC is able to go to the capital markets directly for financing through the sale of certificates.

TMCC and/or one or more wholly-owned subsidiaries of TMCC, or limited liability companies or partnerships in which such a wholly-owned subsidiary is a member, are responsible for creating each SUBI, creating the Origination Trust and each Securitization Trust, and designating the Trust Agent and the Securitization Trustee.

The Trust Agent, its subsidiary the Origination Trustee, and the Securitization Trustee, are each independent entities, unrelated to TMCC, the underwriter or placement agent. The Origination Trustee is the legal owner of the motor vehicle leases and related leased motor vehicles allocated to a SUBI. The Securitization Trustee is the legal owner of the obligations in the Securitization Trust and is responsible for enforcing all the rights created thereby in favor of certificateholders, whether independently or through the Origination Trustee. The Applicant represents that each Securitization Trustee and Trust Agent are substantial financial institutions or trust companies experienced in trust activities. The Trust Agent and Securitization Trustee will receive a fee for their services, which will be paid out of assets of the Origination Trust or the Securitization Trust, as applicable. The method of compensating each for its service related to a SUBI is specified in the Servicing Agreement or Securitization Trust Agreement, as applicable, and disclosed in the prospectus or private placement memorandum relating to the offering of the investor certificates.

9. The Servicer administers the leases on behalf of the beneficial owners of the Origination Trust, including the holders of SUBI certificates and, indirectly, the holders of the investor certificates. The Servicer's functions involve monitoring of leases, maintenance of records, institution of proceedings in the event of default, and sale of vehicles after lease maturity, as well as certain functions relating to the qualifications and permits required to be obtained by the Origination Trustee.[11] The Servicer, the sponsor of the Origination Trust, and the sponsor of the Securitization Trust are unrelated to the underwriter and to DTC. DTC has public senior investor certificates registered in its name (or that of its nominee) and maintains procedures for the distribution of notices, reports, distributions and statements to certificateholders.

As compensation for performing its servicing duties for the Origination Trust, the Servicer is paid a fee equal to a specified percentage (usually no more than one percent) of the balance of the leases it services, including those leases allocated to the SUBI. The Servicer may receive additional compensation related to the SUBI in the form of interest on various accounts of the Origination Trust and/or the Securitization Trust containing proceeds of the leases and related leased motor vehicles allocated to each SUBI as well as interest on certain cash deposits. The Servicer is required to pay the administrative expenses of servicing the Origination Trust out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Securitization Trust or otherwise arranges to obtain credit support from another party. This ''credit support fee'' may be aggregated with

[10] In this regard, the Department notes that although it believes that either the ''strip'' or the ''fast-pay/slow-pay'' certificates described above are included within the scope of the proposed exemption, it further notes that no relief is provided under the exemption for plan investments in subordinate certificates (other than as permitted herein for certain insurance company general accounts). In addition, the Department notes that the conditions of the exemption would require that any ''strip'' or ''fast-pay/slow-pay'' certificates receive one of the three highest ratings available from the Rating Agencies and that such certificates not receive a lower credit rating upon termination of the period during which additional leases may be added to the SUBI portfolio.

The Department cautions plan fiduciaries to fully understand the risks involved with either ''strip'' or ''fast-pay/slow-pay'' certificates prior to any acquisitions of such certificates, and to make prudent determinations as to whether such certificates would adequately meet the investment objectives and liquidity needs of the plan.

[11] TMCC states that these functions are necessary since, as noted in Paragraph 4 above, the Origination Trust is the owner of, and holds title to, the vehicle unless the lessee chooses to purchase such vehicle under the terms of the lease.

other servicing fees, and may be either paid out of the income received on the leases in excess of the certificate rate or paid in a lump sum at the time the Securitization Trust is established. The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor under a lease, provided that such fees are ''qualified administrative fees'' as defined under Section III.S. These administrative fees fall into four categories: (a) late payment fees; (b) acquisition fees; (c) deferral fees; and (d) other administrative fees or similar charges under the leases.

Payments on leases may be made by lessees to the Servicer at various times during the period preceding any date on which payments to the Origination Trust are due. In some cases, the Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a lease and the date payment is due to the Origination Trust. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments on leases are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments into an Origination Trust account by a date specified in the Servicing Agreement. TMCC states that the Servicing Agreement will require that payments into an Origination Trust account will be made monthly, even in cases where the certificates provide for distributions to be made quarterly, semi-annually or annually. Once funds are deposited in the Origination Trust account, such funds are required to be invested in highly rated debt instruments of the type described in the governing documents as ''permitted investments''.

TMCC represents that the Pooling and Servicing Agreement used in the transactions described herein will require that in the event that the rating for TMCC's short-term debt is reduced below a level specified by the Rating Agencies after the sale of the certificates, TMCC (as servicer) will be required to commence depositing collections with respect to trust assets in a trust account on a daily basis within two business days after collection, unless the applicable Rating Agencies have agreed in writing to an alternative arrangement to protect the interests of certificateholders.[12]

All compensation payable to the Servicer with regard to the leases allocated to a SUBI is set forth or referred to in the Servicing Agreement, and described in reasonable detail in the prospectus or private placement memorandum relating to the investor certificates.

10. Participating underwriters or placement agents receive a fee in connection with the securities underwriting or private placement of investor certificates. In a firm commitment underwriting, this fee would consist of the difference between what such underwriter receives for the certificates that it distributes and what it pays the sponsor of the Securitization Trust for those certificates.[13] In a private placement, the fee normally takes the form of an agency commission paid by the sponsor of the Securitization Trust.

The arrangements among underwriters typically are set forth in an ''Agreement Among Underwriters'', which gives the managing underwriter, as lead manager of the offer, the authority to act on behalf of all the underwriters. This agreement also imposes customary restrictions on the underwriters' dealings in the offered securities as are necessary to comply with securities laws and to ensure the orderly distribution of the offered securities.

11. TMCC represents that as the principal amount of the leases allocated to a SUBI is reduced by payments thereon and recoveries on the disposition of leased vehicles, the cost of separately administering the assets allocated to that SUBI generally increases, making the servicing of those assets prohibitively expensive at some point. Consequently, the Securitization Trust Agreement generally provides that the sponsor of the Securitization Trust may repurchase the SUBI when the aggregate principal balance of the investor certificates is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate investor certificate balance. The terms of such repurchase are specified therein and are at least equal to the unpaid principal balance on the investor certificates plus accrued interest. The supplement to the Origination Trust Agreement generally provides that upon such a repurchase of the Securitization Trust's interest in the SUBI by its sponsor, the Origination Trust may repurchase the entire SUBI from the sponsor and thereby terminate the SUBI. The terms of such repurchase are specified therein and generally are at least equal to the value of the pool of leases and leased vehicles allocated to the SUBI.

12. The senior class of investor certificates must receive a rating that is in one of the three highest generic rating categories available from one of the Rating Agencies. To attain the desired rating, the sponsor or its affiliates may establish a reserve fund for the benefit of certificateholders; retain or sell to third parties one or more classes of subordinated certificates; retain another subordinated interest in the trust; and/or obtain other forms of credit support from third parties. The amount of this credit support is set by the Rating Agencies at a level expected to be a multiple of the worst historical net credit loss experience for leases of automobiles and light-duty trucks such as those allocated to the SUBI.

TMCC states that the Rating Agencies, before granting AAA/Aaa ratings for the publicly issued securitization certificates, review the underlying portfolio of assets securing payment to the investors to determine, among other things, if (a) the principal value of the assets is sufficiently greater than the aggregate face amount of the investor certificates as to provide protection against defaults or losses, and (b) there is a sufficient ''spread'' between the overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), being earned on the portfolio and the certificate rate to cover servicing costs, expenses and losses. In the case of its public offerings of certificates, TMCC currently anticipates that (i) the face value of public investor senior certificates will not exceed a specified percentage (e.g. 92.5 percent) of the principal value of the underlying assets, and (ii) the ''spread'' between the overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), of the SUBI portfolio and the certificate rate will be approximately 100 to 300 basis points. Thus, for example, if the targeted ''spread'' were 200 basis points, a SUBI portfolio with a principal value of $100,000,000 would support the issuance of certificates with a face value of only $92,500,000, and a certificate rate of 6 percent per annum would require an overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), for that SUBI portfolio of approximately 8 percent per annum.

[12] TMCC states that its short-term unsecured debt is currently rated P–1 by Moody's Investors Service and A–1 by Standard and Poor's Ratings Services.

[13] TMCC represents that a ''best efforts'' underwriting would not ordinarily be used for the investor certificates.

TMCC states that the Rating Agencies will always require a specific ''spread'' between the certificate rate and the overall yield for leases in the particular SUBI portfolio before providing their initial credit ratings for the certificates. TMCC must maintain this ''spread'' when leases are added to the SUBI portfolio during the ''revolving period'' or risk a lower credit rating for the certificates (see Section II.A.(7)(b) above).

For purposes of the securitization described above, TMCC represents that each individual lease should yield a rate of return, based on the Lease Rate (as defined in Section III.V. above), which is at least equal to the certificate rate plus the targeted spread. However, where the targeted spread is not met as to any lease based solely on the Lease Rate, the principal value of that lease will be discounted so that such lease is treated as having a ''net investment value'' less than its actual outstanding principal balance. In such instances, the lease is discounted to a level at which the actual lease charges to be collected under the lease (including expected principal payments) would yield, on a percentage basis, an overall rate of return which exceeds the certificate rate by the targeted spread. Thus, for each individual lease included in a securitization, its principal value is either: (a) its outstanding principal balance, if its Lease Rate is equal to or greater than the targeted spread; or (b) its discounted net investment value, if its Lease Rate is less than the targeted ''spread''.[14] TMCC states that the use of discounted aggregate net investment values in measuring the ratio of certificate face values to the discounted principal balance of the SUBI portfolio can only further assure that investors are paid interest and principal on their certificates on a timely basis.

13. In many cases, the Servicer may provide cash flow support to the trust pursuant to a contractual obligation to advance funds to the trust to the full extent that it determines that such advances are recoverable (a) out of late payments by the lessees, (b) from a permanent credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. The Servicer would advance such funds in a timely manner. When the Servicer temporarily advances funds, the amount so advanced is recoverable by the Servicer out of future payments on or for leases or leased vehicles allocated to the SUBI to the extent that such amounts are not covered by the other sources described above, including payments from a permanent credit support provider.

If the Servicer fails to advance funds to the extent required by the applicable agreements, fails to call upon a credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the Securitization Trustee would be required to enforce the investor certificateholders' rights, in its capacity as a third-party beneficiary of the Servicing Agreement, as owner of the estate of the Securitization Trust, and as an indirect beneficial owner of the Origination Trust assets allocated to a SUBI (including rights under any credit support mechanism). Therefore, the Securitization Trustee, who is independent of the Servicer, ultimately has the right to enforce any credit support arrangement.

14. TMCC represents that there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the leases allocated to a SUBI as payments for these leases and the related vehicles are used to make payments to the Securitization Trust, as holder of an interest in the SUBI, and then to investors. These safeguards include the following:

(a) There is a disincentive to postponing credit losses because the sooner repossession or sale activities are commenced, the more value generally will be realized on the leased vehicle.

(b) The Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which a lessee's obligations ordinarily are deemed uncollectible. The Servicing Agreement requires the Servicer to follow its normal servicing guidelines. In addition, the Servicing Agreement sets forth the Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible.

(c) As frequently as payments are due on the investor certificates (monthly, quarterly, semi-annually, or annually, as set forth in the Securitization Trust Agreement), the Servicer is required to report to the Securitization Trustee the amount of all past-due payments and the amount of all Servicer advances, along with other current information as to collections on the leases, recoveries on the related leased vehicles, and draws upon the credit support. Further, the Servicer is required to deliver to the trustee annually a certificate from an executive officer of the Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Servicing Agreement or, if the Servicer has defaulted under any of its obligations, specifying any such default. The Servicer's reports are reviewed at least annually by independent accountants to ensure that the Servicer is following its normal servicing standards and that the reports conform to the Servicer's internal account records. The results of the independent accountants' review are delivered to the Securitization Trustee.

(d) In cases where the Servicer and an insurer providing credit support are affiliated or are the same entity, the credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the SUBI, whether due to Servicer advances or any other cause. The floor amount may be a fixed dollar amount or a specified formula amount. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws on such amount. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the principal balance of the leases allocated to the SUBI. The Applicant states that where the floor is a fixed dollar amount, the amount of credit support ordinarily would increase as a percentage of the declining principal balance during the period that the floor is in effect.

15. In connection with the original issuance of investor certificates, a

[14] For example, if the certificate rate for a transaction were 8 percent and the targeted spread were 200 basis points, then, in determining the aggregate face value amount of certificates that could be issued with respect to a given SUBI portfolio, TMCC could include each lease with a Lease Rate of 10 percent or more at its current outstanding principal balance without any discounting. However, if the portfolio included individual leases each with outstanding principal balances of $20,000 and Lease Rates of only 5 percent, then TMCC would have to ''discount'' the value of each such lease for purposes of the securitization to a low enough net investment value (approximately $18,000) so that the same overall monthly lease payment for each lease would now yield a Lease Rate of 10 percent. TMCC notes that any ''discounting'' of leases added to the SUBI portfolio during the ''revolving period'' will result in more leases being added to the portfolio in order to maintain a constant outstanding principal balance during such period. Thus, when interest rates used to determine the Lease Rate for leases added to a SUBI portfolio are declining, the ''discounting'' of leases adds more ''collateral'' to secure payments of the certificate rate.

prospectus or private placement memorandum is furnished to all investors including investing plans. The prospectus or private placement memorandum contains information material to a plan fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the Origination Trust and Securitization Trust as legal entities and a description of how they were formed by their respective sponsors;

(c) Identification of the Trust Agent, Origination Trustee and Securitization Trustee;

(d) A description of the leases and related leased vehicles allocated to each SUBI, including the diversification of the leases and vehicles, the principal terms of the leases, and their material legal aspects;

(e) A description of the sponsors of the Origination Trust and the Securitization Trust, and of the Servicer;

(f) A description of the servicing arrangements set forth in the Servicing Agreement, and the agreements governing the Origination Trust and the Securitization Trust, including a description of the Servicer's principal representations and warranties as to the leases and leased vehicles allocated to each SUBI and the remedies for any breach thereof;

(g) A description of the procedures for collection of payments on or for leases and related leased vehicles and for making distributions to the Securitization Trust, as holder of an interest in the SUBI, and then to investor certificateholders, and a description of the accounts into which such payments are deposited and from which such distributions are made;

(h) Identification of the servicing compensation and any fees for credit support that are deducted from payments on or for leases or related leased vehicles before distributions are made to investors;

(i) A description of periodic statements provided to the Securitization Trustee, and such statements that are provided or made available to investors by the Securitization Trustee;

(j) A description of the events that constitute events of default under the Servicing Agreement and a description of the Securitization Trustee's and the investors' remedies incident thereto;

(k) A description of any credit support;

(l) A general discussion of the principal Federal income tax consequences of the purchase, ownership and disposition of the investor certificates by a typical investor;

(m) A description of the underwriters' or placement agents' plan for distributing the certificates to investors; and

(n) Information about the scope and nature of the secondary market, if any, for the certificates.

Reports indicating the amount of payments of principal and interest are provided to investors as frequently as distributions are made to investors. Investors are also provided with periodic information statements setting forth material information concerning the leases and related vehicles allocated to each SUBI, including information as to the amount and number of delinquent and defaulted leases.

16. In the case of the offer and sale of investor certificates in a registered public offering, the Securitization Trustee, the Servicer or the sponsor of the Securitization Trust will file periodic reports as required by the Securities Exchange Act of 1934 (the 1934 Act). A Securitization Trust and its sponsor may, in some cases, discontinue making filings under the 1934 Act if permitted to do so under the provisions of that Act by exemptions contained therein.

At the time distributions are made to certificateholders, a report is delivered to the trustee as to the status of the Securitization Trust and each SUBI, including the assets allocated to the SUBI. Such report contains information regarding, among other things, the leases and related vehicles allocated to the SUBI, payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report is also delivered to or made available to the Rating Agency or Agencies that have rated the investor certificates. A statement based on this report is also provided to certificateholders either by the Securitization Trustee, the Servicer, or DTC as depository of the investor certificates, including a summary statement regarding the Securitization Trust and the assets allocated to the SUBI. The statement contains information regarding payments and prepayments, delinquencies, the remaining amount of credit support, a breakdown of payments between principal and interest and other information concerning the leases and leased vehicles allocated to the SUBI.

With respect to payments on the certificates, TMCC states that such payments are legally obligated to be made by the Securitization Trustee to DTC, the record owner of the certificates. TMCC represents that DTC makes payments to the beneficial owners of the certificates as required by New York Stock Exchange Regulations, SEC Regulations and the rules of the U.S. Federal Reserve Board.

17. In general, it is the policy of many underwriters to make a market for securities for which they are the lead or co-managing underwriter. It is also the policy of many placement agents to facilitate sales by investors who purchase certificates if the placement agent has acted as a principal or agent in the original private placement of the certificates and if the investors request the placement agent's assistance. In this regard, TMCC anticipates that underwriters will make a secondary market in investor certificates of trusts that are sponsored by TMCC and its Subsidiaries.

18. TMCC and its Subsidiaries represent that they will abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

TMCC has requested the relief proposed herein because, under the Department's regulation defining ''plan assets'' for investment purposes (see 29 CFR 2510.3–101), there could be a ''look-through'' to the underlying assets of the trust issuing certificates purchased by employee benefit plans when there is significant participation by benefit plan investors in a particular offering and the certificates are not considered to be ''publicly-offered'' securities. In this regard, TMCC states that many certificates are held by investors in street or nominee name. Thus, TMCC states that it is not always possible to identify whether the percentage interest in a trust held by benefit plan investors is or is not ''significant'' (29 CFR 2510.3–101(f)). TMCC states further that these problems are compounded as transactions occur in the secondary market. In addition, with respect to the ''publicly-offered security'' exception contained in the Department's regulation (29 CFR 2510.3–101(b)), TMCC states that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers or whether there are at least 100 independent investors

which would make the certificates a ''widely-held'' class of securities (as required therein).

TMCC has requested that the proposed exemption be effective as of September 1, 1997, in order to cover any securitizations of motor vehicle leases and related vehicles since that time which may have involved significant participation by benefit plan investors.

19. In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Securitization Trust holds an interest in a SUBI, which generally represents beneficial interests in a ''fixed pool'' of leases and related leased vehicles, other than the obligation to reinvest principal collections on the leases and leased vehicles in additional qualifying leases and leased vehicles during a fixed ''revolving period'' of no more than 15 months.

(b) The Average Lease Rate for the leases in the portfolio used to create a trust, after accounting for all leases added to such portfolio during the ''revolving period'', will not exceed by more than 200 basis points the Average Lease Rate for the original portfolio of leases used to create the trust.

(c) Certificates in which employee benefit plans invest have been rated in one of the three highest rating categories by the Rating Agencies. To achieve the desired rating, one or more types of credit support are provided by the sponsor or its affiliates or are obtained from third parties. In addition, leases added to a trust portfolio during the ''revolving period'' will not result in the certificates receiving a lower credit rating from the Rating Agencies, at the end of the ''revolving period'', than the rating that was obtained at the time of the initial issuance of the certificates by the trust.

(d) All transactions for which TMCC seeks exemptive relief are governed by the Origination Trust Agreement, the SUBI Supplement, the Servicing Agreement and the Securitization Trust Agreement. These agreements as well as the prospectus or private placement memorandum are made available to plan fiduciaries for their review prior to the plan's investment in the certificates.

(e) The Pooling and Servicing Agreement expressly provides that funds collected by TMCC, as the servicer for trust assets, are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt no longer continues to be rated P–1 by Moody's Investors Service and A–1 by Standard & Poor's Ratings Services (or successors thereto), unless such Rating Agencies accept an alternative arrangement.

(f) Exemptive relief from sections 406(b) and 407(a) of the Act for sales to employee benefit plans is substantially limited.

(g) The Applicant anticipates that underwriters will make a secondary market in investor certificates sponsored by TMCC and its Subsidiaries.

For Further Information Contact: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Kilpatrick Investment Company Employee's Pension Plan (the Plan); Located in Oklahoma City, Oklahoma

[Application No.: D–10607]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836,32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) of improved real property (the Property) by the Plan to the Kilpatrick Investment Company (the Company), a party in interest with respect to the Plan provided the following conditions were met at the time of the Sale: (1) the terms of the Sale were at least as favorable as those the Plan could have obtained in an arm's length transaction with an unrelated party; (2) the fair market value of the Property was determined by an independent and qualified real estate appraiser; (3) the Sale price was equal to the greater of the fair market value of the Property at the time of the Sale or $134,600 which represents the price the Plan originally paid for the Property plus the holding costs incurred by the Plan during the Plan's ownership of the Property; and (4) the Plan paid no commissions or expenses associated with the Sale.

Effective Date: If granted, this proposed exemption will be effective as of April 15, 1998.

Summary of Facts and Representations

1. The Plan is a defined benefit plan having six participants and beneficiaries as of February 19, 1998. The aggregate fair market value of the Plan's assets is $884,543 which is based upon the 1996 Plan's actuarial report. John Kilpatrick is the Plan trustee and owner of the Company.

2. The Property is a sixty year old industrial facility located on a 476,725 square foot site located at 800 N.W. 3rd Street, Moore, Oklahoma. The Plan purchased the Property from an unrelated third party on January 31, 1978 for $95,000 representing land cost of $15,000 and building cost $80,000. Since this time, the Plan has paid approximately $7,000 in land repairs, $15,900 in improvements and $16,555 ad valorem taxes. The warehouse portion of the Property has been leased to Show Productions, an unrelated third party for an annual rent of $6,000.

3. On February 4, 1998, the Property was appraised by Stephen V. Greer Company, Real Estate Appraisers and Consultants. The fair market value of the Property was calculated to be $78,500. In his appraisal report, Mr. Greer defined market value as the probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Mr. Greer noted that the overall quality of the building improvements of the Property is fair and the general condition of the Property is fair to poor. The useful economic life of these improvements is nearing its end. Redevelopment will be required to maximize the value of the site.

4. The Plan proposed to sell the Property in order to diversify its assets and invest in more liquid investments.[15] In February 1998, the Company applied for an exemption to permit a proposed sale of the Property by the Plan to the Company at the fair market value of the Property. However, during the Department's consideration of the exemption request, it became apparent to the Plan trustee that the Plan had invested significantly more in the Property than its appraised value. Thus, the Company proposed to purchase the Property at a price greater than the fair market value of the Property which represented an amount equal to the Plan's acquisition cost plus the holding costs of the Property totaling $134,600.

[15] As of February 1998, the Plan's total investment in real estate accounted for 93% of the value of plan assets. The Department is expressing no opinion in this proposed exemption as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding such real estate. Section 404(a)(1)(C) states that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

The Company stated that it would be in the position to purchase the Property at this price due to the fact that the Company had recently sold another piece of property for $150,000 with respect to which the Company was trying to complete a Code section 1031 like-kind exchange. The Company further states that based upon the section 1031 requirements, the like-kind exchange had to be completed by April 15, 1998, and the Company determined that due to the notice requirements of the exemption process, the exemption would not be granted before this date. Accordingly, the Company purchased the Property from the Plan on April 15, 1998. The applicant represents that the Sale was in the interest of the Plan because it permitted the Plan to fully recover the money it invested in the Property, and it appeared highly unlikely that the Plan could sell the Property to a third party in its current condition at such a price. In addition, the Plan incurred no expenses as a result of the Sale.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of the section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale was a one-time transaction for cash; (2) the Plan paid no expenses associated with the Sale; and (3) the Plan received the greater of the fair market value as determined by an independent, qualified appraiser of the Property or $134,600 which represents the Plan's total investment in the Property.

For Further Information Contact: Allison Padams Lavigne of the Department, telephone (202)219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of July, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–18012 Filed 7–7–98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 98–32; Exemption Application No. D–10459, et al.]; Grant of Individual Exemptions; Union Bank of Switzerland

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Union Bank of Switzerland (UBS/Swiss) and UBS Securities, LLC (UBS Securities) Located in Zurich, Switzerland and New York, New York, Respectively

[Prohibited Transaction Exemption 98–32; Exemption Application Nos. D–10459 and D–10460]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) lending of securities to UBS/Swiss, UBS Securities, UBS Ltd. (UBS/UK), UBS Securities Limited (UBS/Japan) and their successors in interest, which are or will

be affiliated domestic or foreign broker-dealers of UBS Securities,[1] by employee benefit plans (the Client Plans or Plans), including commingled investment funds holding plan assets, for which UBS/Swiss, acting through its New York branch in connection with securities lending activities (UBS NY), an affiliate of the proposed UBS Borrowers, may serve as a securities lending agent, sub-agent, or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, referred to herein as ''Plan A'' or ''Plan B''; and (2) the receipt of compensation by UBS NY in connection with these transactions.

This exemption is subject to the following conditions:

(a) For each Client Plan, neither UBS NY, any of the UBS Borrowers nor any affiliate of those entities has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets.

(b) With regard to—

(1) Plan A, under which UBS NY lends securities of a Client Plan to any UBS Borrowers in either an agency or sub-agency capacity, such arrangement is approved in advance by a Plan fiduciary who is independent of UBS NY and the UBS Borrower and is negotiated by UBS NY which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.[2]

(2) Plan B, under which the UBS Borrower directly negotiates the agreement with the fiduciary of a Client Plan, including a Plan for which UBS NY provides services with respect to the portfolio of securities to be loaned pursuant to an exclusive borrowing arrangement (the Exclusive Borrowing Arrangement), such Client Plan fiduciary is independent of both the UBS Borrower and UBS NY, and UBS NY does not participate in any such negotiations.

(c) The independent fiduciary of a Client Plan approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the UBS Borrower.

(d) The terms of each loan of securities by a Client Plan to a UBS Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan may terminate the agency or sub-agency arrangement under Plan A or an Exclusive Borrowing Agreement under Plan B at any time, without penalty, on five business days notice, whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

(f) The Client Plan or its designee receives from each UBS Borrower by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank, other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 as it may be amended or superseded.

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Client Plan a continuing security interest in and a lien on the collateral. The level of collateral is monitored daily (either by UBS NY under Plan A, or by UBS NY or another designee of the Client Plan under Plan B). If the market value of the collateral, on the close of trading on a business day is less than 100 percent of the market value of the loaned securities at the close of business on that day, the UBS Borrower is required to deliver, by the close of business on the next day, sufficient additional collateral to bring the level to at least 102 percent.

(h) Prior to entering into a Loan Agreement, the applicable UBS Borrower furnishes each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, UBS NY does not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan is provided notice of any material change and approves the loan in view of the changed financial condition.

(i) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to UBS Borrowers, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTEs 81–6 and 82–63 as well as to applicable securities laws of the United States, Switzerland, the United Kingdom or Japan.

(k) UBS NY agrees to indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or from an event of default arising from the UBS Borrower's failing to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence.

[1] For purposes of this exemption, UBS/Swiss, UBS/UK, UBS/Japan and their successors in interest are collectively referred to as the UBS Foreign Borrowers. In addition, UBS Securities, including its successor in interest, and the UBS Foreign Borrowers are together referred to herein as the UBS Borrowers or individually as a UBS Borrower.

[2] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than UBS NY, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

(1) If any event of default occurs, UBS NY, promptly and at its own expense (subject to rights of subrogation in, to the collateral and against such borrower), purchases or causes to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY indemnifies the Client Plan for any shortfall in the collateral plus interest, if contractually applicable, on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY pays the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities, including all interest and dividends on the loaned securities during the loan period.

(m) Prior to any Client Plan's approval of the lending of its securities to any UBS Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption are provided to the Client Plan.

(n) Each Client Plan receives monthly reports with respect to securities lending transactions, including, but not limited to, the information described in Representation 26 of the Summary of Facts and Representations (the Summary) of the Notice, so that an independent fiduciary of a Client Plan may monitor such transactions with the UBS Borrower.

(o) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to UBS Borrowers; provided, however, that —

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity——

(A) Has full investment responsibility with respect to Client Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(q) In addition to the above, all loans involving UBS Foreign Borrowers, have the following requirements:

(1) Such Foreign Borrower is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom in the case of UBS/UK, the Swiss Federal Banking Commission in the case of UBS/Swiss, and the Ministry of Finance, in the case of UBS/Japan;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Loan Agreement under Plan A or the Exclusive Borrowing Agreement under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees that enforcement by a Client Plan of the indemnity provided by UBS New York will occur in the United States courts.

(r) UBS NY and each UBS Foreign Borrower maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (s)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBS NY and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than UBS NY or its affiliates shall be subject to the civil penalty that may be assessed

under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (s)(1).

(s)(1) Except as provided in subparagraph (s)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location during normal business hours by —

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(s)(2) None of the persons described above in paragraphs (s)(1)(B)—(s)(1)(D) of this paragraph (s)(1) are authorized to examine the trade secrets of UBS NY or its affiliates or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on March 31, 1998 at 63 FR 15452.

Written Comments

During the comment period, the Department received one written comment with respect to the Notice and no requests for a public hearing. The comment letter was submitted by UBS/Swiss and UBS Securities (together, the Applicants) and is intended to clarify the operative language of the Notice and the Summary. Presented below are a discussion of the Applicants' comments and the Department's responses.

General Comments

The Applicants wish to make the following general comments to reflect changed circumstances since the original filing of the exemption application.

1. *Successors in Interest.* The Applicants represent that there is currently a pending merger between UBS Swiss and Swiss Bank. The transaction, which has not been structured as an asset sale but rather as a transfer of stock, would result in the formation of a new entity that would be named ''UBS AG.'' In effect, the Applicants state that the shareholders of UBS Swiss and Swiss Bank would surrender shares of stock in their respective entities in exchange for shares of UBS AG. Following the merger, UBS Securities would be renamed ''Warburg Dillon Read LLC.'' The names of UBS/UK and UBS/Japan would remain unchanged. The Applicants state that they have obtained final regulatory approval and anticipate that the merger will be consummated by the end of June 1998.

To ensure that the requested exemption will still be effective following the merger, the Applicants have requested that it be revised, as necessary, to extend to successors in interest to the Applicants and their affiliates. Therefore, the Department has revised the operative language of the exemption by making it applicable to successors in interest to UBS Swiss, UBS Securities and their affiliates, including UBS NY and the UBS/UK and UBS/Japan.

2. *Representation 1(b) of the Summary.* The last sentence in the second paragraph of Representation 1(b) of the Summary states that ''All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T.'' The Applicants note that Regulation T has been amended as of April 1, 1998 and therefore, believe that a representation as to compliance with Regulation T should be made only to the extent it is applicable to the UBS Borrower and the transaction. Accordingly, the Applicants suggest that the last sentence of Representation 1(b) be revised to read as follows:

> All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T, to the extent that such regulation is applicable to UBS Securities and to the transaction.

In concurrence, the Department has made the requested change in Representation 1(b) of the Notice.

Specific Comments

1. *Operative Language of the Notice and Representation 8 of the Summary.* In the operative language of the Notice, the introductory paragraph and Representation 8 of the Summary briefly state that UBS NY may serve as a securities lending agent, a sub-agent or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, which are referred to therein as ''Plan A'' and ''Plan B.'' To clarify the statements made in these paragraphs, the Applicants point out that when UBS NY effects securities lending activities on behalf of a Client Plan, it may be acting as a lending agent or a sub-agent pursuant to discrete agency documentation or pursuant to authority granted under a trust or custodial agreement with the Client Plan which expressly includes the securities lending activity.

The Department has noted the clarification offered by the Applicants.

2. *Condition (k) of the Notice and Representations 23 and 38 of the Summary.* The Applicants suggest that the Department revise Condition (k) of the Notice and Representation 23 and 38 of the Summary to reflect more accurately the scope of the indemnification given by UBS NY to a Client Plan. In this regard, the Applicants recommend that the second sentence of Condition (k) and the second sentence of Representation 38 be modified by striking the phrase ''the failure of the UBS Borrower'' and inserting the phrase ''from an event of default arising from the UBS Borrower's failing * * *'' after the word ''or.''

In response, the Department concurs with the requested modifications and has revised the Notice, accordingly. Although Representation 23 of the Summary contains language similar to that of Condition (k) and Representation 38, the Department has not made a corresponding change since the language contained therein already appears to embody the Applicants' requested modification.

3. *Condition (k)(1) of the Notice and Representation 23 of the Summary.* The Applicants note that UBS NY will perform its indemnity within one business day of the insolvency event (either by (1) paying the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities or (2) by purchasing securities identical to the borrowed securities and applying the collateral to payment of the purchase price and any other expenses of the Client Plan that may be associated with the sale and/or purchase. Because UBS NY generally performs its indemnity by the next business day, the Applicants represent that UBS NY does not pay interest on any shortfall in collateral arising from other than reinvestment risk but it does bear the transaction costs of performing the indemnity. However, in the event UBS NY is ever required to pay interest to a Client Plan, the Applicants request that the phrase ''if contractually applicable'' be inserted following the reference to ''interest'' in Condition

(k)(1) and in the second sentence of the second paragraph in Representation 23.

In response, the Department has made the change requested by the Applicants.

4. *Condition (o)(2)(A) of the Notice and Representation 28(a) of the Summary.*

Condition (o)(2) of the Notice provides that—

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate;

(B) Has full investment responsibility with respect to Client Plan assets invested therein; and

(C) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

Representation 28 of the Summary contains a similar provision. The Department believes that subparagraph (A) above and clause (a) of Representation 28 unnecessarily limit the ability of a Client Plan to effect securities loans under the proposed lending program, particularly in a situation where the independent investment manager's own in-house plan wishes to invest in the commingled investment vehicle. Therefore, the Department has modified the Condition and Representation to read as follows:

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In effect, the independent investment manager's own plan may participate in the commingled investment vehicle but for purposes of determining whether the $50 million aggregation requirement is met, the assets of the Unrelated Plans must be utilized.

5. *Condition (q)(5)(D) of the Notice and Representations 25(d) and 32(d) of the Summary.* Condition (q) of the Notice sets forth certain supplemental requirements for securities loans involving UBS Foreign Borrowers. Specifically, subparagraph 5 of Condition (q) describes the limited form of indemnity that is to be provided by the UBS Foreign Borrower to a Client Plan. For example, prior to a securities lending transaction, the UBS Foreign Borrower must (a) agree to submit to the jurisdiction of the United States; (b) agree to appoint an agent for service of legal process; and (c) consent to service of process on the Process Agent.

The Applicants note, however, that the language of Condition (q)(5)(D) of the Notice and Representations 25(d) and 32(d) of the Summary appears to have been added in error. These paragraphs state that the applicable UBS Foreign Borrower ''agrees to be indemnified in the United States for any transaction covered by this exemption.'' Because no UBS Borrower will be indemnified under this exemption, the Applicants suggest that the language be clarified to state that the ''UBS Foreign Borrower agrees that enforcement by a Client Plan of the indemnity provided by UBS New York will occur in the United States courts.''

In response, the Department concurs with the clarification made by the Applicants and has made the requested change.

6. *Representation 11 of the Summary.* The Applicants request that the second sentence in the second paragraph of Representation 11 of the Summary be modified by inserting the phrase ''will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement.'' Therefore, the Department has revised the sentence to read as follows:

Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement.

7. *Representation 27 of the Summary.* Representation 27 of the Summary describes the contents of the monthly report that will be given to the independent fiduciary of a Client Plan by UBS NY. Among other things, the monthly report will enable the Client Plan fiduciary to monitor securities lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral. The Applicants wish to emphasize that while they cannot be required to divulge, in the monthly report, confidential information regarding securities loans made by outside lenders, they will disclose all of a Client Plan's outstanding securities loans that are made to UBS Borrowers. Therefore, the Applicants request that Representation 27 be revised, in part, as follows:

In order to provide the means for monitoring lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all of the Client Plan's outstanding securities loans to the UBS Borrower and to other borrowers as compared to the total collateral held for both categories of loans.

In response, the Department concurs with the Applicants' clarification of the monthly report and has made the requested change.

For further information regarding the Applicants' comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application Nos. D–10459 and D–10460) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the Applicants, the Department has made the aforementioned changes to the Notice and has decided to grant the exemption

subject to the modifications or clarifications described above.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Breland Investments, Inc. Profit Sharing Plan and Trust (the Plan) Located in Phoenix, Arizona

[Prohibited Transaction Exemption 98–33; Exemption Application No: D–10529]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed loan (the Loan) by the individually directed account (the Account) in the Plan [3] of Dr. Albert E. Breland (Dr. Breland), to Mesa Scholastic Enterprises, a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Dr. Breland, a disqualified person with respect to the Plan, provided the following conditions are satisfied:

(a) the terms of the Loan are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(b) the amount of the Loan does not exceed 25% of the assets in the Account;

(c) the Loan is secured by a first deed of trust on the commercial real property, which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the outstanding balance of the Loan throughout its duration;

The Department received no comments or requests for a hearing in response to the Notice of Proposed Exemption (the Notice) published on Friday, May 29, 1998 at 63 FR 29458. However, in the paragraph entitled ''Notice to Interested Persons'' contained in the Notice, the word ''Overland'' should be deleted and the word ''Breland'' should be inserted in lieu thereof.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

[3] Because Dr. Breland is the only participant in the Plan, there is no jurisdiction under 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Karen J. Hartley Profit Sharing Plan (P/S Plan) and Karen J. Hartley Money Purchase Pension Plan and Trust Agreement (M/P Plan, collectively; the Plans) Located in Eugene, Oregon

[Prohibited Transaction Exemption 98–34; Exemption Application Nos. D–10588 and D–10589]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) by the Plans to Karen J. Hartley, the trustee and sole participant of the Plans and, a disqualified person with respect to the Plans; [4] provided that the following conditions will be met:

1. The Loan will be structured such that each Plan will lend up to 25% of its assets. However, the aggregate amount of the Loan will not exceed $40,000 at any time;

2. The outstanding balance of the Loan will at no time exceed 25% of the Plans' aggregate assets;

3. The Plans will bear no expenses with respect to the proposed transaction;

4. The terms and conditions of the Loan will be at least as favorable to the Plans as those obtainable in arm's-length transaction with an unrelated party; and

5. The Loan will be adequately secured by collateral, which at all times will be equal to 100% of the outstanding principal amount of the Loan plus 6 months interest at the Loan's interest rate of 8.2%. In the event the collateral amount falls below this required amount, this exemption will no longer be available.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 18, 1998 at 63 FR 27332.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

[4] Pursuant to CFR 2510.3–3(b) and (c), the Department has no jurisdiction with respect to the Plans under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Signed at Washington, DC, this 1st day of July 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–18010 Filed 7–7–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[98–092]

Notice of Agency Reports Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before September 8, 1998.

ADDRESSES: All comments should be addressed to Ms. Darlene Ahalt, Goddard Space Flight Center, Greenbelt, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Application for Volunteer Program.

OMB Number: 2700–0057.

Type of Review: Extension.

Need and Uses: The application is used to be considered as a Goddard Space Flight center Visitor Center Volunteer.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, local or Tribal Government.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Hours Per Request: 1.

Annual Burden Hours: 50.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–18127 Filed 7–7–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[98–091]

Notice of Agency Reports Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This is a voluntary satisfaction survey of partners that are familiar with the Agency's operations.

DATES: All comments should be submitted on or before September 8, 1998.

ADDRESSES: All comments should be addressed to Ms. Carrie Sorrels, Code S, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Grants Proposal Writers and Peer Reviewers Customer Satisfaction Surveys.

OMB Number: 2700–0084.

Type of review: Reinstatement.

Need and Uses: The survey information will be used by NASA to improve the efficiency, quality, and timeliness of its grant process, as well as to strengthen its partnership with external customers.

Affected Public: Not-for-profit institutions, Federal Government.

Number of Respondents: 930.

Responses Per Respondent: 1.

Annual Responses: 744.

Hours Per Request: 15 min.

Annual Burden Hours: 62.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–18128 Filed 7–7–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Literature Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on August 4–6, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on August 4 and August 5, and from 9:00 a.m. to 5:00 p.m. on August 6, in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on August 6, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on August 4 and August 5, and from 11:00 a.m. to 5:00 p.m. on August 6, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information will reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: July 1, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–17994 Filed 7–7–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Multidisciplinary Section (Planning & Stabilization category) to the National Council on the Arts will be held on August 4–5, 1998. The panel will meet from 9:00 a.m. to 5:30 p.m. on August 4 and from 9:00 a.m. to 4:30 p.m. on August 5, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. on August 5, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on August 4 and from 12:30 p.m. to 4:30 p.m. on August 5, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 1, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–17995 Filed 7–7–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Media Arts (B) Section (Creation & Presentation category) to the National Council on the Arts will be held on July 20–22, 1998. The panel will meet from 9:00 a.m. to 6:30 p.m. on July 20 and 21 and from 9:00 a.m. to 4:00 p.m. on July 22, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 11:00 a.m. to 12:30 p.m. on July 22, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on July 20 and July 21, and from 9:00 a.m. to 11:00 a.m. and 12:30 p.m. to 4:00 p.m. on July 22, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Endowment on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: July 1, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–17997 Filed 7–7–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel, ArtsREACH Section to the National Council on the Arts will be held on July 28–31, 1998. The panel will meet from 9:00 a.m. to 5:30 p.m. on July 28, from 8:30 a.m. to 7:30 p.m. on July 29, from 8:30 a.m. to 6:00 p.m. on July 30, and from 9:30 a.m. to 12:00 p.m. on July 31, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:30 a.m. to 12:00 p.m. on July 31, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on July 28, from 8:30 a.m. to 7:30 p.m. on July 29, and from 8:30 a.m. to 6:00 p.m. on July 30, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: July 1, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–17996 Filed 7–7–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML–REN; ASLBP No. 95–707–02–ML–REN]

Advanced Medical Systems, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned Subpart L proceeding is hereby replaced by appointing Administrative Judge B. Paul Cotter, Jr. as Presiding Officer in place of Administrative Judge Marshall E. Miller.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Chief Administrative Judge B. Paul Cotter, Jr., Atomic Safety and Licensing Board

Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Rockville, Maryland this 1st day of July 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–18039 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Company, Calvert Cliffs Nuclear Power Plant Units 1 and 2; Notice of Opportunity for a Hearing Regarding Renewal of Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of facility operating licenses Nos. DPR–53 and DPR–69, which authorize Baltimore Gas & Electric Company (BG&E), the applicant, to operate its Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2 at 2700 megawatts thermal. BG&E submitted an application to renew the operating licenses for its CCNPP units by letter dated April 8, 1998. A Notice of Receipt of Application, ''Baltimore Gas & Electric Company; Calvert Cliffs Nuclear Power Plant Units 1 & 2; Notice of Receipt of Application for Renewal of Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period,'' was published on April 27, 1998, in the **Federal Register** (63 FR 20663). The renewed licenses would authorize the applicant to operate CCNPP Units 1 and 2 for an additional 20 years beyond the current 40-year period. The current license for Unit 1 expires on July 31, 2014, and the current license for Unit 2 expires on August 13, 2016.

Prior to issuance of the requested license renewals, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license upon its review and finding that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require an aging management review and (2) time-limited aging analyses that have been identified to require review such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations. The NRC, in accordance with 10 CFR 51.95(c), will prepare an environmental impact statement which is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996). A ''Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process'' was issued on June 10, 1998, in the **Federal Register** (63 FR 31813). As discussed further below, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

By August 7, 1998, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the license renewals in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. and at the local public document room for the CCNPP Units 1 and 2 located in the Calvert County Public Library, 30 Duke Street, Prince Frederick, MD 20678. If the applicant files a request for a hearing or if any person whose interest may be affected by this proceeding files a request for a hearing and a petition for leave to intervene by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Part 54 and Part 51, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters which may be considered pursuant to 10 CFR Parts 54 and 51. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board, up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the

hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R.F. Fleishman, Esquire, General Counsel, Baltimore Gas and Electric Company P.O. Box 1475, Baltimore, MD 21203.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (I)-(v) and 2.714(d).

For further details with respect to this action, see the application dated April 8, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room for the CCNPP Units 1 and 2 located in the Calvert County Public Library, 30 Duke Street, Prince Frederick, MD 20678.

Dated at Rockville Maryland, this 1st day of July 1998.

For The Nuclear Regulatory Commission.

Stephen T. Hoffman,

Acting Director, License Renewal Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18066 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23, issued to Carolina Power & Light (CP&L or the licensee), for operation of the H.B. Robinson Steam Electric Plant, Unit 2, located in Darlington County, South Carolina.

The proposed amendment would revise Technical Specification (TS) 3.7.8, ''Ultimate Heat Sink (UHS),'' to permit an 8-hour delay in UHS temperature restoration period prior to entering the plant shutdown required actions. Also, for the duration of the restoration, service water system (SWS) temperature will be monitored hourly, and should the temperature exceed 99 degrees F, the plant will enter TS 3.7.8 required action A.1, and be in MODE 3 within 6 hours.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides an allowed time for the plant condition resulting from service water temperature in excess of the design limit of 95°F. The Service Water System (SWS) temperature is not assumed to be an initiating condition of any accident analysis evaluated in the safety analysis report. Therefore, the allowance of a limited time for service water temperature to be in excess of the design limit does not involve an increase in the probability of an accident previously evaluated in the safety analysis report (SAR). The SWS supports operability of safety related systems used to mitigate the consequences of an accident. An increase in service water temperature in excess of the design limit is expected to be small due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the service water when near or slightly above the service water design temperature does not introduce new failure mechanisms for systems, structures or components not already considered in the SAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in service water temperature above the design basis limit for the service water system and delay the requirement to shutdown the plant when the service water system design limit is exceeded by 8 hours. There are design margins associated with systems, structures and components that are cooled by the service water system that are affected. The service water system temperature is an input assumption for mitigating the effects of design basis accidents. However, an increase in service water temperature in excess of design limit is expected to be small due to the limited time allowed by the proposed change in conjunction with the slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, there is no significant reduction in margin of safety associated with this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would

result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 7, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 26, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 1st day of July 1998.

For the Nuclear Regulatory Commission.

Ram Subbaratnam,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18064 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16]

Virginia Electric and Power Company, Old Dominion Electric Cooperative; Notice of Issuance of Materials License SNM–2507 North Anna Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a Materials License under the provisions of Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72), to Virginia Electric and Power Company (Virginia Power) and Old Dominion Electric Cooperative (ODEC), authorizing receipt and storage of spent fuel in an independent spent fuel storage installation (ISFSI) located on site at its North Anna Power Station in Louisa County, Virginia.

The function of the ISFSI is to provide interim storage for up to 839.04 metric tons of uranium contained in approximately 1824 fuel assemblies from the North Anna Power Station, Units 1 and 2, in storage casks. Thirty two assemblies are to be loaded into each cask within the North Anna Power Station spent fuel enclosure at the plant and subsequently transferred to the onsite ISFSI. The cask that is authorized for use is the TN–32 designed by Transnuclear, Inc. The license for an ISFSI under 10 CFR Part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

The Commission's Office of Nuclear Material Safety and Safeguards (NMSS) has completed its environmental, safeguards, and safety reviews in support of issuance of this license.

Following receipt of the application filed May 9, 1995, a ''Notice of Consideration of Issuance of Materials License for the Storage of Spent Fuel and Opportunity for Hearing'' was published in the **Federal Register** on July 6, 1995 (60 FR 35237). The ''Environmental Assessment (EA) Related to the Construction and Operation of the North Anna Independent Spent Fuel Storage Installation (dated March 28, 1997) and Finding of No Significant Impact,'' was issued and noticed in the **Federal Register** (62 FR 16202) in accordance with 10 CFR Part 51. The scope of the EA included the construction and operation of an ISFSI on the North Anna Power Station site including impacts derived from use of the TN–32 cask.

The staff has completed its safety review of the North Anna ISFSI site application and safety analysis report. The NRC staff's ''Safety Evaluation Report for the North Anna Independent Spent Fuel Storage Installation'' was issued on June 30, 1998. Materials License SNM–2507, the staff's Environmental Assessment, Safety Evaluation Report, and other documents related to this action are available for public inspection and for copying for a fee at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Special Collections Department, Second Floor, Alderman Library, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 30th day of June 1998.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–18065 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–61, a license held by the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee). The exemption would apply to the Haddam Neck Plant, a permanently shutdown and defueled plant located at the CYAPCO site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would modify security requirements to eliminate certain equipment, relocate certain equipment, modify certain procedures, and reduce the number of armed responders, due to the permanently shutdown and defueled status of the Haddam Neck facility.

The proposed action is in accordance with the licensee's application dated June 19, 1997. The requested action would grant an exemption from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage.''

Need for the Proposed Action

Haddam Neck was shut down on July 22, 1996. On December 5, 1996, the licensee informed the Commission that it had decided to permanently cease operations at Haddam Neck Plant and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), the certifications in the letter modified the facility operating license to permanently withdraw CYAPCO's authority to operate the reactor and to load fuel into the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 73.55 are no longer appropriate. An exemption is required from portions of 10 CFR 73.55 to allow the licensee to implement a revised Defueled Security Plan that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action. The Commission concludes that exemption from certain portions of 10 CFR 73.55 are acceptable given the reduced consequences of an act of sabotage resulting in the release of radioactive material contained in the spent fuel at a defueled reactor site.

The proposed change will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant non-

radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Denial of the exemption request 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

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on July 1, 1998, the NRC staff consulted with Mr. Dwayne Gardner of the State of Connecticut, 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 this action, see the licensee's letter dated June 19, 1997, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Russell Public Library, 123 Broad Street, Middletown, Connecticut.

Dated at Rockville, Maryland, this 1st day of July 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–18059 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Plant Operations and on Fire Protection; Notice of Meeting

The ACRS Subcommittees on Plant Operations and on Fire Protection will hold a joint meeting on July 29, 1998, at the NRC Region II Office, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23 T85, Atlanta, Georgia.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 29, 1998—8:30 a.m. until the conclusion of business

The Subcommittees will meet with the NRC Region II personnel to discuss Region II activities and other items of mutual interest, including significant operating events, on-line maintenance, plant performance review program, results of the pilot fire protection functional inspection, and other fire protection issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of Region II personnel and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 1, 1998.

Medhat M. El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–18040 Filed 7–7–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on June 12, 1998 (63 FR 32258). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1, 1998, and May 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published annually.

Schedule A

No Schedule A authorities were established or revoked during May 1998.

Schedule B

No Schedule B authorities were established or revoked during May 1998.

Schedule C

The following Schedule C authorities were established during May 1998.

Department of Agriculture

Staff Assistant to the Chief, Natural Resources Conservation Service. Effective May 6, 1998.

Confidential Assistant to the Chief Financial Officer. Effective May 6, 1998.

Confidential Assistant to the Administrator, Economic Research Service. Effective May 19, 1998.

Department of Commerce

Senior Advisor to the Director, Office of Business Liaison. Effective May 12, 1998.

Director of Planning and Scheduling to the Deputy Chief of Staff for External Affairs. Effective May 12, 1998.

Director, Secretariat for Electronic Commerce to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective May 22, 1998.

Deputy Director of Advance to the Director of Advance, ffice of External Affairs. Effective May 26, 1998.

Department of Defense

Special Assistant for Health Care Policy to the Assistant Secretary of Defense for Legislative Affairs. Effective May 15, 1998.

Department of Education

Director, Corporate Liaison to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 6, 1998.

Deputy Assistant Secretary for Intergovernmental and Constituent Relations to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 21, 1998.

Department of Energy

Special Assistant for External Programs to the Director, Office of Nuclear Energy, Science and Technology. Effective May 13, 1998.

Department of Health and Human Services

Deputy Chief of Staff to the Chief of Staff. Effective May 6, 1998.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective May 21, 1998.

Deputy Director for Operations to the Director of Intergovernmental Affairs. Effective May 21, 1998.

Deputy Director for Policy to the Director of Intergovernmental Affairs. Effective May 21, 1998.

Department of the Interior

Special Assistant to the Director, Bureau of Land Management. Effective May 6, 1998.

Communications Director to the Assistant Secretary for Indian Affairs. Effective May 20, 1998.

Special Assistant to the Director, Office of Communications. Effective May 21, 1998.

Department of Labor

Special Assistant to the Secretary of Labor. Effective May 8, 1998.

Department of State

Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective May 14, 1998.

Protocol Assistant to the Deputy Chief of Protocol. Effective May 22, 1998.

Federal Trade Commission

Special Assistant to the Commissioner. Effective May 27, 1998.

General Services Administration

Special Assistant to the Regional Administrator, Great Lakes Region. Effective May 22, 1998.

Office of Management and Budget

Staff Assistant to the Director, Office of Management and Budget. Effective May 6, 1998.

Office of National Drug Control Policy

Press Relations Assistant (Typing) to the Chief of Press Relations, Office of Public Affairs. Effective May 12, 1998.

Office of Personnel Management

Confidential Assistant to the Chief of Staff. Effective May 12, 1998.

Special Assistant to the Chief of Staff. Effective May 12, 1998.

Office of the United States Trade Representative

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective May 13, 1998.

Small Business Administration

Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective May 14, 1998.

Special Assistant to the Associate Deputy Administrator for Capital Access. Effective May 14, 1998.

Special Assistant to the Senior Advisor to the Administrator. Effective May 22, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–18032 Filed 7–7–98; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Earnings Information Request.

(2) *Form(s) submitted:* G–19–F.

(3) *OMB Number:* 3220–0184.

(4) *Expiration date of current OMB clearance:* 9/30/1998.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,500.

(8) *Total annual responses:* 1,500.

(9) *Total annual reporting hours:* 200.

(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–18072 Filed 7–7–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23295; 812–11106]

First American Investment Funds, Inc. et al.; Notice of Application

June 30, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application 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: Order requested to allow certain series of a registered open-end investment company to acquire all of the assets and liabilities of: (i) certain series of three registered open-end investment companies, and (ii) five registered closed-end investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: First American Investment Funds, Inc. (''FAIF''), U.S. Bank National Association (''U.S. Bank''), Piper Funds Inc. (''PFI''), Piper Funds Inc.-II (''PFI–II''), Piper Global Funds Inc. (''PGF''), the Americas Income Trust Inc. (''XUS''), Highlander Income Fund Inc. (''HLA''), American Government Income Fund Inc. (''AGF''), American Government Income Portfolio, Inc. (''AAF''), American Opportunity Income Fund Inc. (''OIF''), and Piper Capital Management Incorporated (''Piper Capital'').

FILING DATES: The application was filed on April 15, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: FAIF, Oaks, PA 19456; U.S. Bank, First Bank Place, 601 Second Avenue South, Minneapolis, MN 55480; PFI, PFI–II, PGF, XUS, HLA, AGF, AAF, OIF, and Piper Capital, 222 South Ninth Street, Minneapolis, MN 55402–3804.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, 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, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. XUS, HLA, AGF, AAF, and OIF, each a Minnesota corporation, are closed-end management investment companies registered under the Act (collectively, the ''Piper Closed-End Funds''). PFI, PFI–II, and PGF, each a Minnesota corporation, are open-end management investment companies registered under the Act (collectively; the ''Piper Open-End Funds''). Each of the Piper Open-End Funds offers shares in certain series, some of which, together with the Piper Closed-End Funds, constitute the ''Acquired Funds.'' PFI offers shares in 12 series, seven of which will be Acquired Funds. PFI–II offers a single portfolio, which will be an Acquired Fund. PGF offers two portfolios, each of which will be an Acquired Fund.

2. Piper Capital, a wholly-owned subsidiary of Piper Jaffray Companies Inc. (''Piper Jaffray''), is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is the investment adviser to the Acquired Funds. In addition to Piper Capital, Piper Jaffray's wholly-owned subsidiaries include Piper Jaffray Inc. (''Piper''), a broker-dealer, and Piper Trust Company (''Piper Trust''), which provides trust services to individuals and institutions. Piper Capital, Piper, Piper Trust, and their affiliates, all of which are part of a common control group (the ''Piper Affiliates''), hold of record more than 5% of the outstanding shares of certain Acquired Funds.

3. FAIF,[1] a Maryland corporation, is an open-end investment company registered under the Act. FAIF currently offers shares in 24 series, seven of which will be ''Acquiring Funds'' (the ''Existing FAIF Funds''). FAIF is creating several new series, four of which also will be Acquiring Funds (the ''New FAIF Funds''). The Acquired Funds and the Acquiring Funds collectively are referred to as the ''Funds.''

4. U.S. Bank serves as investment adviser for the Existing FAIF Funds, and will serve as investment adviser for the New FAIF Funds. U.S. Bank is exempt from registration under the Advisers Act. U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp, as is U.S. Bank Trust National Association (''U.S. Trust''). U.S. Bank, U.S. Trust, and their affiliates, all of which are part of a common control group (the ''U.S. Bancorp Affiliates'') hold of record more than 5% of the outstanding shares of certain Acquiring Funds. In addition, defined benefit plans for which the U.S. Bancorp Affiliates have funding obligations own more than 5% of the outstanding shares of certain Acquiring Funds.[2]

5. On May 1, 1998, U.S. Bancorp acquired Piper Jaffray (the ''Merger''). As a result of the Merger, Piper Capital became an indirect wholly-owned subsidiary of U.S. Bancorp. In addition, U.S. Bank and U.S. Trust became affiliated with Piper Jaffray, Piper Capital, Piper Trust, and Piper, and all of these entities became part of a common control group.

6. On February 23, 1998, the board of directors of FAIF (the ''FAIF Board''), including the disinterested directors, unanimously approved each of the reorganizations (the ''Reorganizations''). On April 13, 1998, the boards of directors of the Piper Open-End Funds, XUS and HLA, including in each case the disinterested directors, unanimously approved the Reorganizations, including draft versions of the reorganization agreements between FAIF and the Acquired Funds (the ''Reorganization Agreements''). On April 27, 1998, the boards of directors of AGF, AAF, and OIF, including in each case the disinterested directors, unanimously approved the Reorganizations. The consummation of the Reorganizations is expected to occur on or about July 24, 1998, for XUS and HLA, July 31, 1998, for the Piper Open-End Funds, and August 31, 1998, for AGF, AAF, and OIF (each, a ''Closing'').

7. Pursuant to the Reorganization Agreements, each Acquiring Fund proposes to acquire all of the assets and assume all of the liabilities of its corresponding Acquired Fund in exchange for shares of designated classes of the Acquiring Fund based on the Funds' relative net asset values.[3]

[1] FAIF was incorporated in 1987 as ''SECURAL Mutual Funds, Inc.'' and changed its name to ''First American Investment Funds, Inc.'' in 1991.

[2] 5% or more of the outstanding shares of each Acquired Fund and its corresponding Acquiring Fund are owned by the Piper Affiliates, the U.S. Bancorp Affiliates, or both, except for AAF and FAIF Fixed Income Fund. AAF and FAIF Fixed Income Fund cannot rely on rule 17a–8 because defined benefit plans to which the U.S. Bancorp Affiliates have funding obligations own more than 5% of FAIF Fixed Income Fund.

[3] The Acquired Funds and the corresponding Acquiring Funds are: (i) PFI Small Company Growth Fund and FAIF Small Cap Growth Fund; (ii) PFI Emerging Growth Fund and FAIF Mid Cap

The number of Acquiring Fund shares to be issued in exchange for each Acquired Fund share of each class will be determined by dividing the net asset value of one Acquiring Fund share of the appropriate corresponding class by the net asset value of one Acquired Fund share of that class, computed as of the close of trading on the New York Stock Exchange on the date that the conditions to closing are satisfied or on a later date as the parties may agree (the ''Effective Time''). Each Reorganization Agreement provides that, at the Effective Time, each Acquiring Fund will issue and distribute *pro rata* to its corresponding Acquired Fund's shareholders of record, determined as of the Effective Time, the Acquiring Fund shares issued in exchange for the Acquired Fund shares. Afterwards, no additional shares representing interests in the Acquired Fund will be issued, and the Acquired Fund will be liquidated. The distribution will be accomplished by the issuance of the Acquiring Fund shares to open accounts on the share records of the Acquiring Fund in the names of the Acquired Fund shareholders representing the number of Acquiring Fund shares due each shareholder pursuant to the Reorganization Agreement. Simultaneously, all issued and outstanding shares of the Acquired Fund will be canceled on the books of the Acquired Fund.

8. The Existing FAIF Funds offer shares in three classes (Classes A, B, and Y). The New FAIF Funds will offer shares in two classes (Classes A and Y). Only Class A and Class Y shares will be issued in the Reorganizations. Class A shares are not subject to a front-end sales charge. Purchases of $1 million or more are not subject to an initial sales charge, but are subject to a contingent deferred sales charge (''CDSC'') if redeemed within 24 months after purchase. Class A shares are subject to shareholder servicing fees under a rule 12b–1 plan. Class Y shares are not subject to a front-end, contingent deferred, or other sales charge, a redemption fee, or rule 12b–1 distribution or shareholder servicing fees.

9. The Piper Open-End Funds offer shares in three classes (Classes A, B and Y). Class A shares are subject to a front-end sales charge. Purchases of $500,000 or more are not subject to an initial sales charge, but are subject to a CDSC if the shares are redeemed within a certain time period from the date of purchase. Class A shares of some of the Acquired Funds are subject to distribution and shareholder servicing fees under rule 12b–1 plans. Class B shares are subject to a front-end sales charge but may be subject to a CDSC. Class B shares are subject to shareholder servicing fees under rule 12b–1 plans. Class Y shares are not subject to either a front-end, contingent deferred, or other sales charge, a redemption fee, or rule 12b–1 distribution or shareholder servicing fees. Each Piper Closed-End Fund has one class of shares, which is traded on the New York Stock Exchange (except shares of HLA, which are traded on the American Stock Exchange). Investors thus incur brokerage commissions when purchasing and selling these shares.

10. As a result of the Reorganizations, holders of Class A and B shares of the Piper Open-End Funds will become holders of Class A shares of the corresponding Acquiring Funds, and holders of Class Y shares of the Piper Open-End Funds will become holders of Class Y shares of the corresponding Acquiring Funds. Shareholders of the Piper Closed-End Funds will receive Class A shares of the corresponding Acquiring Funds. No sales charge will be imposed on any of the Acquiring Fund shares to be issued to Acquired Fund shareholders in the Reorganizations.

11. The Funds pay to their respective investment advisers annual investment advisory fees. U.S. Bank has agreed that, for a two year period commencing on the Closing, it will waive fees and reimburse expenses to the Acquiring Funds to the extent necessary so that no Acquiring Fund will have total operating expenses in excess of those currently applicable to the corresponding Acquired Fund, except with respect to the Class Y shares of Piper Intermediate Bond Fund and OIF.

12. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar. The investment policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund also are similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds.

13. The FAIF Board and the boards of directors of the Piper Open-End Funds and the Piper Closed-End Funds (collectively, the ''Piper Boards,'' and together with the FAIF Board, the ''Boards''), including in each case a majority of their disinterested directors, found that participation in the Reorganizations is in the best interests of each Acquired Fund and Acquiring Fund, and that the interests of existing shareholders of those Funds will not be diluted as a result of the Reorganizations.

14. In approving the Reorganizations, the Boards considered, among other things: (a) the compatibility of the investment objectives, policies, and restrictions of each Acquired Fund and its corresponding Acquiring Fund; (b) the advantages of each Reorganization; (c) the tax-free nature of the Reorganizations; (d) the terms and conditions of the Reorganization Agreements; (e) costs associated with the Reorganizations; and (f) investment advisory fees, rule 12b–1 fees, and sales charges that would become applicable to Acquired fund shareholders as a result of the Reorganizations.[4]

15. In addition, the Piper Boards considered, among other things: (a) the potential effect of the Reorganizations on the shareholders of the Acquired Funds; (b) the capabilities of U.S. Bank and other service providers to the Acquiring Funds; (c) the investment advisory and other fees paid by the Acquiring Funds, and the historical and projected expense ratios of the Acquiring funds as compared to those of the Acquired funds; (d) the potential economies of scale that may result from the Reorganization, given the fact that each of the Acquiring Funds, except for the New FAIF Funds, is larger than the corresponding Acquired Fund; (e) U.S. Bank's agreement to pay the expenses incurred in connection with the Reorganizations (except as described below), and to waive fees and reimburse expenses for the two year period commencing on the Closing; and (f) the effect on the shareholders of the Piper Closed-End Funds of a change from a closed-end investment company to a series of an open-end investment company. Also, with respect to the Piper Closed-End Funds, the board of directors of the Piper Closed-End Funds considered alternative structures.

16. U.S. Bank will be responsible for the expenses incurred in connection

Growth Fund; (iii) PFI Growth Fund and FAIF Large Cap Growth Fund; (iv) PFI Growth and Income Fund and FAIF Large Cap Value Fund; (v) PFI Balanced Fund and FAIF Balanced Fund; (vi) PFI Intermediate Bond Fund and FAIF Intermediate Term Income Fund; (vii) PFI Government Income Fund and FAIF Fixed Income Fund; (viii) PGF Pacific European Growth Fund and FAIF International Fund; (ix) PGF Emerging Markets Growth Fund and FAIF Emerging Markets Fund; (x) PFI–II Adjustable Rate Mortgage Securities Fund and FAIF Adjustable Rate Mortgage Securities Fund; (xi) The Americas Income Trust and FAIF Strategic Income Fund; (xii) Highlander Income Fund and FAIF Strategic Income Fund; (xiii) American Government Income Fund and FAIF Fixed Income Fund; (xiv) American Government Income Portfolio and FAIF Fixed Income Fund; and (xv) American Opportunity Income Fund and FAIF Fixed Income Fund.

[4] The Boards noted that no sales charge will be imposed on any of the Acquiring Fund shares to be issued in the Reorganizations.

with the Reorganizations, except the normal expenses incurred for regular annual meetings of the Piper Closed-End Funds, which will be borne by the Piper Closed-End Funds.

17. The Reorganization Agreements may be terminated prior to the Closing upon the mutual consent of both the respective Acquired Fund and FAIF, or by either the respective Acquired Fund or Acquiring Fund if its board of directors determines that proceeding with the Reorganization is inadvisable.

18. Registration statements on Form N–14 (''N–14 Registration Statements'') were filed with the SEC on behalf of PFI, PFI–II, PGF, XUS and HLA on April 15, 1998. An N–14 Registration Statement was filed on behalf of AGF, AAF and OIF on May 18, 1998. Applicants mailed a prospectus/proxy statement to shareholders of the Acquired Funds (except AGF, AAF and OIF) on May 29, 1998. Applicants expect to mail a prospectus/proxy statement to shareholders of AGF, AAF and OIF on or about June 30, 1998.

19. Each Reorganization is subject to a number of conditions, including: (a) the Acquired Fund shareholders will have approved the Reorganization Agreement; (b) the Acquired Fund will have received an opinion of counsel with respect to the federal income tax aspects of the Reorganization; (c) applicants will have received exemptive relief from the SEC with respect to the issues that are the subject of the application; (d) the N–14 Registration Statements will have become effective; and (e) each Acquired Fund will have declared a dividend and/or other distribution in order to distribute all of its investment company taxable income, exempt-interest income, and realized net capital gain, if any for the taxable year. Applicants agree not to make any material changes to the Reorganization Agreements 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 an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds 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 that company.

2. Rule 17a–8 under the act exempts from the prohibitions of section 17(a) 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/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. The U.S. Bancorp Affiliates hold of record more than 5% of the outstanding shares of certain Acquiring Funds and hold or share voting power and/or investment discretion with respect to a portion of those shares. In addition, defined benefit plans to which the U.S. Bancorp Affiliates have funding obligations own more than 5% of certain Acquiring Funds. The Piper Affiliates hold of record more than 5% of the outstanding shares of certain Acquired Funds and hold or share voting power and/or investment discretion with respect to a portion of those shares. Because of these ownership interests, and the fact that, as a result of the Merger, the U.S. Bancorp Affiliates are ''affiliated persons'' of the Acquired Funds and the Piper Affiliates are ''affiliated persons'' of the Acquiring Funds because they are under the common control of U.S. Bancorp, the Acquiring Funds may be deemed affiliated persons of affiliated persons of the Acquired Funds, and vice versa, for reasons not based solely on their common adviser. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if 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, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that the Boards, including in each case a majority of their disinterested directors, found that participation in a Reorganization is in the best interests of each Acquired Fund and its corresponding Acquiring fund, and the intersts of existing shareholders of the Funds will not be diluted as a result of the Reorganizations. Applicants also note that the exchange of the Acquired Funds shares for the Acquiring Funds' shares will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Manangement, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18005 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (International FiberCom, Inc., Common Stock, No Par Value; Common Stock Purchase Warrant) File No. 1–13278

July 1, 1998.

Internation FiberCom, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities have been listed for trading on the Nasdaq SmallCap Market, the BSE, and the Philadelphia Stock Exchange, Inc. (''PHLX'').

On June 8, 1998, the Company provided the BSE with certified resolutions of the Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and also provided detailed reasons for such proposed withdrawal, and the facts in support thereof. In deciding to withdraw its Securities from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant to maintaining multiple listing of its Securities on the Nasdaq SmallCap Market, the BSE, and the PHLX. Due to the low level of trading volume on the BSE and the recent

changes to Section 18 of the Securities Act of 1933, as amended, under the National Securities Market Improvement Act of 1996, the Company does not see any particular advantage in the trading of its Securities on the BSE. The Company also believes that the trading of its Securities on multiple exchanges may fragment the market for its Securities.

The Exchange has informed the Company that is has no objection to the withdrawal of the Company's Securities from listing on the BSE.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act.

Any interest person may, on or before July 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–18054 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Met-Pro Corporation, Common Stock, $.10 Par Value) File No. 1–7763

July 1, 1998.

Met-Pro Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of Met-Pro Corporation (''Company'') has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on June 18, 1998, the New York Stock Exchange, Inc. (''NYSE''). Trading in the Company's Security on the NYSE commenced at the opening of business on June 18, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In deciding to withdraw its security from listing on the Amex, the Company determined that, due to the potential increase in liquidity and visibility, it is in the best interests of the Company to list the Security for trading on the NYSE.

By letter dated June 10, 1998, the Exchange informed the Company that it had no objection to the withdrawal of the Company's Security from listing on the Amex.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–18055 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23297, 812–11036]

SR&F Base Trust, et al.; Notice of Application

July 1, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application 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: SR&F Base Trust (''Base Trust'') and Stein Roe Investment Trust (''Investment Trust'') (collectively the ''Trusts''), on behalf of their respective series SR&F Special Venture Portfolio (the ''Portfolio'') and Stein Roe Special Venture Fund (''Special Venture Fund''), seek an order to permit an in-kind redemption of shares of Special Venture Fund held by an affiliated person of Special Venture Fund, and a corresponding in-kind redemption of shares of the Portfolio held by Special Venture Fund.

APPLICANTS: Base Trust and Investment Trust.

FILING DATES: The application was filed on February 27, 1998 and amended on June 11, 1998.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 27, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549, Applicants, c/o Kervin M. Carome, General Counsel, Stein Roe & Farnham Incorporated, One South Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisory, at (202) 942–0569, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Officer 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Base trust as registered under the Act as an open-end management investment company and organized as a Massachusetts common law trust. Base Trust currently offers twelve series, including the Portfolio. Base Trust is organized so that its series, including the Portfolio, serve as ''master'' funds in a master-feeder structure. Stein Roe & Farnham Incorporated (''Adviser'') is registered under the Investment Advisers Act of 2940 and is the Portfolio's investment adviser.

2. Investment Trust is registered under the Act as an open-end management investment company and organized as a Massachusetts business trust. Investment Trust currently offers ten series, including the Special Venture Fund (collectively with the Portfolio, the ''Funds''). Special Venture Fund is a ''feeder'' fund and invests all of its assets in the Portfolio. Liberty Mutual Insurance company (the ''Affiliated Shareholder''), parent company of the Advisers, owns, in a separate account, approximately 2.45% of the outstanding shares of Special Venture Fund.[1]

3. The Affiliated Shareholder has advised applicants that it expects to redeem its interest in the Special Venture Fund. the Special Venture Fund's prospectus and statement of additional information provide that in certain circumstances, the Special Venture Fund may satisfy all or part of a redemption request by a distribution in-kind of securities. the boards of trustees, including all of the independent trustees, have determined that it would be in the best interest of the Funds and their shareholders to pay to the Affiliated Shareholder the redemption price for its shares in-kinds

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, form knowingly purchasing any security or other property except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person owing 5% or more of the outstanding voting securities of the other person (section 2(a)(3)(A)), any person directly or indirectly controlling, controlled by, or under common control with, such other person (section 2(a)(3)(C)), and, in the case of an investment company, any investment adviser to the company (section 2(a)(3)(E)).

2. Applicants state that, as the parent of the Adviser, the Affiliated Shareholder may be considered an affiliated person of an affiliated person of Special Venture Fund. The proposed in-kind redemption therefore may be prohibited by section 17(a)(2) of the Act.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the proposed in-kind redemption by the Affiliated Shareholder meet the standards set forth in section 17(b) of the Act. Applicants assert that the Affiliated Shareholder will have no choice as to the type of consideration to be received in connection with its redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the Portfolio securities to be distributed in the proposed in-kind redemption will be valued according to an objective, verifiable standard and the in-kind redemption is consistent with the investment policies of the Funds. Applicants also believe that the proposed in-kind redemption is consistent with the general purposes of the Act because the Affiliated Shareholder would not receive any advantage not available to other shareholders.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Portfolio distributed to Special Venture Fund and ultimately to the Affiliated Shareholder pursuant to the in-kind redemption (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Portfolio 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) certain Portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. 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 which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Portfolio will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

3. The In-Kind Securities distributed to Special Venture Fund and the Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Portfolio's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the most recent bid price.

4. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the in-kind redemption occurs, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18056 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

[1] As of December 31, 1997, the Special Venture Fund owned approximately 99.5% of the outstanding interest in the Portfolio.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23296]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 30, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, NW., Washington, DC 20549.

Financial Reserves Fund [File No. 811–3476]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On August 30, 1994, applicant transferred its assets and liabilities to The Financial Reserves Portfolio (''Financial''), a series of The Victory Funds, based on the relative net asset values per share. The total expenses incurred in connection with the reorganization of applicant were $115,211 and were paid by KeyCorp., the parent company of the investment adviser for applicant and Financial.

Filing Dates: The application was filed on September 26, 1997, and amended on June 2, 1998.

Applicant's Address: 3435 Stelzer Road, Suite 1000, Columbus, Ohio 43219–8001.

Asia House Funds [File No. 811–8070]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 12, 1997, applicant distributed its net assets to its shareholders at the net asset value per share. Applicant's investment adviser, Asia House Investments, paid appropriately $7,386.46, and affiliates, ASEAN Growth Fund and Far East Growth Fund, paid $6,084.05 and $9,029.49, respectively, in expenses in connection with the liquidation.

Filing Dates: The application was filed on February 17, 1998 and amended on June 1, 1998.

Applicant's Address: 100 Church Street, Suite 307B, Evanston, IL 60201.

Van Kampen American Capital Government Target Fund [File No. 811–6127]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 16, 1997, applicant made a liquidating distribution at net asset value. Applicant's investment adviser, Van Kampen American Capital Asset Management Inc., paid all expenses in connection with the liquidation.

Filing Dates: The application was filed on December 29, 1997, and amended on June 2, 1998.

Applicant's Address: One Parkview Plaza, Oakbrook, Terrace, IL 60181.

Triple A and Government Series—1997, Inc. [File No. 811–6656]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 29, 1997, applicant made a liquidating distribution to its shareholders at net asset value. Applicant has two shareholders that have not yet surrendered their share certificates. As of June 5, 1998, cash amounting to approximately $20 was being held in a non-interest-bearing account with PNC Bank for these shareholders in accordance with applicable state law. Applicant paid approximately $8,700 in expenses related to the liquidation. Mitchell Hutchins, applicant's investment adviser, will be responsible for any additional expenses that may be incurred with respect to the liquidation.

Filing Dates: The application was filed on November 14, 1997, and amended on June 12, 1998.

Applicant's Address: 1285 Avenue of the Americas, New York, New York 10019.

Goldman Sachs Equity Portfolios, Inc. [File No. 811–6036]

Goldman Sachs Money market Trust [File No. 811–2598]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 1997, each applicant transferred all of its assets and liabilities to the corresponding series of Goldman Sachs Trust (''Trust''), based on the relative net asset values per share. The Trust paid $687,143 in reorganization expenses.

Filing Date: Each application was filed on May 21, 1998.

Applicant's Address: 4900 Sears Tower, Chicago, IL 60606.

Schroder Asian Growth Fund, Inc. [File No. 811–8150]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 20, 1998, applicant converted from a closed-end investment company to an open-end investment company by transferring all of its assets and liabilities to Schroder All-Asia Fund, based on the relative net asset value per share of each fund. Expenses incurred in connection with the conversion totaled approximately $576,000 and were borne by applicant.

Filing Dates: The application was filed on April 27, 1998, and amended on June 24, 1998.

Applicant's Address: 787 Seventh Avenue, 34th Floor, New York, New York 10019.

Franklin Tax-Advantaged International Bond Fund [File No. 811–4849]

Franklin Tax-Advantaged U.S. Government Securities Fund [File No. 811–5007]

Franklin Tax-Advantaged High Yield Securities Fund [File No. 811–5008]

Summary: Each applicant, a California limited partnership, seeks an order declaring that it has ceased to be an investment company. As of June 27, 1997, each of Franklin Tax-Advantaged International Bond Fund and Franklin Tax-Advantaged U.S. Government Securities Fund had liquidated all to its assets and distributed the proceeds *pro rata* to or as directed by its partners. As of May 30, 1997, Franklin Tax-Advantaged High Yield Securities Fund had liquidated all of its assets and distributed the proceeds *pro rata* to or as directed by its partners. Expenses incurred in connection with each liquidation were approximately $7,158, $59,181, and $46,750, respectively, and were borne by each applicant.

Filing Dates: Each application was filed on March 23, 1998, and amended on June 4, 1998.

Applicants' Address: 777 Mariner Island Blvd., San Mateo, California 94404.

The JPM Institutional Plus Funds [File No. 811–7900]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. Between January 1994 and June 1994, all of applicant's public shareholders redeemed their shares at net asset value. On March 22, 1995, applicant's sole remaining shareholder, SFG Investors II Limited Partnership, redeemed its shares at net asset value. Applicant's investment adviser, Morgan Guaranty Trust Company of New York, paid approximately $21,550 in expenses relating to the liquidation.

Filing Dates: The application was filed on February 21, 1997, and amended on June 11, 1997, September 10, 1997, and May 29, 1998.

Applicant's Address: 6 St. James Avenue, Boston, Massachusetts 02116.

CAM Balanced Fund, Inc. [File No. 811–7713]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on May 27, 1998.

Applicant's Address: Three Radnor Corporate Center, Suite 300, Radnor, Pennsylvania 19087.

Putnam Qualified Dividend Income Fund [File No. 811–6055]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on May 27, 1998.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

The Victory Funds [File No. 811–3378]

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company. One June 5, 1995, applicant transferred all of its assets to the Victory Portfolios (the ''Acquiring Fund'') in exchange for securities in that company, based on relative net asset values. Expenses totaled $1,464,629 and were paid by the parent company of the adviser to both the applicant and the Acquiring Fund.

Filing Dates: The application was filed on September 26, 1997 and amended on June 2, 1998.

Applicant's Address: 3435 Stelzer Road, Ste 1000, Columbus, Ohio 43219–8001.

Daily Cash Accumulation Fund, Inc. [File No. 811–2346]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 21, 1997, applicant transferred all of its assets to Money Market Trust, based on the relative net asset value per share. Applicant and Money Market Trust paid $563,300 and $86,600, respectively, in expenses in connection with the transaction.

Filing Dates: The application was filed on April 3, 1998 and amended on June 24, 1998.

Applicant's Address: 6803 South Tucson Way, Englewood, Colorado 80112.

Investors Trust [File No. 811–4945]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 1996, pursuant to the applicable Reorganization Agreement, applicant's five series, Investors Trust Government Fund, Investors Trust Value Fund, Investors Trust Growth Fund, Investors Trust Tax Free Fund, and Investors Trust Adjustable Rate Fund, transferred their assets and stated liabilities into corresponding Acquiring Funds of the GE Funds. Expenses totaled $906,750, of which $809,058 was paid by GE Investment Management Incorporated, the adviser to the Acquiring Funds, and $97,692 was paid by GNA Capital Management, the adviser to the applicant.

Filing Dates: The application was filed on February 9, 1998 and amended on May 28, 1998.

Address: Applicant: Suite 5600, Two Union Square, 601 Union Street, Seattle, WA 98101.

A. T. Ohio Municipal Money Fund [File No. 811–4097]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 30, 1997, applicant transferred all of its assets to The Ohio Municipal Money Market Portfolio, a series of The Victory Funds, based on the relative net asset value per share. Keycorp, the parent of applicant's investment adviser, Society Asset Management Inc., paid $115,211 in expenses in connection with the transaction.

Filing Date: The application was filed on September 26, 1997, and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 3435 Stelzer Road, Suite 1000, Columbus, Ohio 43219–8001.

The Exchange Fund of Boston, Inc. [File No. 811–2598]

Fiduciary Exchange Fund, Inc. [File No. 811–1409]

Second Fiduciary Exchange Fund, Inc. [File No. 811–1453]

Diversification Fund, Inc. [File No. 811–1003]

Capital Exchange Fund, Inc. [File No. 811–1339]

Depositors Fund Of Boston, Inc. [File No. 811–1295]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1997, each applicant transferred all of its assets and liabilities to corresponding series of Eaton Vance Series Trust (''Trust''), based on the relative net asset values per share. Applicant paid approximately $6,000 in reorganization expenses.

Filing Date: Each application was filed on May 22, 1998, and Fiduciary Exchange Fund, Inc. has agreed to file an amendment during the notice period.

Applicants' Address: 24 Federal Street, Boston, MA 02110.

Society's Collective Investment Retirement Fund [File No. 811–4895]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 18, 1994, pursuant to an Agreement and Plan of Reorganization, applicant's two series, the Balanced Portfolio Series and the U.S. Government Portfolio Series, transferred their assets into corresponding series of the Victory Portfolios based on relative net asset values per share. Expenses totaled $49,951 and were paid by the parent company of the adviser to both the applicant and the Victory Portfolios.

Filing Dates: The application was filed on October 1, 1997 and amended on June 2, 1998.

Address: Applicant, 3435 Stelzer Road, Ste 1000, Columbus, Ohio 43219–8001.

Putnam Information Sciences Trust [File No. 811–3672]

Putnam Intermediate Government Income Trust [File No. 811–5556]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 23, 1992, Putnam Information Sciences Trust transferred all of its assets and liabilities to Putnam New Opportunities Fund (''New Opportunities Fund''),

based on the relative net asset values per share. Applicant and New Opportunities Fund paid approximately $108,400 and $25,600, respectively, in expenses related to the reorganization. On January 26, 1998, Putnam Intermediate Government Income Trust transferred all of its assets and liabilities to Putnam Mater Intermediate Income Trust (the ''Master Fund''), based on the relative net asset values per share. Applicant and the Master Fund paid approximately $310,696 and $360,303, respectively, in expenses related to the reorganization.

Filing Date: Each application was filed on May 27, 1998.

Applicants' Address: One Post Office Square, Boston, Massachusetts 02109.

Dean Witter Managers' Select Fund [File No. 811–8053]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 27, 1998, applicant distributed its assets to Dean Witter InterCapital, Inc. (''Dean Witter''), applicant's investment adviser and sole shareholder. Applicant never made a public offering of its shares and does not propose to make a public offering or engage in any business activities.

Filing Date: The application was filed on May 8, 1998.

Applicant's Address: Two World Trade Center, New York, New York 10048.

Oppenheimer Fund [File No. 811–847]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 20, 1997, applicant transferred all of its assets to Oppenheimer Multiple Strategies Fund (the ''Strategies Fund'') at net asset value. Applicant and Strategies Fund bore $56,000 and $28,000, respectively, in expenses in connection with the transaction.

Filing Dates: The application was filed on April 21, 1998 and amended on June 12, 1998.

Applicant's Address: Two World Trade Center, New York, New York 10048–0203.

Oppenheimer Global Emerging Growth Fund [File No. 811–5381]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 20, 1997, applicant transferred all of its assets to Oppenheimer Global Fund (the ''Global Fund'') at net asset value. Applicant and Global Fund paid $66,754 and $27,923, respectively, in expenses in connection with the transaction.

Filing Dates: The application was filed on April 21, 1998 and amended on June 12, 1998.

Applicant's Address: Two World Trade Center, New York, New York 10048–0203.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18004 Filed 7–7–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40151; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request to Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

July 1, 1998.

I. Introduction

On June 30, 1998, the National Association of Securities Dealers, Inc. (''NASD''), on behalf of itself and the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposal to extend the operation of a joint transaction reporting plan (''Plan'') [1] for Nasdaq/National Market (''Nasdaq/NM'') (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through December 31, 1998.[3] The Commission also is extending certain exemptive relief as described below. The June 1998 Extension Request also requests that the Commission approve the Plan, as amended, on a permanent basis on or before December 31, 1998. During the six-month extension of the Plan, the Commission will consider whether to approve the proposed Plan, as amended, on a permanent basis.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[5] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[6] The Plan has since been in operation on an extended pilot basis.[7]

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[1] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated June 30, 1998 (''June 1998 Extension Request''). The June 1998 Extension Request also requests the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended (''Act''). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a ''limited participant'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc. (''Amex'') was a Participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 8.

[3] On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. *See* March 1996 Extension Order, *infra* note 8. Thereafter the Participants submitted certain technical revisions to the revenue sharing agreement (''Revised Amendment No. 9''). *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996. *See also* September 1996 Extension Order, *infra* note 8.

[4] *See* Section 12(f)(2) of the Act.

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[6] *See* letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation (''Division''), SEC, dated May 9, 1994.

[7] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Order''); Securities Exchange Act Release

Continued

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in ''eligible securities.''[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on June 30, 1998, the Commission granted an exemption to vendors from Rule 11Ac1–2 under the Act regarding the calculation of the BBO[10] and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. As discussed further below in the *Summary of Comments*, the Participants ask in the June 1998 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is resolved. Additionally, in the June 1998 Extension Request, the Participants also request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

V. Summary of Comments

In the December 1997 Extension Order, the Commission requested comment on the following issues: Whether the BBO calculation for securities traded pursuant to the Plan should be based on a price/time/size methodology or a price/size/time methodology; whether there is a need for a trade through rule, and the impact of the CHX's intended use of BRASS, as defined below.

With respect to the BBO calculation issue, the Nasdaq Board approved a recommendation to modify the methodology for calculating the BBO on Nasdaq in order to prioritize quotes based on a price/size/time algorithm instead of the current price/time/size algorithm, provided that Nasdaq market makers are subject to a minimum quote size requirement of 100 shares for at least 1,000 Nasdaq securities. In furtherance of this goal, on October 29, 1997, the Commission approved a NASD proposal to extend and expand the ''Actual Size Rule''[11] to a total of 150 securities from 100 securities.[12] More recently, the NASD proposed to expand the Actual Size Rule to cover all Nasdaq securities and to implement this rule on a permanent basis.[13] In addition, the NASD submitted a proposed rule change to establish an integrated order delivery and execution system for directed orders and non-directed orders.[14] The proposed new system, if approved would replace the NASD's SOES and SelectNet systems and would have an impact on the Plan (*e.g.*, the manner in which Plan participants interact with orders and quotes displayed in Nasdaq).[15] As a result, the NASD and the Plan participants request an extension of the Plan until December 31, 1998 to afford the Plan participants time to resolve the BBO issue.[16]

With respect to the need for a trade through rule, the NASD continues to maintain in the June 1998 Extension Request that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved.

With regard to the CHX's use of BRASS, by the end of 1998 the CHX intends to replace its existing trade support system for accessing securities subject to the Plan and begin using BRASS, developed by Automated Securities Clearance, Limited (''ASC''). BRASS is a trade support and order routing system which offers subscribers, generally broker-dealers, software and hardware to enable them to perform various functions. ASC grants its subscribers a license to operate the BRASS software through a customized computer terminal purchased from ASC or by running the BRASS software on their own terminals. The CHX has represented that ASC has specifically customized BRASS to meet the special

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No. 36589 (December 13, 1995), 60 FR 65696 (December 20); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996) (''March 1996 Extension Order''); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996) (''September 1996 Extension Order''); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997) (''June 1997 Extension Order''); and Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (''December 1997 Extension Order'').

[8] The Plan defines ''eligible security'' as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange.

[9] The full text of the Plan, as well as a ''Concept Paper'' describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

[10] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that ''in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer . . . shall be computed by ranking all such identical bids or offers . . . first by size . . . then by time.'' The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[11] *See* Securities Exchange Act Release No. 39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

[12] *See* Securities Exchange Act Release No. 38513 (April 15, 1997), 62 FR 19369 (April 21, 1997). Under the Actual Size Rule, market makers in certain Nasdaq securities are subject to a minimum quotation size requirement of 100 shares instead of the applicable small order execution system (''SOES'') tier size for that security.

[13] *See* Securities Exchange Act Release No. 39760 (March 16, 1998), 63 FR 13894 (March 23, 1998).

[14] *See* Securities Exchange Act Release No. 39718 (March 4, 1998), 63 FR 12124 (March 12, 1998). (''IODES Proposal'') Directed orders are those that an order-entry firm chooses to send to a specific Nasdaq market maker, electronic communications network (''ECN'') or UTP exchange for delivery and execution. Non-directed orders are those that are not sent to a particular Nasdaq market maker or ECN. In other words, when the broker-dealer entering the order does not specify the particular Nasdaq market maker, ECN or UTP exchange it wants to access, the order will be sent to the next available executing participant quoting at the national BBO.

[15] Portions of the proposed new system are contingent on the approval of the request to implement the Actual Size Rule for all Nasdaq securities. The proposal does, however, contain alternative approaches if the Actual Size Rule is not approved for all Nasdaq securities. *See* IODES Proposal, supra note 14.

[16] The BSE submitted comments to the SEC concerning the proposed new order delivery and execution system's impact on the Plan, preservation of the BSE's rights concerning issues still not agreed upon or specifically covered by the Plan (specifically the need for a trade-through rule). *See* Comment letter No. 1511, SR–NASD–98–17 from Karen A. Aluise, Vice President, BSE to Jonathan G. Katz, Secretary, SEC dated May 14, 1998. In addition, the CHX submitted comments to the SEC concerning the IODES proposal and encouraged the Commission to grant permanent approval of the Plan. *See* Comment letter No. 1160, SR–NASD–98–17 from Patricia L. Levy, Senior Vice President and General Counsel, CHX to Jonathan G. Katz, Secretary, SEC dated May 13, 1998.

needs of the CHX. Among other things, Nasdaq market makers that already subscribe to BRASS will be able to route OTC/UTP orders to specialists on the CHX floor through a SelectNet linkage with BRASS workstations on the CHX floor. Conversely, CHX specialists will be able to route orders into SelectNet through their BRASS workstations.[17] The Commission notes that ASC will be subject to the Commission's inspection and examination procedures with regards to the specific customized BRASS system that ASC will provide to the CHX because ASC will be operating a facility of an exchange.

The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and the CHX's use of the BRASS system as well as issues presented by changes occurring in the market place.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through December 31, 1998, is appropriate and in furtherance of Section 11A of the Act. The Commission believes that such extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation [18] and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. In addition, the Commission believes that the extension will afford the CHX adequate time to test the BRASS system, address any operating issues concerning its use and implement it. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before September 30, 1998 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by December 31, 1998.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of December 31, 1998 or until such time as the calculation methodology for the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through December 31, 1998. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the extension, including whether the extension is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by [insert date 21 days from date of publication].

VIII. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A and the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through December 31, 1998, and certain exemptive relief until December 31, 1998, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[17] *See* December 1997 Extension Request and Letter from George T. Simon, Foley & Lardner to Howard L. Kramer, Senior Associate Director, Division, SEC, dated December 12, 1997 (''CHX Letter'').

[18] *See e.g.,* Actual Size Rule Release, supra note 13 and IODES Proposal, supra note 14.

[19] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40143; File No. SR–Amex–97–38]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Exchange's Warrant Listing Guidelines.

June 29, 1998.

I. Introduction

On October 22, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its *Company Guide* to revise its warrant listing and maintenance guidelines.

The proposed rule change was published for comment in the **Federal Register** on December 10, 1997.[3] No comments were received on the proposal. On April 3, 1998, Amex filed an Amendment to the proposed rule change.[4] This order approves the Amex proposal, as amended.

II. Description of the Proposal

The Amex proposes to amend its *Company Guide* to revise its warrant listing standards.[5] Currently, Section 105 provides that the Amex will not list warrants unless the underlying common stock is listed on the Amex or the New York Stock Exchange (''NYSE'') and further provides that the Exchange will evaluate the warrant issuer's listing eligibility using the same financial and distribution guidelines as are applied to the listing of common stock.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39392 (Dec. 3, 1997), 62 FR 65112.

[4] *See* Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated April 3, 1998 (''Amendment No. 1''). In Amendment No. 1, Amex proposes raising the initial warrant listing standards from 100,000 warrants with no public holder requirement, as originally proposed, to 200,000 warrants publicly held by not less than 100 public warrantholders. Amendment No. 1 makes several other clarifications which are discussed herein.

[5] The Amex has represented that the proposal would only affect warrants listed under Section 105 of the Exchange's *Company Guide* and not currency or other types of warrants listed pursuant to Section 106 or 107. *See* Amendment No. 1.

Specifically, with respect to financial guidelines, the issuer of the warrants must meet the size and earnings requirements for common stock set forth in Section 101 (*i.e.*, stockholders equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years). The Exchange believes that these guidelines are unnecessarily high when applied to the listing of warrants. In this regard, the Amex notes that a listed company is not required to meet the original listing guidelines when issuing additional shares of its common stock and that warrants are nothing more than a claim on a company to issue more stock that does not expose a company to financial risk. Thus, Amex believes that warrant issuers should not be subject to the same stringent financial requirements as required of issuers of common stock.

Similarly, Amex believes that the current original listing distribution requirements (*i.e.*, a minimum of 500,000 publicly held warrants and not less than 800 public warrantholders or 1,000,000 publicly held warrants and not less than 400 public warrantholders) are too high because price discovery occurs with the underlying security and, therefore, such a high degree of liquidity is not as important for the warrant.

As a result of the above, the Amex is proposing to amend Section 105, relating to initial listing requirements for warrants, and Section 1003, relating to maintenance requirements for warrants.[6] The Amex is proposing that Section 105 be amended to eliminate the express requirements that companies applying for listing of warrants must meet the size and earnings criteria for common stock. However, in addition to the current requirement that the underlying common stock (or other security underlying the warrant) must be listed on the Amex or the NYSE, the Amex is proposing to amend Section 105 to include a requirement that the underlying security must be in ''good standing.'' The Amex has represented that for a company's common stock to be in ''good standing,'' it must be above the numerical maintenance standards of the Amex or the NYSE.[7] Where common stock underlies the warrant, the ''good standing'' requirement results in a de facto size and earnings requirement for the issuer of the warrant.[8] The Amex also is proposing that Section 105 be amended to reduce the original listing distribution criteria for warrants from 500,000 warrants outstanding and not less than 800 public warrantholders or 1,000,000 publicly held warrants and not less than 400 public warrantholders to 200,000 warrants outstanding and not less than 100 public warrantholders.[9] In addition, recognizing that a minimum level of liquidity is necessary to support a public market, the Amex is proposing to amend Section 1003 to add a specific maintenance standard of at least 50,000 publicly held warrants in order for Amex to continue listing the warrants. The Amex also has represented that it would suspend or delist the warrants if the underlying common stock (or other security underlying the warrant) is suspended or delisted.[10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[11] Specifically, the Commission finds that revising the initial listing criteria and adopting specific maintenance requirements for warrants will serve to promote the public interest, protect investors and remove impediments to a free and open securities market by making more warrants eligible for trading on the Amex by reducing the numerical listing requirements while, at the same time, ensuring a minimum level of liquidity will exist to support the public trading market in such warrants.[12]

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization (''SRO'') to screen issuers and provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an SRO to monitor the status and trading characteristics of that issue to ensure that it continues to meet the SRO's standards for market depth and liquidity.

The Commission believes that the proposed initial listing standards should help Amex to ensure that only substantial companies are eligible to have their warrants listed on the Exchange. While the proposed rule would no longer require issuers of warrants to meet the initial size and earnings requirements for issuers of common stock, the rule would require the common stock or other security underlying the warrant to be listed and in ''good standing'' on either the Amex or the NYSE.[13] This standard will ensure, at a minimum, that only issuers who meet the numerical continued listing standards for issuers of common stock (or other securities underlying the warrant) on the Amex or NYSE may list warrants on the Amex.[14] These requirements contain specific issuer standards including shareholders' equity, public float and earnings.[15] In addition, the Amex will not list a warrant if the security underlying the warrant has been suspended.

The Commission finds that it is not unreasonable for the Exchange to reduce

[6] The Commission notes that currently the Exchange has no separate maintenance standards for warrants, but instead applies the general delisting provision in Section 1003.

[7] *See* Amendment No. 1. This representation clarifies that the underlying common stock must meet the objective numerical maintenance criteria rather than the subjective criteria that may permit a company to remain listed despite being below the numerical criteria.

[8] *See* Amex Company Guide, Sections 1001–1004; NYSE Rule 499.

[9] *See* Amendment No. 1.

[10] *See* Amendment No. 1.

[11] 15 U.S.C. 78f(b)(5).

[12] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] This standard requires Amex to ensure the underlying security is meeting the numerical continued listing standards on the market where it is listed (*e.g.*, Amex of NYSE). We note that the mere fact that a security continues to be listed on the Amex or NYSE is not sufficient inquiry to determine if it is meeting the numerical continued listing criteria.

[14] Section 105 is, in the Commission's view, generally intended to provide listing standards for traditional corporate warrants where the issuer of the underlying security is the same as the warrant issuer. The Commission believes that an issuer desiring to list warrants on another issuers' security may be more appropriately listed under another listing standard depending on such factors as whether the issuer of the warrant holds the underlying securities. For example, if the issuer did not hold the securities underlying the warrants and/or the issuer did not have a pre-existing relationship with the issuer of the underlying security, we believe the warrant should not be listed under Section 105 for warrants. In any case, for the warrants that are appropriate for listing under Section 105, the Amex has stated that, if a third party issuer seeks to list warrants on the Exchange, the Amex will evaluate the listing eligibility of the warrants by applying the listing criteria in Section 105 to both the issuer of the warrants as well as to the issuer of the common stock underlying the warrants. *See* Letter from Michael Emen, Senior Vice President and Counsel—Securities, Legal and Regulatory Policy, Amex, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated June 16, 1998.

[15] *See* Amex Company Guide, Sections 1001–1004; NYSE Rule 499.

the initial listing distribution criteria from 500,000 warrants publicly held and not less than 800 public warrant holders or 1,000,000 publicly held warrants and not less than 400 public warrantholders to 200,000 warrants publicly held and not less than 100 public warrantholders with a maintenance standard of 50,000 warrants publicly held. The Commission recognizes that the reduction in the initial listing standards is substantial. In reviewing the Amex's proposal the Commission has been particularly concerned about the lowered public holder requirement and the lack of such a public holder requirement for continued listing. While the Commission's determination on this issue was close, we have determined to approve the new standards based, in part, on the unique, completely derivative nature of warrants and the fact that they are exercisable into another security that must remain in ''good standing'' on its listed market. Accordingly, although the Commission is concerned about maintaining sufficient liquidity in the marketplace for listed warrants, the Commission believes that the revised initial listing criteria together with the added maintenance standard will serve to enable the Exchange to evaluate the propriety of continued exchange trading of warrants.

Finally, the Commission notes that warrants will trade under the Amex's existing regulatory regime for trading securities, and, therefore, the Commission believes that adequate safeguards are in place to ensure the protection of investors in warrants. In addition, the Amex will delist or suspend trading in warrants whenever the underlying equity security is delisted or suspended. Because warrants represent a claim on a company to issue stock, it is reasonable to expect the underlying equity security to meet the maintenance criteria of the exchange on which it is listed. It also would be undesirable to continue trading in listed warrants when the underlying equity security has been suspended or delisted and no longer trades in the secondary market.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 raises the initial listing requirements from 100,000 warrants with no public warrantholder requirement, as originally proposed, to 200,000 warrants publicly held by not less than 100 public warrantholders. The Commission believes that these higher standards are appropriate and serve to protect investors and the public interest. In addition, the Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 1.

Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and 19(b)(2) [16] of the Act, to approve Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent comments, 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. 522, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–38 and should be submitted by July 29, 1998.

For the foregoing reasons, the Commission finds that the Amex's amended proposal to revise original listing and maintenance requirements for Section 105 warrants is consistent with the requirements 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 (SR–Amex–97–38), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40150; File No. SR–CHX–98–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

July 1, 1998.

On June 17, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby requests a six month extension of the pilot program relating to the trading of Nasdaq/NM Securities on the Exchange that is currently due to expire on June 30, 1998. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through December 31, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain CHX rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[2] Among other things, these rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (''MAX system'').[3]

On January 3, 1997, the Commission approved,[4] on a one year pilot basis, a program that eliminated the requirement that CHX specialist automatically execute orders in Nasdaq/NM securities when the specialists is not quoting at the national best bid or best offer (''NBBO'').[5] When the Commission approved the program on a pilot basis, it stated that the arrangement in place for Exchange specialists to access OTC market makers was not an ideal linkage between the markets on a permanent basis and that the Exchange should work with Nasdaq to establish a more effective linkage. In addition, the Commission requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include a least six months worth of trading data. Due to programming issues, the pilot program was not implemented until April, 1997.

Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three month extension to collect the data and prepare the report for the Commission. On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998.

The Exchange, prior to the pilot expiring, requested another three month extension. On March 31, 1998, the Commission approved the pilot for an additional three month period, until June 30, 1998.[7] The Exchange now requests another extension of the current pilot program, through December 31, 1998.

Under the pilot program, specialists must continue to accept agency[8] market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place.[9] Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO where the order was received.

The pilot program requires the specialist to set the MAX auto-execution threshold at 1000 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.[10]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay.[11] If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirements under Section 6(b)(5)[12] that an exchange have rules that are designed, in part, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

[2] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (ordering approving File No. SR–MSE–87–2). *See also* Securities Exchange Act Release Nos. 28146 (June 26, 1990) (order expanding the number of eligible Nasdaq/NM securities to 100); and 36102 (August 14, 1995) (ordering expanding the number of Nadaq/NM securities to 500).

[3] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX, Art. XX, Rule 37(b). A MAX order that fits under the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST Rule does not apply, but MAX system handling rules do apply.

[4] *See* Securities Exchange Act Release No. 38119.

[5] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[6] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[7] *See* Securities Exchange Act Release No. 39823 (March 31, 1998).

[8] The term ''agency order'' means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. The Rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[9] The 100 to 2099 share auto-acceptance threshold previously in place continues to apply to Dually Listed securities (those issues that are traded on the CHX and are listed on either the New York Stock Exchange or American Stock Exchange).

[10] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) in issues that became subject to mandatory compliance with SEC Rule 11Ac1–4 on or prior to February 24, 1997, and for 1000 shares in other issues.

[11] The twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote.

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission 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 also will be available for inspection and copying at the Exchange. All submissions should refer to file number SR–CHX–98–16 and should be submitted by July 29, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11A(a)(1)(C) and 11A(a)(1)(D) of the Act because the Exchange's proposal conforms CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while CHX provides a separate, competitive market for Nasdaq/NM securities.

The Commission notes however that, while the Exchange has been working towards establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 3, 1997 order.[14] The Commission is approving the extension of the pilot so that the rules of the exchange will operate without interruption.

The Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is Therefore Ordered, pursuant to Section 19(b)(2),[15] that the proposed rule change (SR–CHX–98–16) be, and hereby is, approved through December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18052 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40146; File No. SR–NYSE–98–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., and Amendment No. 1 Thereto, To Amend Exchange Rule 115 Regarding Disclosure of Specialists' Orders

June 30, 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 March 17, 1998, the New York Stock Exchange, Inc. (the ''NYSE'' or ''Exchange'') 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 Exchange. On June 23, 1998, the NYSE filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 115, Disclosure of Specialists' Orders Prohibited. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

Exchange Rule 115 prohibits disclosure of information in regard to orders on a specialist's book except in certain limited circumstances. This policy was first adopted as a rule in February 1934. Limited exceptions were adopted for disclosure when demonstrating methods of trading to visitors in 1938 and to implement the Intermarket Trading System in 1978. A third exception, approved in 1991, allows a specialist to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated June 17, 1998 (''Amendment No. 1''). In Amendment No. 1, the NYSE clarifies that percentage orders, under the proposed rule change, will be treated the same as other orders other than stop orders. The NYSE also notes that the proposed amendment to NYSE Rule 115, permitting a specialist to respond to an issuer's inquiry regarding buying and selling interest in its stock, is consistent with NYSE Rule 106, recent changes to the Exchange's Allocation Policy, and the duties of a specialist in that the proposal should promote a positive professional relationship between the specialist and the exchange-listed company. Furthermore, the Exchange notes it believes that non-member, non-issuer market participants are not disadvantaged by communications between the issuer and the specialist because the same information is available through a member's market probe of the specialist. The Exchange represents that under the proposed rule change issuers will not have direct access to the floor of the Exchange.

information about buying or selling interest in the market at or near the prevailing quote in response to a market probe of a member.[4] The specialist must make this same information available, in a fair and impartial manner, to all members making a similar inquiry. The specialist must also be expressly authorized to release the names of buyers and sellers by the member who entered the order. The names of buyers and sellers refers to the names of members or member organizations entering orders or expressing interest with the specialist, and not the names of their customers.

The Exchange is proposing to amend Rule 115 to permit a specialist, acting solely in his or her capacity as a market maker (*i.e.*, while on the Floor), and responding to a market probe by a member, to give any information concerning buying and selling interest or orders he or she holds on the book in a stock.[5] This proposal deletes the limitation that such disclosed interest be ''at or near the prevailing quote.'' However, with respect to stop orders on the book for a stock,[6] a specialist may disclose this information when the specialist judges that the member conducting the market probe has the intention to trade in the stock at a price at which such stop orders would be relevant. The additional restriction on the disclosure of stop orders will permit disclosure in legitimate circumstances, *e.g.*, when a proposed trade would be effected at a price which would trigger stop orders.

The proposal would also permit the specialist to disclose the identity of any buyer or seller represented on his book without being required to have express authorization from the member who entered the order to disclose the names of buyers and sellers, *i.e.*, the members or member organizations who are representing the buying and selling interest. Nevertheless, a member may request that the identity of a buyer or seller *not* be disclosed at any time, or in respect to a particular order left with a specialist.

The rule will continue to require a specialist to make any information available in a fair and impartial manner.

The Exchange believes that enabling specialists to provide information under amended Rule 115 will facilitate the bringing together of buyers and sellers in a more efficient manner. For example, information will be given to members acting in the capacity of agents for their customers, and thus, the benefits of having this information will inure to these customers by giving them a more complete picture of trading interest.

An added exception to Rule 115 is proposed to permit specialists to disclose information about orders on the book in their stock to listed companies, except for information pertaining to stop orders in the stock. The Exchange believes this will provide the opportunity for specialists to respond to listed companies' requests to be kept apprised concerning the market for their stocks.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 11(b),[7] which prohibits a specialist from disclosing information on orders he or she holds ''which is not available to all members. * * *'' The Exchange believes that the change to NYSE Rule 115 is consistent with Section 11(b)[8] because it provides a mechanism for the fair and impartial disclosure of information by the specialist in a manner that is neither anti-competitive nor discriminatory. The specialist must respond to market probes by members with the same information being disclosed to each such member. With respect to the disclosure of stop orders, the rule's requirement that the specialist have a reasonable belief that the inquiry is fostered by an intent to trade at a relevant price supports the aims of Section 6(b)(5) of the Act[9] concerning the prevention of fraudulent or manipulative acts. Disclosure of certain information to issuers also supports the provisions of Section 6(b)(5)[10] with respect to creating a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Specifically, the Commission requests comments on whether the proposed provisions regarding issuer access to the specialist's book is consistent with the Act, including Section 6(b)(5) of the Act.[11] Persons making written submissions should file six copies therof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filled 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, N.W., Washington, D.C. 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–10 and should be submitted by July 29, 1998.

[4] Securities Exchange Act Release No. 29318 (June 17, 1991) 56 FR 28937 (June 25, 1991).

[5] The proposal includes not only orders on the specialist's book, but also any percentage orders held by the specialist. *See* Amendment No. 1, *supra* note 3.

[6] A stop order is an order to buy or sell at the market when a definite price is reached either above (on a buy) or below (on a sell) the price that prevailed when the order was given. A stop order becomes a market order after a transaction at the stop price occurs. A stop-limit order is a stop order that designates a price limit. A stop-limited order becomes a limit order when a transaction takes place at the stop price. *See* NYSE Rule 13.

[7] 15 U.S.C. 78k(b).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18002 Filed 7–7–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before September 8, 1998.

FOR FURTHER INFORMATION CONTACT:

Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Executive Education Program Participant Profile''.

Type of Request: New Collection.

Form No: N/A.

Description of Respondents: 8(a) Participants.

Annual Response: 300.

Annual Burden: 225.

Comments: Send all comments regarding this information collection to Cherina Hunter, General Business & Industry Specialist, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: July 2, 1998.

Vanessa Smith,

Acting Chief, Administrative Information Branch.

[FR Doc. 98–18137 Filed 7–7–98; 8:45 am]

BILLING CODE 8025–01–M

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No.: 01/71–0369]

RFE VI SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On March 9, 1998, an application was filed by RFE VI SBIC, L.P., at 36 Grove Street, New Canaan, Connecticut 06840, 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. 01/71–0369 on June 17, 1998, to RFE VI SBIC, 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 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–18139 Filed 7–7–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No.: 06/76–0316]

SBIC Partners II, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 22, 1997, an application was filed by SBIC Partners II, L.P., at 201 Main Street, Suite 2302, Fort Worth, TX 76102, 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. 06/76–0316 on June 16, 1998, to SBIC Partners II, 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 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–18138 Filed 7–7–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5⅞ percent for the July—September quarter of FY 98.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term of the loan.

Jane Palsgrove Butler,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 98–17979 Filed 7–7–98; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments

on the proposed forms and the reporting and recordkeeping requirements.

OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on information collections 2120–0020 and 2120–0057 was published on March 9, 1998 [63 FR 11472–11473].

DATES: Comments on this notice must be received on or before August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

(1) *Title:* Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

OMB Control Number: 2120–0020

Form(s): FAA Form 337.

Type of Request: Extension of a currently approved collection.

Affected Public: Certified mechanics, repair stations, and air carriers authorized to perform maintenance. Pilots are also authorized to perform and record preventive maintenance; however, the authorization applies only to those pilots who own or lease their aircraft for private operation.

Abstract: The information collection associated with 14 CFR part 43 is necessary to ensure that maintenance, rebuilding, or alteration of aircraft, aircraft components, etc., is performed by qualified individuals and at proper intervals. Further, maintenance records are essential to ensure that an aircraft is properly maintained and is mechanically safe for flight.

Estimated Burden: The estimated total annual burden is 1,377,897 hours.

(2) *Title:* Safety Improvement Report Accident Prevention Counselor Activity Reports.

OMB Control Number: 2120–0057.

Form(s): FAA Form 8740–5 and 2; FAA Form 8740–6.

Type Request: Extension of a currently approved collection.

Affected Public: Pilots, airport operators, charter and commuter aircraft operators engaging in air transportation.

Abstract: Safety Improvements Reports are used by airmen to notify the FAA of hazards to flight operations. Accident Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program Accomplishments.

Annual Estimated Burden: 1,762 hours.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

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 estimate 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 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 July 1, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–18022 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4007]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Applications must reach the Coast Guard on or before September 30, 1998.

ADDRESSES: You may request an application form by writing to Commandant (G–OPB–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0950; or by faxing 202–267–4285. Submit application forms to the same address. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. A. J. Marmo, Executive Director of NBSAC, telephone (202) 267–0950, fax (202) 267–4285. For questions on viewing or submitting material to this docket, contact Dorothy Walker, Chief Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council(NBSAC) was established by the Federal Boat Safety Act of 1971. It is a Federal advisory committee constituted under 5 U.S.C. App. 2. NBSAC provides advice to the Coast Guard regarding regulations and other major boating safety matters. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

The Coast Guard will consider applications for the following seven positions that expire or become vacant in December 1998: two representatives of State officials responsible for State boating safety programs; three representatives of recreational boat and associated equipment manufacturers; and two representatives of the general public. Mayors are particularly encouraged to submit applications to fill appropriate vacancies. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of 3 years unless filling an unexpired term. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a

Federal court or as otherwise provided under the Privacy Act (4 U.S.C. 552a).

Dated: July 2, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–18114 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3848; Notice 2]

Beall Trailers of Washington, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This notice grants the application by Beall Trailers of Washington, Inc., of Kent, Washington, (''Beall''), a wholly-owned subsidiary of Beall Corporation, for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on May 19, 1998, and an opportunity afforded for comment (63 FR 27618).

Beall manufactures and sells dump body trailers. It produced a total of 311 trailers in 1997, of which 124 were dump body types. Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including dump body types, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. In its application, Beall stated that ''alterations may have to be made to the trailer chassis or even raising the dump box to provide space for the retractable guard,'' indicating that a guard that retracts when the dump body is in operation is the solution it is seeking in order to comply. According to Beall, the company has ''placed significant resources (time and money) towards the design of an acceptable guard. We have involved Montana State University professors from their Mechanical Engineering department. We have conducted Finite Element Analysis and traditional methods of design arriving at a plastically deforming guard that meets the standard, for nonasphalt carrying applications.'' The deforming guard does not retract, thus cannot be used on dump body trailers. Beall believed that its problem is similar to that experienced by other manufacturers manufacturing dump trailers. The company stated that ''devices used in other countries do not meet FMVSS 224.'' It continues to study ''hinged/retractable devices'' but must overcome lack of space for a retracted device. The company said that it would strive to develop a device that would comply with Federal requirements while an exemption is in effect.

If an exemption is not granted, the company argued that substantial economic hardship will result. First, it would lose a trailer that accounts for 40 percent of its overall production. In addition, ''some percentage of the remaining 60% would be lost since our customers typically purchase matching truck mounted dump bodies which may also be lost.'' Beall also believed that 31 of its 63 employees would have to be laid off if its application is denied. Maintenance of full employment would be in the public interest it argues. Beall's net income was $39,317 in 1995 and $72,213 in 1996. In the first 10 months of 1997, its net income before income taxes was $697,040. If the application is denied, it foresees a net loss of $71,445 for 1998.

No comments were received on the application.

NHTSA has analyzed the economic and regulatory situation that confronts Beall. The configuration of the company's dump trailer has presented it with an engineering problem that it was unable to resolve by the effective date of the standard, even though the company has studied devices used in other countries. Beall anticipates arriving at a solution within the year that its exemption would be in effect, and the company did not ask for the three full year exemption permitted under the hardship authority. Although a denial would not create an untenable economic situation, it would result in the company having a net loss for 1998. More ominously, a denial might also have the effect of eroding the market for the trailers that Beall could continue to produce ''since our customers typically purchase matching truck mounted dump bodies.''

NHTSA agrees that maintenance of full employment is in the public interest. The very low volume of the trailers that will be covered by an exemption limits the effect on safety of the trailers that will be produced under the exemption without a rear underride guard.

In consideration of the foregoing, it is hereby found that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and that an exemption would be in the public interest and consistent with motor vehicle safety. Accordingly, Beall Trailers of Washington, Inc., is hereby granted NHTSA Temporary Exemption No. 98–5 from Federal Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*, 49 CFR 571.224, expiring July 1, 1999.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: June 29, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–18095 Filed 7–7–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–545]

South Orient Railroad Company, Ltd.—Abandonment and Discontinuance of Trackage Rights—Between San Angelo and Presidio, TX

On June 18, 1998, the South Orient Railroad Company, Ltd. (SORC), filed an application with the Surface Transportation Board (Board) for permission to abandon its San Angelo-Presidio Line extending from milepost 722 near Mertzon station south of San Angelo to approximately milepost 945.3 at Alpine Junction and from approximately milepost 956.7 at Paisano Junction to the end of the line at milepost 1029.1 on the International Bridge near Presidio, a distance of approximately 296.4 miles;[1] and to discontinue its trackage rights over the Union Pacific Railroad Company's line extending from approximately milepost 945.3 at Alpine Junction to approximately milepost 956.7 at Paisano Junction, a distance of 11.4 miles, for a total distance of approximately 307 miles in Brewster, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Tom Green, and Upton Counties, TX. The line includes the stations of Mertzon, milepost 745.7; Barnhart, milepost 771.6; Big Lake, milepost 790.6; Rankin, milepost 819.9; McCamey, milepost 838.6; Baldridge, milepost 863.8; Sulphur Jct., milepost 869.4; Fort Stockton, milepost 881.7; Belding, milepost 892.9; Hovey, milepost 917.2; Alpine, milepost 944.3; Alpine Jct., milepost 945.6; Paisano Jct., milepost 956.7; Paisano, milepost 956.9; Tinaja, milepost 969.3; Plata, milepost 993.7;

[1] The line also includes an additional 14.4 miles of side track.

Casa Piedra, milepost 1002.9; and Presidio, milepost 1026.7, and traverses through United States Postal Service ZIP Codes 76903, 76666, 76930, 76932, 79778, 76752, 79735, 79830, 79832, and 79845.

The line does not contain federally granted rights-of-way. Any documentation in SORC's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment and discontinuance was filed with the application.

This line of railroad has been included in SORC's system narrative description in Category 1 since April 17, 1998.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by August 3, 1998. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by August 3, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27). The applicant's reply to any opposition statements and its response to trail use requests must be filed by August 17, 1998. *See* 49 CFR 1152.26(a).

Persons opposing the proposed abandonment and discontinuance that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment and discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must refer to STB Docket No. AB–545 and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Christopher E. V. Quinn, Oppenheimer Wolff & Donnelly (Illinois), Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

The lines sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use if the Board decides to permit the abandonment and discontinuance in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning the abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–17942 Filed 7–7–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 12040

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12040, Order Blank for Charities Conducting Fund Raising Events.

DATES: Written comments should be received on or before September 8, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Order Blank for Charities Conducting Fund Raising Events.

OMB Number: 1545–1609.

Form Number: Form 12040.

Abstract: Form 12040 is used by charitable organizations to order forms

and publications for information gathering and filing their return. This form is included in Publication 1391, Deductibility of Payments Made to Charities Conducting Fund-Raising Events.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–18107 Filed 7–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8812

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8812, Additional Child Tax Credit.

DATES: Written comments should be received on or before September 8, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Additional Child Tax Credit.

OMB Number: To be assigned later.

Form Number: 8812.

Abstract: Section 24 of the Internal Revenue Code allows taxpayers a credit for each dependent child who is under age 17 at the close of the taxpayer's tax year. The credit directly reduces the tax liability for the year and, if the taxpayer has three or more children, may be refundable. Form 8812 is used to compute the refundable amount of the credit.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,500,000.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 2,905,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–18108 Filed 7–7–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 63, No. 130
wednesday, July 8, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 204

Administrative Corrections

Correction

In rule document 98–16174 appearing on page 33248, in the issue of Thursday, June 18, 1998, make the following correction:

PART 204 [CORRECTED]

On page 33248, in the first column, amendatory instruction 2. is corrected to read as follows:

§ 204.4, 204.6 and 204.8 [Amended]

2. Footnotes 2-4 in § 204.4(c)(1)(vii) through (ix) and footnotes 5 through 8 in § 204.6(a)(1), (a)(4) and (b)(1)(v) and footnote 9 in § 204.8 are amended by revising ''204.1'' to read ''204.4''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 121P; AG Order No. 2162–98]

RIN 1125–AA23

Executive Office for Immigration Review; Motion to Reopen: Suspension of Deportation and Cancellation of Removal

Correction

In rule document 98–15588, beginning on page 31890, in the issue of Thursday, June 11, 1998, make the following correction:

§ 3.43 [Corrected]

On page 31894, in the third column, in the ninth line ''(c)'' should read ''(C)''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 401 and 402

[USCG-1998-3976]

Great Lakes Pilotage; Reorganization of Regulations

Correction

In rule document 98–17269 beginning on page 35138, in the issue of Monday, June 29, 1998, make the following corrections:

§ 402.100 [Corrected]

1. On page 35140, in the first column, in amendatory instruction 11i., ''Section 401.100.'' should read ''Section 402.100.''.

§ 401.211 [Corrected]

2. On page 35140, in the first column, in amendatory instruction 14c.,''401.211(a)(1), (b) and (3);'' should read ''401.211(a)(1), (b) and (e);''.

§ 401.428 [Corrected]

3. On page 35140, in the second column, in amendatory instruction 14o., ''401.438;'' should read ''401.428;''.

§ 402.100 [Corrected]

4. On page 35140, in the second column, in amendatory instruction 14x., ''401.100;'' should read ''402.100;''.

§ 402.210 [Corrected]

5. On page 35140, in the second column, in amendatory instruction 14y., ''401.210(a);'' should read ''402.210(a);''.

§ 402.320 [Corrected]

6. On page 35140, in the second column, in amendatory instruction 14z., ''401.320(a) introductory text;'' should read ''402.320(a) introductory text;''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 178

[T.D. 98–49]

RIN 1515–AB98

Prior Disclosure; Correction

Correction

In rule document 98–17431 appearing on page 35798, in the issue of Wednesday, July 1, 1998, make the following correction:

On page 35798, in the first column, the signature line should read as follows:

Harold M. Singer,

Chief, Regulations Branch.

BILLING CODE 1505-01-D

federal register

Wednesday
July 8, 1998

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Proposal To List the Contiguous United States Distinct Population Segment of the Canada Lynx; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Proposal To List the Contiguous United States Distinct Population Segment of the Canada Lynx as a Threatened Species; and the Captive Population of Canada Lynx Within the Coterminous United States (lower 48 States) as Threatened Due to Similarity of Appearance, With a Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the contiguous United States population segment of the Canada lynx (*Lynx canadensis*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). This population segment includes the States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts. The contiguous United States population segment of the Canada lynx is threatened by human alteration of forests, low numbers as a result of past overexploitation, expansion of the range of competitors (bobcats (*Felis rufus*) and coyotes (*Canis latrans*)), and elevated levels of human access into lynx habitat. This rule also lists the captive population of Canada lynx within the coterminous United States (lower 48 States) as threatened due to similarity of appearance with a special rule.

DATES: Comments from all interested parties must be received by September 30, 1998. Public hearing locations and dates are set forth in **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Ave., Suite 320, Helena, Montana 59601. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, Montana Field Office (see **ADDRESSES** section) (telephone 406/449–5225; facsimile 406/449–5339).

SUPPLEMENTARY INFORMATION: Public hearings on this proposal will be held in the following locations:

Western States

Colorado

Wednesday, July 22, 1998 from 7 p.m. until 9 p.m. at the Ramada Inn, 124 W. 6th St., Glenwood Springs, Colorado. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Tuesday, July 28, 1998, from 7 p.m. until 9 p.m. at the Sheraton Denver West, 360 Union Boulevard, Lakewood, Colorado. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Idaho

Thursday, September 10, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Coeur d'Alene Inn and Conference Center, 414 West Appleway Avenue, Coeur d'Alene, Idaho.

Montana

Tuesday, July 21, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Colonial Inn Best Western, 2301 Colonial Drive, Helena, Montana.

Wednesday, July 22, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at Cavanaugh's at Kalispell Center, 20 N. Main, Kalispell, Montana.

Oregon

Tuesday September 15, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at Eastern Oregon University, Hoke University Center, 1410 L Avenue, Rooms 201–203, LaGrande Oregon.

Washington

Tuesday, September 8, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Cedars Inn, 1 Appleway, Okanogan, Washington.

Wyoming

Wednesday, August 12, 1998, from 2 p.m until 4 p.m and from 6 p.m until 8 p.m. at the Cody Auditorium, Cody Club Room, 1234 Beck Avenue, Cody, Wyoming.

Eastern States

Maine

Tuesday, September 15, 1998 from 7 p.m. until 9 p.m. at the Old Town High School, 240 Stillwater Ave, Old Town, Maine.

Great Lakes States

Wisconsin

Tuesday, September 15, 1998 from 7 p.m. to 9 p.m. at the Northern Great Lakes Center on County Road G near Hwy 2, west of Ashland, Wisconsin. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Background

The Canada lynx is a medium-sized cat with long legs, large, well-furred paws, long tufts on the ears, and a short, black-tipped tail (McCord and Cardoza 1982). Adult males average 10 kilograms (kg) (22 pounds (lb)) in weight and 85 centimeters (cm) (33.5 inches (in)) in length (head to tail), and females average 8.5 kg (19 lb) and 82 cm (32 in) (Quinn and Parker 1987). The lynx's long legs and large feet make it highly adapted to hunting in deep snow.

The bobcat (*F. rufus*) is a North American relative of the Canada lynx. Compared to the lynx, the bobcat has smaller paws, shorter ear tufts, a more spotted pelage, and only the top of the tip of the tail is black. The paws of the lynx have twice the surface area of those of the bobcat (Quinn and Parker 1987). The lynx also differs in its body proportions in comparison to the bobcat. Lynx have longer legs, with hind legs that are longer than the front legs, giving the lynx a ''stooped'' appearance (Quinn and Parker 1987). Bobcats are largely restricted to habitats where deep snows do not accumulate (Koehler and Hornocker 1991). Hybridization between lynx and bobcat is unknown (Quinn and Parker 1987).

Classification of the Canada lynx (also called the North American lynx) has been subject to revision. The Service, in accordance with Wilson and Reeder (1993), recognizes the Canada lynx as *L. canadensis*. The Service previously used the name L. lynx canadensis for the Canada lynx (Jones *et al.* 1992; S. Williams, Texas Tech University, pers. comm. 1994). Other scientific names still in use include *Felis lynx or F. lynx canadensis* (Jones *et al.* 1986; Tumlison 1987).

The historical and present North American range of the Canada lynx north of the contiguous United States includes Alaska and that part of Canada that extends from the Yukon and Northwest Territories south to the United States border, and east to New Brunswick and Nova Scotia. In the contiguous United States, the lynx historically occurred in the Cascade Range of Washington and Oregon; the Rocky Mountains from Montana, Idaho, and Oregon south to Utah and Colorado; the western Great Lakes region; and the northeastern United States region from Maine, south to New York and Pennsylvania, and east to Massachusetts (McCord and Cardoza 1982; Quinn and Parker 1987).

In the contiguous United States, Canada lynx inhabit a mosaic between boreal forests and subalpine coniferous forest or northern hardwoods, whereas Canada lynx habitat in Canada and Alaska is the boreal forest ecosystem (Barbour *et al.* 1980; McCord and Cardoza 1982; Koehler and Aubry 1994; M. Hunter, University of Maine, pers. comm. 1994, Colorado Division of Wildlife 1997).

Canada lynx are specialized predators that are highly dependent on the snowshoe hare (*Lepus americanus*) for food. Snowshoe hare prefer diverse, early successional forests with stands of conifers and shrubby understories that provide for feeding and cover to escape from predators and protection during extreme weather (Wolfe *et al.* 1982, Monthey 1986, Koehler and Aubry 1994). Lynx usually concentrate their foraging activities in areas where hare activity is high (Koehler *et al.* 1979; Parker 1981; Ward and Krebs 1985; Hash 1990; Weaver 1993; Koehler and Aubry 1994; D. Winger, U.S. Forest Service, pers. comm. 1994).

Canada lynx utilize late successional forests with large woody debris, such as downed logs and windfalls, to provide denning sites with security and thermal cover for kittens (McCord and Cardoza 1982, Koehler 1990, Koehler and Brittell 1990). In Washington, lynx used lodgepole pine (*Pinus contorta*), spruce (*Picea* spp.), and subalpine fir (*Abies lasiocarpa*) forests older than 200 years for denning (Koehler and Brittell 1990). Based on information from the western United States, Koehler and Brittell (1990) concluded sites selected for denning also must provide for minimal disturbance by humans and proximity to foraging habitat (early successional forests), with denning stands at least 1 hectare (ha) (2.471 acres (ac)) in size.

Lynx require adequate travel cover (frequently intermediate successional forest stages) to provide connectivity within a forest landscape for security, movement within home ranges, and access between den sites and foraging areas (Brittell *et al.* 1989, Koehler and Aubry 1994). Such areas also may provide foraging opportunities.

The size and shape of Canada lynx home ranges appear related to the availability of prey and the density of lynx (Koehler and Aubry 1994). Documented home ranges vary from 12 to 243 square kilometers (sq km) (5–94 square miles (sq mi)) and larger (Saunders 1963; Brand *et al.* 1976; Mech 1980; Parker *et al.* 1983; Koehler and Aubry 1994).

The association between lynx and snowshoe hare is considered a classic predator-prey relationship (Saunders 1963; van Zyll de Jong 1966; Quinn and Parker 1987). In much of its North American range, Canada lynx populations fluctuate with the approximate 10-year hare cycle of abundance (Elton and Nicholson 1942); as hare populations increase, lynx populations increase. Generally, it is believed that when hare populations are at their cyclic high, they deplete their food resources and hare populations decline. This causes lynx populations to decline as a result of reduced reproductive success caused by an inadequate alternate food source (Nellis *et al.* 1972; Brand *et al.* 1976).

Snowshoe hare provide the prey quality necessary to support high density lynx populations (Brand and Keith 1979). Lynx also prey opportunistically on other small mammals and birds, particularly when hare populations decline (Nellis *et al.* 1972; Brand *et al.* 1976; McCord and Cardoza 1982). Apparently, a shift to alternate food sources may not compensate for the decrease in hares consumed (Koehler and Aubry 1994). The lower quality diet causes sudden decreases in the productivity of adult females, and decreased survival of young, which causes recruitment to the breeding population to essentially cease (Nellis *et al.* 1972; Brand and Keith 1979).

Based primarily on studies in the western mountains of the contiguous United States, it appears lynx and snowshoe hare in more southern latitudes may not exhibit strong population cycles (Dolbeer and Clark 1975; Wolff 1980; Buehler and Keith 1982; Brittell *et al.* 1989; Koehler 1990; Koehler and Aubry 1994). Wolff (1982 *in* Koehler and Aubry 1994) hypothesized that the presence of additional predators and competitors of hares at lower latitudes accounts for this pattern. The relative stability of hare populations in southern latitudes also may be a result of patchy, suboptimal habitat (Buehler and Keith 1982, Koehler 1990, Koehler and Aubry 1994).

Periodic increases in lynx numbers in the contiguous United States may be accentuated by dispersal of transient animals from Canadian populations. Canada lynx are capable of dispersing extremely long distances (Mech 1977; Brainerd 1985; Washington Department of Wildlife 1993); for example, a male was documented traveling 616 km (370 mi) (Brainerd 1985). Canada lynx may disperse long distances from their normal range to search for food when snowshoe hare populations decline (Ward and Krebs 1985; C. Pils, *in litt.* 1994; Koehler and Aubry 1994). Canada lynx also may disperse when local lynx densities are high (U.S. Fish and Wildlife Service 1977; Thiel 1987; J. Conley, Idaho Department of Fish and Game, *in litt.* 1994).

Because lynx occurrence throughout much of the contiguous United States is on the southern periphery of the species' range, there is speculation that presence of lynx in the contiguous United States is solely a consequence of dispersal from Canada. This has led to speculation that most of the United States may never have supported self-sustaining, resident [1] populations over time (T. Bremicker, Minnesota Department of Natural Resources, *in litt.* 1994; S. Fritts, U.S. Fish and Wildlife Service, *in litt.* 1994).

Based on the majority view of the respondents and the best scientific and commercial data available, the Service has determined that, historically, the Canada lynx was a resident species in 16 States in the contiguous United States, occurring in dispersed populations at relatively low densities (Rust 1946; Harger 1965; Nellis 1971; Henderson 1978; Brocke 1982; Mccord and Cardoza 1982; Brainerd 1985; Washington Department of Wildlife 1993; Koehler and Aubry 1994; Kurta 1995; T. Bailey, U.S. Fish and Wildlife Service, *in litt.* 1994; E. Bangs, U.S. Fish and Wildlife Service, pers. comm. 1994; P. Beir, Northern Arizona University, *in litt.* 1994; B. Berg, Minnesota Department of Natural Resources, pers. comm. 1994; P. Brussard, University of Nevada, *in litt.* 1994; G. Koehler, Independent Researcher, *in litt.* 1994; W. Krohn, University of Maine, *in litt.* 1994; J. Weaver, Independent Researcher, *in litt.* 1994). Furthermore, the historic and current presence of snowshoe hare populations, the lynx's primary food, within the same ecosystems in the contiguous United States (Adams 1959; Keener 1971; Dolbeer and Clark 1975; Buehler and Keith 1982; Fuller and Heisey 1986; Monthey 1986; Koehler 1991) supports the Service's conclusion.

The Service considers Canada lynx to have been historically resident within Maine, New Hampshire, Vermont, New York, Pennsylvania, Massachusetts, Michigan, Wisconsin, Minnesota,

[1] **Note:** With respect to the lynx and the analysis presented in this document, the terms ''resident'' and ''resident population'' mean a group or subgroup of lynx in an area (e.g., Minnesota) or portion of a larger area (e.g., Great Lakes States) that is capable of long-term persistence, based on self-sustaining reproduction of young and successful recruitment of young into the breeding age cohort, without immigration of lynx from Canada. It is acknowledged that movements of lynx across the United States and Canada border did occur and that this migration was beneficial to the lynx in the contiguous United States.

Montana, Wyoming, Washington, Oregon, Idaho, Utah, and Colorado.

While evidence suggests historical lynx numbers in the contiguous United States increased because of dispersal from lynx populations in northern latitudes during the cyclic peaks (Henderson 1978, Mech 1980), the Service does not conclude that dispersal from Canada was required to maintain the contiguous United States lynx population as viable. However, dispersal of Canada lynx into the contiguous United States may now be necessary to replenish lynx numbers because of the current status of lynx in the contiguous United States. In addition, the Service concludes that suitable Canada lynx habitat currently exists (and existed to a greater extent historically) in the contiguous United States (Rust 1946; Harger 1965; Nellis 1971; Washington Department of Wildlife 1993; Henderson 1978; B. Giddings, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1994; S. Parren, Vermont Department of Fish and Wildlife, pers. comm. 1994; F. Hurley, *in litt.* 1994; and K. Staley, White Mountain National Forest, pers. comm. 1994).

Distribution and Status

Within the contiguous United States, the lynx population is divided regionally by ecological barriers consisting of unsuitable lynx habitat. These regions are the Northeast, the Great Lakes, and the Rocky Mountains/Cascades. To enhance the organization and clarity of this proposal, the regions are discussed separately below.

Northeast Region—Historically, lynx habitat in the Northeast United States existed in a mostly contiguous block of forest in the ecotone between boreal and deciduous forest. This forest has been described as sub-boreal forest (M. Hunter, University of Maine, pers. comm. 1994). Principal tree species include red spruce (*Picea rubens*) and balsam fir (*Abies balsamea*), interspersed with northern hardwoods such as sugar maple (*Acer saccharum*), yellow birch (*Betula alleghaniensis*), and American beech (*Fagus grandifolia*). Lynx once occurred from northern Maine, across northern New Hampshire and Vermont, to the Adirondacks in New York (McCord and Cardoza 1982) and probably occurred southward along the higher elevations of the mountain ranges in the region (Brocke 1982; K. Gustafson, New Hampshire Department of Fish and Game, pers. comm. 1994). Unfortunately, in records compiled prior to the 1970's, lynx were often not distinguished from bobcats (J. Cardoza, Massachusetts Division of Fisheries and Wildlife, pers. comm. 1994).

Snowshoe hare habitat in the region is characterized by spruce/fir softwood forests typical of boreal forests; a mixture of mature and successional softwood growth provides cover and browse for hares (Monthey 1986). Forested habitat in the region has increased because of land-use changes during the past century (Irland 1982, Litvaitis 1993). In some areas, there may be a gradual upward trend in the coniferous component as spruce and fir regenerate beneath the hardwood species that had established after large-scale logging and burning at the turn of the century (D. Degraff, U.S. Forest Service, pers. comm. 1994; F. Hurley, Maine Department of Inland Fisheries and Wildlife, *in litt.* 1994; J. Lanier, New Hampshire Fish and Game, pers. comm. 1994). Although localized habitat conditions have improved, reoccupation of these areas may be impeded by barriers to lynx immigration, such as paved roads with high-volume traffic, nonforested agricultural habitats, or other intervening areas of unsuitable habitat.

Although Maine, New Hampshire, Vermont, and New York report areas of suitable lynx habitat and/or prey base, low numbers of lynx are present only in Maine and lynx may be extirpated throughout the remainder of the Northeast Region (see discussion below). Much of the potential lynx habitat in this region is held in private ownership (Harper *et al.* 1990).

Maine—In Maine, historical accounts indicate that, although lynx probably were never abundant, they were resident in the State and that numbers of lynx fluctuated over the past 150 years (Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997). Information on population size, trends, distribution, and factors influencing these variables are sparse and mostly anecdotal (F. Hurley, in litt. 1994). Lynx were bountied in Maine prior to the closure of hunting and trapping seasons in 1967.

Suitable habitat and prey to support lynx are abundant in northwestern Maine (F. Hurley, *in litt.* 1994). The Maine Department of Inland Fisheries and Wildlife classifies the lynx as a species of special concern (Matula 1997). The lynx is currently protected from hunting and trapping.

Although no reliable population estimates exist, in 1994 it was suggested that only 200 animals or less occur statewide (Maine Department of Inland Fisheries and Wildlife 1994). A statewide track survey, initiated during the 1994/1995 winter was conducted for 3 successive years. A total of 4,118, 1-km (0.62-mi) transects were surveyed. Lynx were encountered on 54 of the transects in nine townships, all during the first year of the survey (Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997). However, biologists have encountered lynx tracks in northwestern Maine during the past three winters while conducting unrelated fieldwork (Maine Department of Inland Fisheries and Wildlife, *in litt.*, 1998). The Service concludes a resident lynx population exists in Maine.

New Hampshire—Lynx were intermittently bountied in New Hampshire until 1965. In response to the apparent declines in lynx abundance reflected in bounty numbers, the bounty was repealed and thereafter the lynx was provided full protection from legal harvest (Siegler 1971; Silver 1974; Litvaitis *et al.* 1991). Despite legal protection, the lynx population did not increase. Since 1980, the lynx has been listed as an endangered species by the New Hampshire Fish and Game Department. Two years of winter track surveys did not detect Canada lynx (Litvaitis *et al.* 1991). The Service concludes the Canada lynx is very rare and likely extirpated from New Hampshire.

Vermont—In Vermont, historically, lynx likely occurred at low densities in the northern part of the State. Quantitative data on the current abundance or distribution of lynx are unavailable. By the mid-1900's, Vermont had not had a documented breeding population of lynx for several decades (Osgood 1938 *in* Vermont Department of Fish and Wildlife 1987). Since 1972 the lynx has been listed by the State as endangered. One of the last verified occurrences of lynx in the State occurred in 1968, with periodic reports since then. Suitable habitat exists in the northeastern section and along mountain ridges in the State, and snowshoe hares are present in high numbers (S. Parren, Vermont Department of Fish and Wildlife, pers. comm. 1994; C. Groves, Green Mountain National Forest, pers. comm. 1994). Canada lynx is currently considered to be extirpated in Vermont (S. Parren, pers. comm. 1998). The Service concludes the Canada lynx is very rare and likely extirpated from Vermont.

New York State—Historically, lynx occurred in most northern regions of New York, the Adirondack Mountains, and the Catskill Mountains (K. Gustafson, pers. comm. 1994), but they are now considered extirpated (G. Parsons, New York State Department of Environmental Conservation, *in litt.* 1994). By the 1880's, the population was

apparently approaching extirpation (Miller 1899 in Brocke 1982). Trapping and sighting records from the early 1900's to the present indicate that lynx occurred only infrequently. The most recent verified sighting was in 1980 (G. Parsons, *in litt.* 1994). An abundant prey base exists (Brocke 1982), but the habitat has been highly fragmented. Extensive road infrastructure and a lack of early successional coniferous forest in much of the potential habitat likely precludes natural lynx reestablishment in New York (G. Batchellor, New York State Department of Environmental Conservation, pers. comm. 1994; G. Parsons, *in litt.* 1994).

An effort to reintroduce Canada lynx into the Adirondack Mountains occurred from 1988 to 1990 (Brocke *et al.* 1990, D. Major, U.S. Fish and Wildlife Service, pers. comm. 1998), but success of the reintroduction remains doubtful. As of 1993, some Canada lynx were believed still present, but no reproduction had been documented (K. Gustafson, pers. comm. 1994). A collared lynx from the reintroduction effort was recently found near Ottawa, Ontario, Canada (M. Amaral, U.S. Fish and Wildlife Service, pers. comm. 1997). No verified occurrences in New York have been reported recently; however, both the State University of New York at Syracuse and the New York Department of Environmental Conservation maintain records of reported sightings. No further monitoring is planned. In New York, lynx are legally classified as a small game species with a closed season. The Service concludes the Canada lynx is very rare and probably extirpated from New York.

Pennsylvania/Massachusetts—In Pennsylvania and Massachusetts, located at the southernmost reaches of the historical range of the species in the Northeast United States (Hall and Kelson 1959), resident animals may have existed in the coniferous forests of higher elevations of mountain ranges, but accurate historical information is unavailable. Based on the lack of lynx habitat in these States, historically the animal was probably uncommon (J. Belfonti, *in litt.* 1994). Many individuals in these States may have dispersed from more northern regions during cyclic irruptions of the lynx populations in Canada (J. Belfonti, The Nature Conservancy, *in litt.* 1994). The last known record of a naturally occurring Canada lynx in Pennsylvania was in 1923 (J. Belfonti, *in litt.* 1994), and a possible record from 1930 exists for Massachusetts (J. Cardoza, *in litt.* 1994). The Service concludes lynx are extirpated from Pennsylvania and Massachusetts.

Great Lakes Region—Historically the lynx was found in the western Great Lakes States of Michigan, Wisconsin, and Minnesota. The habitat occupied by lynx in this region consists primarily of an ecotone between boreal and mixed deciduous forest and is a mosaic of balsam fir, eastern hemlock (*Tsuga canadensis*), eastern white pine (*Pinus strobus*), jack pine (*P. banksiana*), quaking aspen (*Populus tremuloides*), birch (*Betula spp.*), and maple (*Acer spp.*) (Barbour *et al.* 1980). Much of the lynx habitat in this region is in public ownership, primarily county, State, or national forests.

The lynx population in this region was regularly supplemented by dispersing lynx from Canada (Harger 1965; M. DonCarlos, *in litt.* 1994; C. Pils, *in litt.* 1994). Historically, Ontario and Manitoba had very strong, cyclic lynx populations from which individuals dispersed to search for food during periods when the hare populations crashed or during cyclic highs of lynx populations. However, trapping harvests during the period of extremely high pelt prices in the 1970's and 1980's substantially impacted Canadian lynx populations. As a result, harvest was closed temporarily and since has been closely regulated (I. McKay, Manitoba Natural Resources, *in litt.* 1994; M. Novak, Ontario Ministry of Natural Resources, pers. comm. 1994). Because of low numbers of lynx, Manitoba closed its season on lynx harvest from 1995 to 1997 (I. McKay, pers. comm. 1997). Although current habitat conditions along the Canada/United States border for lynx are mostly intact and suitable, dispersal into the Great Lakes States has been severely limited because of the reduced lynx population in Canada (D. Mech, pers comm. 1994; M. Novak, pers. comm. 1994).

Minnesota—In the past, Minnesota lynx populations fluctuated markedly during 10-year cycles and were influenced by influxes from Canada (Henderson 1978; Mech 1980; M. DonCarlos, Minnesota Department of Natural Resources, *in litt.* 1994). The resident lynx population was restricted to the northeastern area of the State; however, transients have been found throughout Minnesota (Gunderson 1978; Mech 1980).

Until 1965, lynx were bountied in Minnesota. In 1976, the lynx was classified as a game species and harvest seasons were established (M. DonCarlos, *in litt.* 1994). Harvest and bounty records for the State are available since 1930. Based on these records, highs in the lynx cycle were approximated to have occurred in 1940, 1952, 1962, and 1973 (Henderson 1978). Henderson (1978) estimated that during a 47-year period (1930–1976), the Minnesota lynx harvest was substantial, ranging from at least 50 to more than 200 per year during 29 seasons.

From the mid-1970's to the late 1980's, pelt prices were extremely high in Canada and the United States. Also, from 1979 to 1980, hare numbers were at their cyclic peak (M. DonCarlos, *in litt.* 1994). Despite these two factors, lynx harvest remained very low and the expected lynx peak for the early 1980's did not occur (B. Berg, pers. comm. 1994; M. DonCarlos, *in litt.* 1994). As a result, the harvest season was closed and remains closed today. Although lynx are currently considered rare (D. Mech, pers. comm. 1994), available habitat in northern Minnesota is capable of maintaining resident lynx populations (M. DonCarlos, *in litt.* 1994). Based on recent anecdotal information, the Service concludes that a resident population possibly exists in Minnesota (P. Burke, U.S. Fish and Wildlife Service, pers. comm. 1998).

Wisconsin—A resident lynx population likely has not existed in Wisconsin since 1900 (Thiel 1987). The presence of lynx in Wisconsin has been associated with the cyclic lynx population fluctuations in Canada (Thiel 1987). A bounty on lynx existed until 1957. Between 1948 and 1956, 19 lynx were harvested in the State; annual harvest ranged from zero (1954) to four (1952) (Wisconsin Department of Natural Resources 1993). Lynx were placed on the protected species list in 1957 and were classified as State endangered in 1972 (C. Pils, *in litt.* 1994). Between 1976 and 1984, 63 lynx observations were reported, with most reports from the northwestern area adjacent to Minnesota; seven lynx were reported from 1991–1993, two of which were mortalities (Wydeven 1992; Wydeven 1993; Wydeven in prep.; C. Pils, *in litt.* 1994). There were no sightings of lynx in 1994 or 1995 and one possible set of tracks was sighted in 1996 (U.S. Fish and Wildlife Service, *in litt.* 1997). Snowshoe hares occur across northern Wisconsin (Buehler and Keith 1982). Potential lynx habitat in northern Wisconsin has remained in an early- to mid-successional mixed coniferous forest condition since the early 1900's, with some limited older growth present but primarily confined to forested wetlands (D. Zastrow, Wisconsin Department of Natural Resources, pers. comm. 1998). The lynx has been reclassified as a State protected species with a closed season (A. Wydeven, Wisconsin Department of Natural

Resources, pers. comm. 1998). Despite extensive review of historic and current information regarding the lynx in Wisconsin, neither Jackson (1961) nor Thiel (1987) were able to cite any evidence of breeding subsequent to the decline of the species in the 1800's. There has been a continued decline in confirmed sightings in recent years and the Service concludes that, based on available information, a resident population of lynx no longer exists in Wisconsin, although individual animals likely are present.

Michigan—In Michigan, historical reports indicate that the Canada lynx was resident and widespread throughout the upper and lower peninsula in the 19th century (Harger 1965). Lynx moved into the upper peninsula from Wisconsin or crossed the St. Mary's River from Ontario (Baker 1983). The limited ability for lynx dispersal from the upper to the lower peninsula, in addition to positive records of lynx in 23 lower peninsula counties, indicated that in the lower peninsula, Canada lynx were self-sustaining in the past (Harger 1965; Baker 1983). Canada lynx were believed extirpated from Michigan's lower peninsula in 1928, and by 1938 they were considered rare or extinct throughout the State (Harger 1965). The lynx persisted on Isle Royale in Lake Superior into the late 1970's (Peterson 1977 *in* Baker 1983). Based on the numbers and distribution of lynx reported from 1940 to 1965, particularly during 1962, Harger (1965) believed that lynx were repopulating Michigan as a result of improved habitat conditions in the upper peninsula.

The lynx was first listed as State endangered in 1974, but was not included on the list during revisions in 1976 and 1980. It was returned to the list as threatened in 1983 and its status upgraded to endangered in 1987, where it remains. As such, it is protected from harvest but conservation actions are limited because little is known about the species requirements (T. Weise, *in litt.* 1994).

Throughout the 1980's and 1990's, reports of lynx in the upper peninsula of Michigan have been rare; no lynx have been reported in the lower peninsula during this time period (T. Weise, Michigan Department of Natural Resources, *in litt.* 1994). The lynx's current distribution in Michigan is unknown but is likely limited to the upper peninsula. No surveys have been conducted to determine lynx numbers or range (T. Weise, *in litt.* 1994). The last breeding record was in 1976 (T. Weise, *in litt.* 1994). Suitable lynx habitat is currently available in Michigan's upper peninsula (T. Weise, *in litt.* 1994). Since the mid-1960's the trend of lynx numbers has been unknown. However, the Service concludes that low numbers of lynx may still occur in Michigan's upper peninsula with no increasing trend apparent.

Rocky Mountain/Cascades Region—Lynx currently are thought to be present in the western mountains of the contiguous United States in the Cascades Range of Washington, the Thompson-Okanogan Highlands of northern Washington, the Blue Mountains of Oregon, and the Rocky Mountains in Idaho, Montana, Wyoming, Utah, and Colorado.

Lynx habitat in Montana occurs primarily in the high elevation mountains. Principal tree species include lodgepole pine (*Pinus contorta*), Douglas fir (*Pseudotsuga menziesii*), and subalpine fir (*Abies lasiocarpa*) (Koehler *et al.* 1979, Hash 1990). In Washington, lynx live in boreal-type forests that occur in north central Washington along the east slope of the Cascade Mountain range and the Thompson-Okanogan Highlands. In Oregon, lynx habitat exists in the Blue Mountains in northeastern Oregon and the Cascades. Preferred lynx habitat in Idaho consists of dense coniferous, high elevation forest broken by small shrubby openings and coniferous swamps (Leptich 1990). Unsuitable habitat in Wyoming's Red Desert isolates the lynx population in Colorado and extreme southeastern Wyoming from that of the Rocky Mountains to the northwest (Thompson and Halfpenny 1989; Koehler and Aubry 1994). Colorado's montane and subalpine forest ecosystems are naturally highly fragmented (Findley and Anderson 1956 *in* Koehler and Aubry 1994, Thompson 1994). Utah is considered the southern margin of the Canada lynx range.

Washington—In Washington, resident Canada lynx were historically found in highest concentrations in the northeast and north central regions, along the east slope of the Cascade Mountains (Washington Department of Wildlife 1993). Nellis (1971) regarded lynx occurrence in Washington as rare to common. Records of lynx exist from the Mount Rainier National Park area in the central Cascades, south in the Cascades nearly to the Oregon border on Mount Adams, and in the Blue Mountains in the southeastern part of the State (Taylor and Shaw 1927 *in* Koehler and Aubry 1994, Dalquest 1948, Washington Department of Natural Resources 1996a). Washington has designated six ''Lynx Management Zones'' across north central Washington (Washington Department of Natural Resources 1996a). Currently, lynx occupy five of these zones: Okanogan, Kettle Range, the Wedge, Little Pend Oreille, and Salmo Priest. Additionally, lynx occupy the northern and southern Cascades of Washington (Washington Department of Natural Resources 1996a; C. Lee, U.S. Fish and Wildlife Service, pers. comm. 1998). Much of these areas are in Federal, Tribal, and State ownership.

A total harvest of 215 lynx was reported for the hunting and trapping seasons from 1960–61 to 1990–91, with peak harvests in 1969–70 (31 lynx) and 1976–77 (39 lynx) (Washington Department of Wildlife 1993). Following the 1976–77 season, lynx harvests decreased markedly, resulting in increasingly restrictive harvest regulations. Based on trapper interviews and track sighting, lynx densities in northeastern Washington appear to have been depressed during at least the past 20 years (Washington Department of Wildlife 1993). In response to markedly decreased harvests, regulations were tightened in 1977–78; lynx hunting and trapping seasons were closed in 1991 (Washington Department of Wildlife 1993).

The current lynx population in the State of Washington has been estimated at 96 to 191 individuals (Washington Department of Wildlife 1993). Brittell *et al.* (1989) estimated 225 lynx in Washington State. However, population estimates may be high because it was assumed that habitat suitability and lynx densities were similar across the range, which is not the case (Washington Department of Wildlife 1993). Since 1993, the lynx has been listed as a State threatened species (Washington Department of Wildlife 1993). The Service concludes that a resident lynx population exists in the State of Washington.

Oregon—Resident Canada lynx populations were historically low in Oregon (Koehler and Aubry 1994). Historic records exist from nine counties in Oregon (Bailey 1936, Nellis 1971). Recent observations of lynx have been reported from the Cascades and the Blue Mountains in northeastern Oregon (Csuti *et al.* 1997; E. Gaines, Oregon Natural Heritage Program, *in litt.* 1994; R. Anderson, Wallowa-Whitman National Forest, *in litt.* 1998). The Canada lynx is currently classified as a furbearer with a closed trapping and hunting season (E. Gaines, Oregon Natural Heritage Program, pers. comm. 1997). The Service concludes that a self-sustaining resident population does not exist in Oregon, but individual animals are present.

Idaho—According to Rust (1946), lynx were distributed throughout northern Idaho in the early 1940's, occurring in 8 of the 10 northern and north-central counties. In 1990, Hash reported stable or declining small lynx populations in Idaho. Harvest records were unreliable prior to the late 1980's because no distinction was made between lynx and large bobcats. In 1982, Idaho Department of Fish and Game initiated a mandatory pelt tagging program and the number of reported lynx harvests dropped to zero. Twelve lynx were reported harvested between 1978 and 1991 (M. Tera-Berns, Idaho Department of Fish and Game, pers. comm. 1997). No current population estimates are available (P. Harrington, U.S. Forest Service, pers. comm. 1994; J. Hayden, Idaho Department of Fish and Game, pers. comm. 1994). Recent confirmed lynx reports are scarce (J. Conley, Idaho Department of Fish and Game, *in litt.* 1994).

Prior to 1977, the species was considered a predator, subject to unrestricted harvest with no closed season and no bag limit. In 1990, in response to concern over the status of lynx in Idaho, the Idaho Department of Fish and Game instituted a statewide harvest quota of three lynx per year. Idaho closed the Canada lynx trapping/hunting season in the 1997/1998 season because the quota had not been filled in several years, although lynx remain classified as a furbearer. In 1995, a multiple agency Conservation Strategy was initiated to assess the conservation of the lynx and other forest carnivores (Idaho Department of Fish and Game *et al.* 1995; Roloff 1995). The Service concludes that a self-sustaining resident population does not exist in Idaho, but individual animals are present.

Montana—In Montana, Canada lynx were reported to be common (Nellis 1971) and were found throughout the western part of the State (B. Giddings, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1994). After 1985, lynx populations in Montana were believed to be at or near their lowest levels in the past several decades (Hash 1990). Brainerd (1985) documented evidence of Canada lynx reproduction; however, more recent evidence of recruitment into the population has not been documented.

Until 1977, lynx in Montana were classified as nongame and were provided no regulatory protection (D. Childress, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1990). Assessment of historic population levels or trends is difficult because lynx often were not distinguished from bobcats in harvest records prior to 1977. Between 1959 and 1967, estimates of statewide harvest ranged from a low of 36 in the 1961–62 season to a high of 376 during the 1963–64 season (Hoffman *et al.* 1969). However, these figures likely overestimate lynx abundance because they probably include bobcats. Since 1985, harvest records exist from 24 counties in the northwest, southwest, and west-central part of the State (B. Giddings, *in litt.* 1994). Hoffman *et al.* (1969) cited numerous records of lynx harvested in eastern Montana's Great Plains region between 1959 and 1967, but these records are suspect because of possible misidentification with bobcat.

Beginning in 1977, lynx were classified as a furbearer. A season length and licensing regulations were set, but no quota was imposed. Harvest records can reflect the status of lynx populations; however, the lynx harvest and, consequently, the lynx population likely were significantly influenced by extremely high pelt prices during the mid-1970's to late 1980's.

Since 1977, Montana's highest lynx harvest occurred in both 1979 and 1984 when 62 lynx were taken in each season (B. Giddings, *in litt.* 1994). Although quotas dropped incrementally from 135 to 40 over an 8-year period (1982–1989), lynx harvest never approached the quota levels, ranging from 62 to 15 animals taken per season (B. Giddings, *in litt.* 1994). After 1985, lynx harvests declined to record lows and lynx populations in Montana were believed to be at or near their lowest levels in the past several decades (Hash 1990). In response, a district of the Montana Trappers Association requested that lynx harvest be closed for one season (S. Conn, Montana Trappers Association, *in litt.* 1990). The State responded by decreasing the quota from 40 to 5 in 1990 (B. Giddings, in litt. 1994). During this period, the lowest annual harvest occurred in 1990, with two lynx taken while the quota was five (B. Giddings, *in litt.* 1994). From 1991 to the present, the quota has been two, which was filled annually or exceeded by one (1991) or two (1993) (B. Giddings, *in litt.* 1994).

The Montana Department of Fish, Wildlife, and Parks estimated the lynx population as 1,750 to 2,400 in 1977, 700 to 950 in 1982, and 1,040 lynx in 1994 (B. Giddings, *in litt.* 1994). These estimates were determined using a habitat area/density index. Habitat area estimates did not account for habitat areas that would be unsuitable for lynx.

Harvest records, winter track surveys conducted since 1990–91, and trapper logbooks, have led Montana Department of Fish, Wildlife, and Parks to conclude that the State's lynx population has recovered and is distributed across its historic range (B. Giddings, *in litt.* 1994). However, others familiar with lynx in the Rocky Mountain region suggest that these estimates are optimistic, and express serious concerns about the status of lynx in Montana (E. Bangs, pers. comm. 1994; M. Hornocker, Hornocker Wildlife Research Institute, Inc., *in litt.* 1994; G. Koehler, *in litt.* 1994; L. Nordstrom, U.S. Fish and Wildlife Service, *in litt.* 1994; M. Roy and S. Torbit, National Wildlife Federation, *in litt.* 1994). The Service concludes a resident population of lynx is present in Montana.

Wyoming—In Wyoming, Canada lynx are generally believed to have been uncommon in the State because of the limited availability of large areas of suitable habitat (Reeve *et al.* 1986; Clark and Stromberg 1987; Wyoming Game and Fish Department 1992). Until 1957, lynx were bountied in the State. Since 1973, the lynx has been listed as a protected nongame species. Nearly all historical and recent records of lynx in Wyoming are from the western mountain ranges, primarily within the Greater Yellowstone Ecosystem (Reeve *et al.* 1986). However, documented reports of lynx in Yellowstone National Park are rare (S. Consolo-Murphy, Yellowstone National Park, pers. comm. 1994). Elsewhere in Wyoming, lynx have been reported from the Uinta Mountains in the extreme southwest and the Big Horn Mountains in the north-central part of the State, although these are unconfirmed by field investigations (Reeve *et al.* 1986).

Only 12 records of lynx exist for Wyoming from 1981 to 1994 (C. Gillin, Wyoming Game and Fish Department, *in litt.* 1994). In late 1996 the Wyoming Game and Fish Department began a study to attempt to document the current range of the lynx. Two lynx have been trapped and collared in the Wyoming Range and continue to be tracked (B. Oakleaf, Wyoming Game and Fish Department, pers. comm. 1998). In addition, one lynx was confirmed in the Wind River Range in 1997 (B. Luce, Wyoming Game and Fish, pers. comm. 1997).

If lynx exist in southeastern Wyoming, they are isolated from the rest of the State by the Red Desert but are contiguous with Colorado lynx populations (J. Fitzgerald, University of Northern Colorado, pers. comm. 1994; J. Halfpenny, Independent Researcher, pers. comm. 1994; J. Weaver, pers. comm. 1994). None of the reports of lynx in the Medicine Bow and Laramie ranges in southeastern Wyoming have been confirmed to date (Reeve *et al.* 1986). The Service concludes that,

although individual lynx are present, a resident population likely no longer exists in Wyoming.

Utah—In Utah, Canada lynx are thought to be nearly extirpated, although it is possible a few may exist in the high, inaccessible areas of the Uinta Mountains (B. Blackwell, Utah Department of Natural Resources, pers. comm. 1994). Sightings have been reported from most of the mountain ranges in Utah. However, because of misidentification with the bobcat, some of these records may not be valid (McKay 1991). Nearly all the reliable lynx reports are from the Uinta Mountain Range along the Wyoming border (McKay 1991). The lynx is listed as a State sensitive species. The Service concludes that a self-sustaining resident population does not exist in Utah, but individual animals may be present.

Colorado—Colorado represents the extreme southern edge of the range of the Canada lynx. Wyoming's Red Desert likely acts as a barrier that reduces or precludes opportunities for immigration and emigration, effectively isolating lynx in the southern Rocky Mountains in Colorado and Wyoming (Halfpenny *et al.* 1982; Koehler and Aubry 1994; G. Koehler, *in litt.* 1994; J. Weaver, *in litt.* 1994). It is likely Canada lynx never have been abundant in Colorado (Colorado Division of Wildlife *et al.* 1997), partially because its montane and subalpine forest ecosystems are naturally highly fragmented (Thompson 1994).

The lynx has been listed as a State endangered species since 1976 (Colorado Division of Wildlife *et al.* 1997). From the late 1800's to 1993, only 65 reliable lynx records exist; the last verified lynx specimens were taken in the early 1970's (J. Sheppard, Colorado Division of Wildlife, *in litt.* 1994). Since the late 1970's, intensive surveying efforts have revealed only minimal evidence of lynx presence (Halfpenny and Miller 1981; Thompson and Halfpenny 1989; Anderson 1990; Thompson and Halfpenny 1991; Andrews 1992; Carney 1993; Fitzgerald 1994; J. Sheppard, *in litt.* 1994; J. Halfpenny, pers. comm. 1994; Colorado Division of Wildlife *et al.* 1997). Lynx in Colorado are believed to be extremely rare and the long-term viability of the lynx in Colorado is questionable (Colorado Division of Wildlife *et al.* 1997). The Service concludes that a self-sustaining resident population does not exist in Colorado, but individual animals may be present.

Other Reports or Sightings—Lynx observations in Nevada, North Dakota, South Dakota, Iowa, Nebraska, Indiana, Ohio, and Virginia appear to be a result of transients dispersing during periods of high lynx density elsewhere (Hall and Kelson 1959; Burt 1954 *in* Brocke 1982; S. Johnson, Indiana Department of Natural Resources, *in litt.* 1994; P. Jones, Ohio Department of Natural Resources, *in litt.* 1994; W. Jobman, U.S. Fish and Wildlife Service, *in litt.* 1997; Smithsonian Institute, *in litt.* 1998). During the early 1960's, lynx moved into the Great Plains and the Midwest region of the United States during an apparent cyclic high in surrounding lynx populations (Gunderson 1978; Mech 1980; DeStefano 1987; South Dakota Natural Heritage Program, *in litt.* 1994). Based on the lynx's ecological requirements, such records likely represent dispersing, transient individuals, not resident populations.

Summary of Status—Based on information available to the Service at this time, the Service concludes that lynx were resident in 16 States in the contiguous United States. Currently, resident populations of lynx likely exist in Maine, Montana, Washington, and possibly Minnesota. States with recent records of individual lynx sightings, but possibly no longer sustaining self-supporting populations, include Wisconsin, Michigan, Oregon, Idaho, Wyoming, Utah, and Colorado. Lynx may be extirpated from New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts.

Previous Federal Action

The Canada lynx was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna in 1977. The Service classified the Canada lynx as a category 2 candidate species in the December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 2 species were those species for which information in the Service's possession indicated that listing was possibly appropriate, but for which substantive data on biological vulnerability and threats were not available to support a proposed rule. Candidate species are currently defined as those species for which the Service has sufficient information on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions. On October 6, 1992, the Service published a notice of a 90-day petition finding indicating that the August 22, 1991 petition did not present substantial information to indicate that listing the North Cascades population of the Canada lynx as endangered was warranted (57 FR 46007). A lawsuit was filed challenging the October 6, 1992, petition finding. On July 9, 1993, the Service published a notice indicating that it had revisited the North Cascades 90-day petition after receiving new information and again found that there was not substantial information to indicate that listing the population may be warranted (58 FR 36924). The Service announced in the finding that a status review would be conducted. In a settlement agreement dated November 30, 1993, the Service agreed to conduct a status review throughout the lower 48 States to determine if the species was threatened or endangered, and to complete the review and publish the finding by November 15, 1994. On February 2, 1994, the Service published a notice (59 FR 4887) announcing continuation of the status review that was initiated in 1982.

On April 27, 1994, the Service received a petition to list the coterminous United States population of ''North American'' lynx as threatened or endangered. Additionally, the petitioners requested that the southern Rocky Mountain population of the ''North American'' lynx in Wyoming and Colorado be emergency listed. A notice was published on August 26, 1994 (59 FR 44123), indicating that the petition presented substantial information that listing may be warranted, but that there was not substantial information to indicate that emergency listing may be warranted for the Southern Rocky Mountain population.

On December 27, 1994, the Service published a notice (59 FR 66507) of its 12-month finding as to the status of the Canada lynx in the 48 contiguous States, as directed by the settlement agreement and the petition, that listing was not warranted because of the lack of residency of lynx populations in the lower 48 States and the Service's inability to substantiate that threats such as ''trapping, hunting, poaching, and present habitat destruction'' actually ''threaten the continued existence of the lynx in the wild.'' On January 30, 1996, the Defenders of Wildlife and 14 other plaintiffs challenged the Service's finding by filing a lawsuit.

On March 27, 1997, the U.S. District Court (District of Columbia) issued an order setting aside the not warranted finding and remanded it to the Service for further consideration. The Service was ordered to publish a 12-month finding on the status of the lynx within 60 days. On May 27, 1997, the Service published a 12-month petition finding (62 FR 28653) that the Canada lynx population in the contiguous United States was warranted for listing under

the Act but precluded by higher priority listing actions. This warranted but precluded finding automatically elevated the Canada lynx to candidate species status. Candidate species are defined as those species for which the Service has sufficient information on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions.

On September 15, 1997, Defenders of Wildlife, *et al.* filed suit against the Service in the U.S. District Court, District of Columbia, arguing that the Service violated the Act in finding that listing the Canada lynx population in the contiguous United States was warranted but precluded. On December 22, 1997, the court denied the plaintiffs' motion to enforce judgement against the Service's May 1997 warranted but precluded finding for the Canada lynx population in the contiguous United States. At the same time, the court set an expedited schedule and hearing date (March 18, 1998) for the lawsuit filed in September 1997.

On February 12, 1998, the U.S. District Court approved a settlement agreement between the Service and the Plaintiffs that called for the Service to publish a proposed rule to list the Canada lynx in the contiguous United States by June 30, 1998. This proposed rule for the contiguous United States population of the Canada lynx fulfills the requirement of the settlement agreement and serves as the final 12-month warranted finding on the petitions to list the lynx.

Processing of this proposed rule conforms with the Service's Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action. At this time, this region has no pending Tier 1 actions and is progressing with work on Tier 2 actions. This proposed rule also conforms to earlier Service guidance on assignment of priorities to species under consideration for listing as endangered or threatened published in the **Federal Register** on September 21, 1983 (48 FR 43098). This guidance sets up a priority system from 1–12 based on immediacy and magnitude of threat and on species' taxonomy. In the Service's May 1997 finding the lynx was elevated to candidate status and given a listing priority of 3.

In accordance with the policy promulgated July 1, 1994 (59 FR 34270), the Service will solicit the opinions of independent Canada lynx experts and/or conservation biologists regarding the proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Peer reviewers will be identified through requests to research institutions, universities, and museums for individuals with recognized expertise with the subject matter. The reviewers will be asked to comment during the public comment period upon the specific assumptions and conclusions regarding the proposed listing and special rule. These comments will be considered in the preparation of the final rule as appropriate. In a status review of the lynx in 1994, prior to the publication of the Service's formal peer review policy, the Service solicited the comments of 31 independent experts and/or conservation biologists regarding the effects of cyclic Canada lynx movements from Canada to the contiguous United States. Of the 16 responses received, 9 respondents believed Canada lynx should be considered resident in portions of the contiguous United States, 1 did not (regarding the Great Lakes region only), and 6 did not specifically respond to the questions.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Canada lynx (*Lynx canadensis*) are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Since the mid-to-late 1800's, several habitat-related factors influenced, and continue to contribute to, declines in local or regional Canada lynx populations. The most influential factor affecting lynx habitat is human alteration of the distribution and abundance, species composition, successional stages, and connectivity of forests, and the resulting changes in the forests' capacity to sustain lynx populations. Additionally, forest fragmentation isolates habitat into relatively small patches, thereby reducing the viability of wildlife that are dependent on larger areas of forest habitat (Litvaitis and Harrison 1989).

In all regions of the lynx range in the contiguous United States, timber harvest and its related activities are a predominant land use affecting lynx habitat. Forestry practices can be beneficial or detrimental for lynx depending on the method and timing by which they are conducted. Timber harvest can be used to achieve the early successional stages of forest preferred by snowshoe hares, although it takes time (15 years or more depending on the type of forest) for harvested areas to reach this stage (Monthey 1986, Quinn and Parker 1987, Koehler 1990, Koehler and Brittell 1990, Washington Department of Wildlife 1993). For example, in the West, thinning (either single tree or group selection), if implemented in a well-planned harvest prescription, can hasten the development of late-successional forests containing structures such as downed woody debris for thermal and security cover and for denning; early thinning to maximize tree-growth potential can be compatible with snowshoe hare and lynx habitat needs provided that stands are thinned before snowshoe hares recolonize the area (Koehler and Aubry 1994).

Intensive tree harvesting (e.g., large-scale clearcutting) can eliminate the mosaic of habitats necessary for Canada lynx survival, including late successional denning and early successional prey habitat. Specifically, these activities can result in reduced cover, unusable forest openings, and monotypic stands with a sparse understory that are unfavorable for Canada lynx and/or their prey (Brittell *et al.* 1989; de Vos and Matel 1952; Harger 1965; Hatler 1988; Koehler 1990; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994). Canada lynx avoid openings such as clearcuts, unforested areas, and grasslands (Koehler *et al.* 1979; Koehler and Brittell 1990, Murray *et al.* 1994) and snowshoe hares are also unlikely to use such areas because of the lack of cover (Koehler *et al.* 1979; H. Golden, Alaska Department

of Fish and Game, pers. comm. 1994; Koehler and Aubry 1994).

Great Lakes and Northeast Region

Softwoods that provided Canada lynx habitat were logged extensively during the late 1800's and early 1900's (Jackson 1961; Barbour *et al.* 1980; Belcher 1980; Irland 1982). Over a relatively short period, timber extraction during this era resulted in the replacement of late-successional conifer forest with extensive tracts of very early successional habitat and eliminated cover for lynx and hare (Jackson 1961, Keener 1971). Coniferous forests also were cleared for agriculture during this period. In the Northeast Region, slash, accumulated during logging operations, fueled wildfires that burned vast acreages of softwood forest (Belcher 1980; J. Lanier, pers. comm. 1994). This sudden alteration of habitat likely resulted in sharp declines in snowshoe hare numbers over large areas, subsequently reducing Canada lynx numbers (Jackson 1961; Keener 1971; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994).

During these early periods of timber extraction in the Northeast and Great Lakes Regions, probable declines in Canada lynx numbers were concurrent with substantial increases in human populations and unregulated trapping in or near lynx habitat (K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994). By the turn of the century in the Northeast Region, historical records indicate that lynx populations were declining or were nearly extirpated (Silver 1974; Vermont Department of Fish and Game 1987; K. Gustafson, *in litt.* 1994; G. Parsons, *in litt.* 1994).

The impacts of the logging conducted in the Northeast Region during the late 1800's continue to affect Canada lynx habitat. In Maine, softwood cover and dense sapling growth provided improved snowshoe hare habitat after timber harvest and fires in late successional forests (Monthey 1986). However, in the western sections of the Northeast Region, extensive tracts of predominantly softwood forests that were harvested and burned-over during the late 1800's and early 1900's were subsequently replaced with regenerating hardwoods (D. Degraff, pers. comm. 1994; J. Lanier, pers. comm. 1994). For a period of time, this extensive area would have been in the early successional habitat used by snowshoe hare. However, such extensive tracts did not provide the mosaic of forest habitats required by lynx and, as succession progressed, these tracts became unsuitable for both lynx and hare. Hardwood forests do not typically supply adequate cover for snowshoe hares (Monthey 1986). Additional declines in hare populations may have occurred during the 1940's and 1950's as a result of large-scale forest maturation (Litvaitis *et al.* 1991).

In Maine, large tracts of forest (some as large as 36-square mile townships) were harvested in the 1960's to reduce the incidence of spruce budworm. Harvesting of these large tracts create a simplified, monotypic forest over large areas, not a mosaic of forest stands. Passage of the State Forestry Practices Act has required clearcut size to be substantially reduced.

At higher elevations and northern latitudes in the Northeast, red spruce and balsam fir are important components of snowshoe hare habitat. Declines in red spruce forests have been documented, and drought, acid deposition, and other human-generated pollutants have been suggested as principal causes (Scott *et al.* 1984).

Lynx populations have not increased in the Northeast Region despite some apparent improvements in habitat. Forested habitat in the Northeast has increased because of land-use changes during the past century (Irland 1982; Litvaitis 1993). In some areas there may be a gradual upward trend in the coniferous component as spruce and fir regenerate beneath hardwood species (D. Degraff, pers. comm. 1994). Several of the Northeast States support adequate, if not abundant, snowshoe hare populations (C. Grove, Green Mountain National Forest, pers. comm. 1994; F. Hurley, *in litt.* 1994; J. Lanier, pers. comm. 1994).

Isolation of suitable habitat and lack of immigration apparently remain important factors in the continued absence of lynx populations in the Northeast Region (Litvaitis *et al.* 1991; W. Krohn, University of Maine, *in litt.* 1994; R. Lafond, Quebec Department of Recreation, Fish, and Game, pers. comm. 1994). Historically, resident Canada lynx populations in the Northeast were periodically supplemented with transient or dispersing individuals from the north (Litvaitis *et al.* 1991; J. Lanier, pers. comm. 1994). However, over the past several decades, Canada lynx numbers also declined in the southern portions of its range in Canada in response to overexploitation and clearing of forested habitat for agriculture, timber, and human settlement (Mills 1990; McAlpine and Heward 1993; Quebec Department of Recreation, Fish, and Game, *in litt.* 1993). The fragmented landscape across southern Quebec probably presents a substantial barrier to lynx attempting to disperse southward across the St. Lawrence River (W. Krohn, *in litt.* 1994; R. Lafond, pers. comm. 1994; J. Lanier, pers. comm. 1994; J. Litvaitis, University of New Hampshire, pers. comm. 1994). However, lynx from a resident population in a Quebec reserve south of the St. Lawrence should encounter little difficulty crossing into Maine (C. McLaughlin, Maine Department of Inland Fisheries and Wildlife, *in litt.* 1998). Similarly, movement of lynx into Maine from occupied habitat in New Brunswick should be possible.

Today, diminished numbers of Canada lynx in southern Canada and the paucity of functional dispersal routes from Canadian lynx populations have substantially restricted the opportunity for Canada lynx to recolonize suitable habitat in New York, Vermont, and New Hampshire (Litvaitis et al. 1991; W. Krohn, *in litt.* 1994; R. La Fond, pers. comm. 1994; J. Lanier, pers. comm. 1994).

In 1990, the U.S. Forest Service published a report that examined the northern forest lands in New York, Vermont, New Hampshire, and Maine (Harper *et al.* 1990). The 26-million acre study area encompassed most of the historic range of lynx in the region. Eighty-four percent of northern forest lands in the region are currently privately owned and 16 percent are in public ownership, of which only 300,000 acres are federally owned. Commercial forestry continues to be the dominant land use on 60 percent of the private lands in the northern forests. The rapid pace of subdivision for recreation home sites has been identified as a serious concern to maintaining the integrity of Northeast forests (Harper *et al.* 1990).

Habitat fragmentation from forestry management programs, agricultural conversions, and roadway construction may be limiting lynx in the Great Lakes States. However, insufficient information currently exists to assess the impact of these threats to lynx. Lynx habitat quality appeared to be increasing in Michigan's upper peninsula as of 1965 (Harger 1965); however, as of 1998, lynx numbers have not increased in response to predicted improved habitat (Kurta 1995).

Rocky Mountain/Cascades Region

The majority of Canada lynx habitat in the West occurs on public lands. Research linking forest management on Federal lands in the West to Canada lynx habitat requirements is minimal.

In the interior Columbia River basin of eastern Washington and Oregon, Idaho, and western Montana, timber harvest patterns, along with the

exclusion of fire have converted much of the late successional stage forest to younger, mid-successional stage forests (U.S. Forest Service and Bureau of Land Management 1996). There has been an increase in fragmentation of forest lands and loss of connectivity within and between blocks of habitat, which has isolated some wildlife habitats and reduced the ability of some wildlife populations to move across the landscape (U.S. Forest Service and Bureau of Land Management 1997).

In the Seeley-Swan Valley in northwestern Montana, the forest landscape has become increasingly fragmented since 1930, consisting of smaller, more numerous patches with more edge and less interior habitat (Hart 1994). Fragmentation was caused by an extensive network of highway and forest roads, timber harvest, and residential construction. Timber harvest replaced fire as the dominant disturbance process (Hart 1994). Mature/overmature forests have declined in total area, while seedling and sapling seral stages have become more extensive (Hart 1994). The amount of predicted lynx habitat in the Seeley-Swan Valley has declined 36 percent since 1930 and became more fragmented over time (Hart 1994).

Recolonization of suitable lynx habitat within the State of Washington eventually may be precluded by the fragmentation of habitat and potential isolation from the lynx population in Canada (Washington Department of Wildlife 1993).

Fire has played an important role in forest ecology in western mountain ranges of the United States. Forest fires naturally maintained mosaics of early successional forest stands, unburnt bogs and swamps, and late-successional conifer forest forming ideal snowshoe hare and Canada lynx habitat (Todd 1985; Fischer and Bradley 1987; Quinn and Parker 1987). During the early twentieth century, Federal and State agencies in the contiguous United States enacted a policy of suppressing forest fires. The lack of adequate hare habitat in southern latitudes may be partially a result of fire suppression during the past 50 years (Koehler 1990). Suppression of forest fires in the West has allowed forests to mature, thereby reducing habitat suitability for snowshoe hares and Canada lynx (Brittell *et al.* 1989; Fox 1978; Koehler 1990; Washington Department of Wildlife 1993; T. Bailey, U.S. Fish and Wildlife Service, *in litt.* 1994; H. Golden, pers. comm. 1994). Fire suppression is most likely affecting lynx habitat in areas where historical frequency of fires is shorter than the length of time fires have been suppressed in the Region (P. Stickney, U.S. Forest Service, pers. comm. 1994).

In all regions of the contiguous United States lynx range, clearing of forests for urbanization, recreational developments such as ski areas, and agriculture has fragmented, degraded, or reduced the available suitable lynx habitat, reduced the prey base, and increased human disturbance and the likelihood of accidental trapping, shooting, or highway mortality (de Vos and Matel 1952; Harger 1965; Belcher 1980; Thiel 1987; Todd 1985; Thompson 1987; Harper *et al.* 1990; Brocke *et al.* 1991; Thompson and Halfpenny 1991; Colorado Division of Wildlife *et al.* 1997) (see factor E).

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

The Service believes that the effects of an overharvest of Canada lynx during the 1970's and 1980's persist today and continue to reduce the potential for recovery of lynx populations in the contiguous United States by precluding repopulation of areas of suitable habitat. Where exploitation is intense and recruitment is low, trapping can significantly depress lynx populations (Koehler and Aubry 1994). Fewer Canada lynx of breeding age reduce the ability and degree to which lynx populations recover after population lows (de Vos and Matel 1952; Brand and Keith 1979; Todd 1985; Ward and Krebs 1985; Bailey *et al.* 1986; Hatler 1988; Brittell *et al.* 1989). Elton and Nicholson (1942) recognized that overharvest had the potential to diminish lynx populations to levels where the natural cycles of lynx populations could not occur.

Lynx behavior makes them susceptible to trapping. Canada lynx are easy to catch in traps (Bailey *et al.* 1986; Hatler 1988; Mills 1990). The potential number of traps a lynx encounters is increased when it moves long distances to search for prey. Canada lynx are more vulnerable to concentrated trapping efforts because lynx focus their hunting in areas where snowshoe hare densities are high (Ward and Krebs 1985). On the Kenai Peninsula, Alaska, juvenile lynx were five times more vulnerable to trapping than adults; several juvenile siblings can easily be trapped from a small area (Bailey *et al.* 1986). Trapping females that are accompanied by kittens often results in the death of those kittens because they are unable to feed and protect themselves (Bailey *et al.* 1986; Carbyn and Patriquin 1983; Parker *et al.* 1983). It is possible for a trapper to remove a large proportion of a local lynx population by trapping where lynx are concentrated (Carbyn and Patriquin 1983; Ward and Krebs 1985; Bailey *et al.* 1986; J. Weaver, pers. comm. 1994).

Human-induced mortality is the most important mortality factor for Canada lynx populations (Ward and Krebs 1985). Trapping mortality has been shown to be entirely additive (i.e., in addition to natural mortality) rather than compensatory (taking the place of natural mortality) (Brand and Keith 1979). In Minnesota, trapping was estimated to account for 81 percent of known lynx mortality during cyclic lows and 58 percent of mortality during cyclic highs (Henderson 1978). In numerous studies, trapping or shooting was documented as the cause of a substantial majority of Canada lynx mortalities (Mech 1980; Carbyn and Patriquin 1983; Ward and Krebs 1985; Bailey *et al.* 1986).

Unregulated trapping and hunting of Canada lynx continued for decades in the contiguous United States. Lynx were bountied in several States until relatively recently. Canada lynx were likely overexploited during periods of unregulated harvest in the Northeast and Great Lakes regions (K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994). In the Rocky Mountains/Cascades Region, lynx population declines prior to 1940 were attributed to high trapping pressure (Nellis 1971).

Historically, lynx trapping provided a significant economic return in the fur trading industry. During periods of high pelt prices, the potential for obtaining even a single lynx pelt made trapping efforts worthwhile (Quinn and Parker 1987, Hatler 1988). This economic incentive increases the threat of over exploitation of Canada lynx populations.

The present low numbers of lynx in the contiguous United States and southern Canada are the residual effects of substantial overtrapping that occurred in the 1970's and 1980's, in response to unprecedented high pelt prices (Bailey *et al.* 1986; B. Berg, pers. comm. 1994; D. Mech, pers. comm. 1994; M. Novak, Ontario Ministry Natural Resources, pers. comm. 1994; A. Todd, Alberta Department of Forestry, Lands, and Wildlife, pers. comm. 1994). As a result of fur demands by the fashion industry, pelt prices began increasing around 1975 (Hatler 1988, Hash 1990). In Montana, the 1974 average pelt price was $63, but by 1978 the average price increased over 500 percent to $348 (B. Giddings, *in litt.* 1994). Lynx pelt prices peaked in the mid-1980's at nearly $500 and remained above $200 per pelt for 12 years until 1989. Pelt prices were comparable throughout the United States and

Canada (Todd 1985; Hatler 1988; I. McKay, Manitoba Natural Resources, *in litt.* 1994; Quebec Department of Recreation, Fish, and Game, *in litt.* 1994).

The number of Montana bobcat and lynx trapping licenses is an example of a general index of trapper effort and also of the amount of trapping pressure on lynx populations. Records indicate that the price of pelts influenced the trapping effort. The average number of licensed lynx and bobcat trappers from 1972–73 through 1974–75 was 1,600 (B. Giddings, *in litt.* 1994). After the record high pelt prices in 1978–79, a total of nearly 5,000 trappers were licensed for the next season. Although information on licenses was not available after 1982, trapper effort likely remained high as long as pelt prices were high and lynx were being trapped. Records for other regions during this period demonstrate the same trend (Brand and Keith 1979; Todd 1985; Bailey *et al.* 1986; Hatler 1988; Washington Department of Wildlife 1993; M. DonCarlos, *in litt.* 1994; I. McKay, *in litt.* 1994; Quebec Department of Recreation, Fish, and Game, *in litt.* 1994).

This period of intense trapping pressure also occurred during a period of naturally declining Canada lynx numbers in Canada. Periods of population decline are critical times when trapping has a greater additive impact on a population's ability to recover from periodic lows (Brand and Keith 1979; Bailey *et al.* 1986). Alberta's lynx fur harvest during the 1975–76 cyclic low was still nearly 2 to 3 times higher than that during the preceding two cyclic lows (Todd 1985). In Quebec from 1976 to 1979, lynx harvest reached record highs for a period during a cyclic low in hare and lynx populations (Quebec Department of Recreation, Fish, and Game, *in litt.* 1993). These harvest levels are linked to the highest pelt prices ever recorded there and to a continuous and sustained increase in the number of trappers during the preceding decade.

The additive trapping mortality of Canada lynx during the 1970's and 1980's depleted the breeding stock of lynx populations in the United States and southern Canada, which limited the ability for lynx populations to subsequently recover and repopulate areas of suitable habitat. Lynx populations may have become so severely depleted that they cannot reach their former densities during the periods of abundant prey and maximum reproductive success (Quinn and Parker 1987; Hatler 1988). The lynx population of the 1980's and 1990's has reflected the over exploitation of the previous decade in the lack of cyclic lynx highs in parts of the contiguous United States and the lack of typical cyclic influxes of lynx from Canada, although data have indicated normal hare populations (M. DonCarlos, *in litt.* 1994; M. DonCarlos, pers. comm. 1994).

In response to substantially declining harvests during the 1970's and 1980's (indicating that lynx populations were being over exploited), Washington, Montana, Minnesota, Alberta, British Columbia, Manitoba, Ontario, Quebec, and Alaska severely restricted or closed their lynx harvest seasons (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993; S. Conn, *in litt.* 1990; M. DonCarlos, *in litt.* 1994; B. Giddings, *in litt.* 1994; R. McFetridge, Alberta Environmental Protection, *in litt.* 1994; I. McKay, *in litt.* 1994; M. Novak, pers. comm. 1994). Because of continued concern for lynx populations, none of the States have relaxed their restrictions, and many Canadian provinces still maintain careful control of lynx harvest (Alberta Environmental Protection 1993; Washington Department of Wildlife 1993; M. DonCarlos, *in litt.* 1994; B. Giddings, *in litt.* 1994; R. McFetridge, *in litt.* 1994; I. McKay pers. comm. 1997).

As of 1993, the lynx population in portions of Quebec apparently has not yet fully recovered despite adequate, increasing hare populations (Quebec Department of Recreation, Fish, and Game, *in litt.* 1993). Because of concern over a potentially declining lynx population, the British Columbia government closed the season on Canada lynx for a 3-year period in the mid-1990's (A. Fontana, British Columbia Department of Wildlife, pers. comm. 1994). Manitoba closed its lynx season Province-wide from 1995–1997 because of low lynx numbers (I. McKay, pers. comm. 1997).

States where lynx currently or historically occur declare harvest of lynx illegal, with the exception of Montana, where legal harvest is set by a limited statewide quota of two. In all States where the lynx was considered to be a resident species, lynx are included on the State's lists of endangered, threatened, protected, or regulated game species.

C. Disease or Predation

Disease and predation are not known to be factors threatening Canada lynx. However, in areas with human population centers, or high human densities in more rural areas, diseases of domestic animals may pose potential threats to lynx (R. Brocke, State University of New York, pers. comm. 1994).

D. Inadequacy of Existing Regulatory Mechanisms

There are no regulatory mechanisms that address the management or conservation of functional Canada lynx habitat, although most states provide the Canada lynx with protection from hunting and trapping.

Lynx are classified as endangered by 4 of the 16 States in the contiguous United States where the Canada lynx was considered to be a resident species, Vermont (1972), New Hampshire (1980), Michigan (1987), and Colorado (1976). Lynx are classified as threatened by Washington (1993). Utah has classified the lynx as a sensitive species. The lynx is classified as a species of special concern in Maine (1997) and in Wisconsin it is protected (1997). Two States officially classify them as extirpated: Pennsylvania (J. Belfonti, *in litt.* 1994) and Massachusetts (J. Cardoza, *in litt.* 1994). Five States classify lynx as small game or furbearers with closed seasons: Idaho (1997), New York (1967), Minnesota (1984), Wyoming (1973), and Oregon (1997).

A Canada lynx trapping season still occurs in Montana, but the legal, State wide quota is restricted to two animals. In response to declining harvests, Montana has substantially reduced the lynx quota since 1977 (when the lynx was added to the Convention on International Trade in Endangered Species (CITES) and Montana classified the species as a furbearer). Since 1991, the quota has been two for the entire State, which has been met or slightly exceeded annually (B. Giddings, pers. comm. 1998).

Estimates of illegal harvest of Canada lynx are unavailable for most areas. Illegal harvest has been a serious concern in localized areas in the past (Washington Department of Wildlife 1993).

On February 4, 1977, the Canada lynx was included in Appendix II of CITES. The CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. The CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

Regulatory mechanisms to protect Canada lynx habitat are limited. Although the U.S. Forest Service

classifies lynx as a sensitive species within the contiguous United States, few national forests have developed population viability objectives or management guidelines required by the National Forest Management Act for Canada lynx because of limited information about the species' requirements. All national forests are obligated to protect biological diversity on Federal lands.

In the northeast region, the Green Mountain National Forest Plan states that the national forest will develop management plans if and when an established Canada lynx population is detected (U.S. Forest Service 1986a). There are no specific regulations or guidelines pertaining to lynx habitat. The White Mountain National Forest Plan includes Canada lynx as an indicator species and limits recreational trail density in Canada lynx habitat. The forest plan calls for consideration of the needs of the species in planning alternatives, the monitoring of lynx populations, and for initiating or coordinating studies and/or recovery efforts (U.S. Forest Service 1986b).

In the Great Lakes region, some national forests apply standards for gray wolf (*Canis lupus*) to guide Canada lynx habitat management (M. Shedd, Superior National Forest, pers. comm. 1994). It is unknown whether wolf standards are appropriate for lynx.

Washington Department of Wildlife (1993) determined that habitat needs of Canada lynx had not been considered adequately while planning for timber harvest on national forest and State lands in some areas of the State.

Several lynx conservation plans exist or are under development. Such plans include the lynx habitat management guidelines for Washington (Washington Department of Fish and Wildlife 1993; R. Naney, Okanogan National Forest, *in litt.* 1994), the Idaho State conservation effort (Roloff 1995), Washington Department of Natural Resources conservation strategy (Washington Department of Natural Resources 1996a), Boise-Cascade Timber Corporation lynx habitat management plan in Washington (Whitwill and Roloff 1996), Kootenai National Forest in Montana (Kootenai National Forest 1997), and the Southern Rocky Mountains, Draft strategy for the conservation and reestablishment of lynx and wolverine in the southern Rocky Mountains (Colorado Division of Wildlife *et al.* 1997). At this time, there has been no comprehensive review of these plans to determine whether the guidelines in these plans have the ability to maintain or increase lynx populations. The degree to which these plans are or will be implemented and monitored varies.

Land use on private lands can have a great impact on Canada lynx habitat. The majority of Canada lynx habitat in the Northeast region occurs on private land, ranging from small residential lots to large industrial ownerships (Harper *et al.* 1990). All States in the region have various laws and regulations regarding environmental issues (Harper *et al.* 1990). Indirectly these regulations may promote the conservation of habitat; however, none are directed specifically to Canada lynx habitat conservation. In the Northeast region, the Northern Forest Lands Council has a charter to maintain traditional patterns of landownership and use; part of this effort includes a forest inventory (Northern Forest Lands Council, *in litt.* 1994). How this effort may affect the conservation of Canada lynx habitat is unknown.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Loss of suitable habitat for Canada lynx reduces the potential for population growth or recolonization of the lynx and further confines lynx to smaller, more isolated habitat units (Weaver 1993). Isolation increases the susceptibility of the lynx to human-caused threats, natural stochastic events, and effects of genetic bottlenecks (Andrews 1992; Weaver 1993). In the Rocky Mountain/Cascades Region much of lynx habitat is naturally disjunct and habitat connectivity is required across large geographic areas to facilitate dispersal and genetic exchange (Roloff 1995). The increased fragmentation of forest lands and loss of connectivity within and among blocks of habitat in the interior Columbia River basin of Washington, Oregon, Idaho, and Montana has reduced the ability of some wildlife populations to move across the landscape, resulting in long-term loss of genetic interchange (U.S. Forest Service and Bureau of Land Management 1997).

Elevated levels of human access into forests are a significant threat to Canada lynx because they increase the likelihood of lynx encountering people, which may result in displacement of lynx from their habitats and/or possible injuries or deaths by intentional or unintentional shooting, trapping, and vehicle accidents (Hatler 1988; Thiel 1987; Brittell *et al.* 1989; Koehler and Brittell 1990; Brocke *et al.* 1991; Andrew 1992; Washington Department of Wildlife 1993; Brocke *et al.* 1993; M. Hunter, University of Maine, pers. comm. 1994). Human access into Canada lynx habitat in many areas has increased over the last several decades because of increasing human populations and increased construction of roads and trails and the growing popularity of snowmobiles and offroad vehicles. In the interior Columbia River basin of Washington, Oregon, Idaho, and Montana, increased human access has decreased the availability of areas with low human activities, which are important to large forest carnivores, including lynx (U.S. Forest Service and Bureau of Land Management 1997).

Lynx will use some types of roads for hunting and travel (Koehler and Aubry 1994). Koehler and Aubry (1994) concluded road construction and maintenance are important components of lynx habitat management because they both destroy and create prey habitat, but also make lynx more vulnerable to human-caused mortalities. In the interior Columbia River basin of Washington, Oregon, Idaho, and Montana, high road densities were found primarily in intensively managed forest lands of both public and private ownership (U.S. Forest Service and Bureau of Land Management 1997).

Wide-ranging species are impacted by the increased road densities that often accompany human-caused forest fragmentation (Litvaitis 1993). The Loomis State Forest in Washington plans to construct a total of 615 mi of roads from 1996 to 2005 (Washington Department of Natural Resources 1996b). According to the plan, the density of roads in primary lynx habitat will be 1.91 to 3.04 road mi per square mile (sq mi) (Washington Department of Natural Resources 1996b). Even roads that are considered ''closed'' will continue to be accessible to snowmobiles, thereby allowing access to higher elevation lynx habitat by humans and lynx competitors.

In the Pioneer Mountains of Montana, a currently narrow, unpaved road is being paved and widened to further encourage already high recreational use of the forest (Harding Lawson Associates Infrastructure, Inc. 1996). The project area is occupied, high-quality lynx habitat, although lynx use of the area is currently restricted because of intense recreational use of the area (Harding Lawson Associates Infrastructure, Inc. 1996). Completion of this road project will impact lynx by causing further deterioration of lynx habitat, because increased human activity will sever lynx travel corridors and mortalities from vehicle collisions will increase (Harding Lawson Associates Infrastructure, Inc. 1996).

Blocks of suitable habitat, both public and private, are often dissected by extensive networks of paved roads. Traffic on highways has been shown to

pose a considerable mortality risk to Canada lynx (Brocke *et al.* 1991; B. Ruediger, U.S. Forest Service, pers. comm. 1997). Highway densities are a contributing factor in the decline of carnivores, including the lynx, in the contiguous United States (Ruediger 1996). Dispersing or transient lynx are more vulnerable to traffic deaths than resident lynx because their movements over large areas increase their exposure to roads. In the Great Lakes States, recent records of lynx are from mortalities due to vehicle collisions, which could limit the potential for reestablishment of populations in Wisconsin or Michigan.

Increasing human access into Canada lynx habitat has increased the vulnerability of Canada lynx to both legal and illegal harvest in areas that, historically, were relatively isolated from humans (Todd 1985; McKay 1991; Washington Department of Wildlife 1993; M. Hunter, pers. comm. 1994). In the Uinta Mountains of Utah, most of the documented Canada lynx specimens were shot during deer hunting season in an area easily accessed by hunters (McKay 1991). In Washington, there is concern that human access may reduce the number of Canada lynx emigrating from British Columbia, further increasing the vulnerability of the remaining small population (Washington Department of Wildlife 1993). The high degree of access into Alberta's forests created by petroleum development and logging was suggested as an explanation for why Alberta produced a large proportion of the total Canadian lynx harvest in the 1970's and 1980's (Todd 1985).

Human access is a particularly important factor during periods when Canada lynx populations are low and concentrated in localized refugia. Brand and Keith (1979) indicated that refugia may have supported only adult lynx during population lows. Refugia were therefore critical for repopulating available range elsewhere when the population increased (Todd 1985). If such refugia were accessible to humans, local lynx populations could be easily extirpated by trapping, particularly if there are incentives such as high pelt prices (Carbyn and Patriquin 1983; Ward and Krebs 1985; Bailey *et al.* 1986; J. Weaver, pers. comm. 1994; Koehler and Aubry 1994).

The Canada lynx may be displaced or eliminated when competitors (e.g., bobcat, coyote) expand into its range (de Vos and Matel 1952; Parker *et al.* 1983; Quinn and Parker 1987; M. DonCarlos, pers. comm. 1994; D. Major, U.S. Fish and Wildlife Service, pers. comm. 1994; J. Weaver, pers. comm. 1994). The Canada lynx is at a competitive disadvantage against these other species because it is a specialized predator, whereas bobcat and coyotes are generalists that are able to feed on a wide variety of prey. Historically, bobcat and coyotes have not been able to compete with lynx in areas that receive deep snow cover, where lynx are much more highly adapted. Where Canada lynx and bobcat or coyote ranges overlapped, their niches were segregated by winter range conditions (McCord and Cardoza 1982; Parker *et al.* 1983; Quinn and Parker 1987). In Yukon, Canada, coyotes selected snow that was shallower and harder than that used by lynx (Murray *et al.* 1994).

Some biologists believe competition has played a significant role in the decline of Canada lynx (Brocke 1982; Parker *et al.* 1983; E. Bangs, U.S. Fish and Wildlife Service, pers. comm. 1994). Murray *et al.* (1994) speculate that, in Yukon, use of open spruce forests by lynx may have been to avoid areas where coyotes were present. In Utah, where more habitat is suitable for bobcat, it has been suggested that bobcat competition with Canada lynx resulted in the possible extirpation of Canada lynx from Utah (B. Blackwell, pers. comm. 1994). Research has detected direct competition in certain areas, as on Cape Breton Island where, without changes in forest habitat, bobcats displaced Canada lynx from all areas except high elevations, where snow accumulation limited the bobcat's range (Parker *et al.* 1983).

Competition between Canada lynx and other species may be facilitated through alteration of forests by timber harvest or other human activities. Modified habitat may be more suitable to Canada lynx competitors or may facilitate the establishment of a competitor after local extirpation of the lynx (McCord and Cardoza 1982; Quinn and Parker 1987). In the Northeast United States, extensive clearing of forests for timber and agriculture improved conditions for white-tailed deer (*Odocoileus virginianus*) populations, which subsequently may have influenced a northward expansion of bobcats into the region (K. Gustafson, pers. comm. 1994). Additionally, mild weather in some regions for the past decade has improved conditions and habitat for bobcat and coyotes, particularly by minimizing snow depth (Quinn and Parker 1987; J. Weaver, pers. comm. 1994). Coyotes have been colonizing Maine and New Hampshire since the 1970's (Litvaitis and Harrison 1989).

Competition during late winter, a time when lynx are already nutritionally stressed, may be especially detrimental to lynx (Koehler and Aubry 1994). Snowmobile trails and roads that are maintained for winter recreation and forest management activities enable coyotes and bobcats to access lynx winter habitat (Koehler and Aubry 1994).

Snowmobile use in the Great Lakes and Rocky Mountain/Cascades regions has resulted in an increase in both human presence and the prevalence of packed snow corridors in lynx habitat. The increased snowmobile use and the increased area in which snowmobiles are used likely diminishes habitat quality for lynx, and also decreases the lynx's competitive advantage in deep snow. This results in an increased threat posed by competitors, as a result of the increase in hard-packed snow trails.

Legal trapping activities for bobcat, coyotes, and other furbearers create a potential for incidental capture of lynx. The threat to resident lynx from legal trapping for other species may be limited because most bobcat or coyote trapping occurs in areas unlikely to support lynx (M. DonCarlos, pers. comm. 1994; K. Elowe, Maine Department of Inland Fisheries and Wildlife, pers. comm. 1994; J. Lanier, pers. comm. 1994; D. Mech, pers. comm. 1994; Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997).

Where Canada lynx populations have been substantially reduced or extirpated in the contiguous United States, natural recolonization of suitable habitat likely will require lynx migration from other areas in the contiguous United States or Canada. However, because of the unsuitable habitat isolating Colorado and southeastern Wyoming from the remainder of the Rocky Mountains/Cascades, recolonization through immigration is extremely unlikely.

Winter navigation and associated ice breaking on the St. Mary's River between Ontario and Upper Michigan could be a potential threat to reestablishment or maintenance of a lynx population in that area. Presently, the St. Mary's River shipping channel is not kept open between January 15 and March 25. Ice breaking before or after that period could reduce the amount of time available for lynx to immigrate across the St. Mary's shipping channel from Ontario to Michigan (Robinson and Fuller 1980).

Distinct Population Segment

For a species to be listable under the Act, it must meet the definition of a ''species'' as provided in the Act. The Act defines ''species'' as a species, subspecies, or distinct population segment of a vertebrate species. On

February 7, 1996 (61 FR 4722), the Service and National Marine Fisheries Service published final policy guidance concerning recognition of Distinct Vertebrate Population Segments for consideration under the Act. It is necessary for the Service to use this Vertebrate Population Policy when it is considering listing a vertebrate species or species as endangered or threatened in only a portion of its range. In developing this proposed rule the Service evaluated whether Canada lynx in the contiguous United States constitutes a distinct population segment under the population policy.

While application of the vertebrate population policy may result in the identification of a greater number of potentially listable entities, the policy was developed specifically to allow for more refined application of the Act that better reflects the biological needs of the taxon being considered and avoids the inclusion of entities that may not require the considerable protections of the Act. This approach better serves Congress's intent that listing of distinct population segments be conducted ''sparingly.''

Under the vertebrate population policy, two elements, discreteness and significance, must be considered to determine whether a species' population meets the definition of a distinct population segment. If a population is discrete and significant, its status is evaluated using the five listing factors described in section 4(a)(1) of the Act to determine if it meets the definition of either threatened or endangered.

A species' population segment can be considered discrete from the remainder of the taxon if it satisfies either one of the following conditions: (1) ''it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors,'' or (2) ''it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.'' Given that the Service has determined that resident, viable numbers of Canada lynx exist in the contiguous United States (see Background section), the Service concludes that the contiguous United States population of the Canada lynx is discrete based on the international boundary between Canada and the contiguous United States because of differences in status and management of Canada lynx between the United States and Canada.

In Canada, management of forest lands and conservation of wildlife habitat varies depending on Provincial regulations. In Alberta, there is no law regulating forest practices and the status of Canada lynx in Alberta is of concern because of habitat-related threats as a result of logging (B. Triechel, Alberta Environmental Protection, pers. comm. 1997). There is no overarching forest practices legislation in Canada, such as the United States' National Forest Management Act, governing management of national lands and/or providing for consideration of wildlife habitat requirements. Additionally, in Canada, lynx harvest regulations vary, being regulated by individual Province or, in some cases, individual trapping district.

According to the Vertebrate Population policy, a population segment can be considered significant based on information such as the following: (1) ''Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon''; (2) ''Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon''; (3) ''Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range;'' and (4) ''Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.''

In a general sense, Canada lynx in the contiguous United States might be considered biologically and/or ecologically significant simply because they represent the southern extent of the species' overall range. There are climatic and vegetational differences between Canada lynx habitat in the contiguous United States and that in northern latitudes in Canada and Alaska (Kuchler 1965). In the contiguous United States, Canada lynx inhabit a mosaic between boreal forests and sublpine coniferous forests or northern hardwoods, whereas in more northern latitudes, Canada lynx habitat is the boreal forest ecosystem (Barbour *et al.* 1980; McCord and Cardoza 1982; Koehler and Aubry 1994; M. Hunter, University of Maine, pers. comm. 1994; Colorado Division of Wildlife *et al.* 1997) (see Background section).

Canada lynx and snowshoe hare population dynamics in portions of the contiguous United States are different from those in northern Canada. Historically, Canada lynx and snowshoe hare populations in some areas of the contiguous United States have not exhibited the extreme cyclic population fluctuations of the northern latitudes for which Canada lynx are noted (Dolbeer and Clark 1975; Brittell *et al.* 1989; Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994) (see Background section). This less cyclic population has been attributed to the lower quality and quantity of snowshoe hare habitat available in southern latitudes and/or the presence of additional snowshoe hare predators (Buehler and Keith 1982, Wolff 1982 *in* Koehler and Aubry 1994, Koehler 1990, Koehler and Aubry 1994).

Extirpation of the contiguous United States population of the Canada lynx would result in a significant gap in the range of the taxon. Canada lynx would not only be lost throughout a broad region of the United States, but a number of ecosystems would lose a top-level carnivore from their representative fauna.

After review and consideration of Canada lynx status and management in the contiguous United States and Canada, contacts with recognized experts, lynx life history, habitat, and population dynamics, the Service has determined that the Canada lynx in the contiguous United States is discrete and significant and, therefore, qualifies as a distinct population segment to be considered for listing under the Act.

Finding

Based on historic observations, trapping records and other evidence available to the Service at this time, the Service finds that, historically, Canada lynx were resident in 16 of the contiguous United States. The overall numbers and range of Canada lynx in the contiguous United States are substantially reduced from historic levels. Currently, resident populations of lynx likely exist in Maine, Montana, Washington, and possibly Minnesota. States with recent records of individual lynx sightings, but possibly no longer sustaining self-supporting populations, include Wisconsin, Michigan, Oregon, Idaho, Wyoming, Utah, and Colorado. Lynx may be extirpated from New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts.

At present, lynx numbers in the contiguous United States have not recovered from the overexploitation by both unregulated and regulated trapping that occurred in the 1970's and 1980's. As a result, the other threats to the lynx described earlier under the ''Summary of Factors Affecting the Species'' section have a serious effect on the remaining population. Where Canada lynx numbers have been substantially reduced or extirpated, natural recolonization of suitable habitat likely

will require lynx migration from other areas in the contiguous United States or Canada. In Maine, there is evidence that lynx move back and forth across the Canadian border, indicating that Maine lynx habitat is contiguous with occupied habitat in Quebec and possibly, New Brunswick (M. Amaral, *in litt.* 1998).

Forest management practices that result in the loss of diverse age structure, roading, urbanization, agriculture, recreational developments, and unnatural fire frequencies have altered suitable lynx habitat in many areas throughout the contiguous United States. As a result, many states may have insufficient habitat quality and/or quantity to sustain lynx or their prey.

The likelihood of lynx encountering people has dramatically increased over the last few decades as a result of elevated levels of human access into lynx habitat. Roads and trails, snowmobiles, offroad vehicles, and ski area developments enable human access into historically remote forests, thereby increasing the likelihood of lynx being displaced from otherwise suitable habitats and increasing the vulnerability of lynx to human-induced mortality.

Although the legal taking of lynx is highly restricted in the contiguous United States, existing regulatory mechanisms may be inadequate to protect the small, remnant lynx populations or to conserve Canada lynx habitat.

The cumulative effect of these habitat changes has been the creation of habitats and prey bases that are better able to support lynx competitors, such as bobcats and coyotes, rather than lynx. Bobcats are able to outcompete lynx except in habitats with excessive snow depths. Roads and packed snow trails have allowed bobcats and coyotes to access the winter habitats for which lynx are highly specialized.

Recently, some States, Federal agencies, and other entities have initiated survey and research efforts to better evaluate the status of the Canada lynx within the contiguous United States. Additionally, some States such as Washington, Colorado, and Idaho are in the process of developing strategies to conserve and restore lynx in their states.

Resident lynx populations still occur in Montana, Washington, Maine and, possibly, Minnesota. According to Montana Fish, Wildlife and Parks, Montana's lynx numbers are fairly stable. Therefore, the Service concludes that a designation as threatened is appropriate. A threatened species is defined in the Act as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Based on the preceding discussions and analyses, using the best available scientific and commercial information available, the Service finds that listing of the Canada lynx within the contiguous United States is warranted. The Service proposes to list the contiguous United States Canada lynx population segment (consisting of the States of Maine, New Hampshire, Vermont, New York, Pennsylvania, Massachusetts, Michigan, Wisconsin, Minnesota, Washington, Oregon, Idaho, Montana, Wyoming, Utah, and Colorado) as threatened.

Critical Habitat

Critical habitat is defined in section 3(5)(a) of the Act as— (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,'' i.e., the species is recovered and can be removed from the list of endangered and threatened species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Canada lynx at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In accordance with the definition of critical habitat provided by section 3(5)(A)(I) of the Act, the Service's regulations require the Service to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with the Service, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Critical habitat, by definition, applies only to Federal agency actions. The 50 CFR 402.02 defines ''jeopardize the continued existence of'' as meaning to engage in an action that would reasonably 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. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Thus, in the section 7(a)(2) consultation process, the jeopardy analysis focuses on potential effects on the species' populations, whereas the destruction or adverse modification analysis focuses on habitat value.

Common to both a jeopardy and the destruction or adverse modification of critical habitat is the requirement that the Service find an appreciable effect on both the species' survival and recovery. This is in contrast to the public perception that the adverse modification standard sets a lower threshold for violation of section 7 than that for jeopardy. Thus, Federal actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect

the outcome of consultation. Biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. Thus, the Service believes that, from a section 7 consultation perspective, no additional conservation benefit would be achieved for the contiguous United States Canada lynx population by the designation of critical habitat.

Currently, in the contiguous United States, legal harvest of lynx is not a threat to the population because all States, except Montana, have closed seasons on the harvest of lynx. Montana has an extremely low quota, allowing two lynx to be harvested per season. Additionally, current prices for lynx pelts are relatively low so there is little incentive to trap lynx. However, should pelt prices increase again in the future, there will be strong incentive to trap lynx as evidenced by trapping records from the 1970's and 1980's (see Factor B, above). Designation of critical habitat would increase the vulnerability of lynx to poaching; therefore, the Service concludes it would not be prudent to designate critical habitat.

In the contiguous United States, Canada lynx inhabit a mosaic between boreal forests and subalpine coniferous forests or northern hardwoods, as described earlier in the Background section. Canada lynx are highly dependent on snowshoe hares to supply an adequate food source. Canada lynx concentrate their foraging activities in areas where hare activity is high. Snowshoe hares prefer structurally diverse forests, often early successional stages, with stands of conifers and shrubby understories that provide for feeding, escape from predators, and protection during extreme weather. For denning, it is believed Canada lynx require late successional forests that provide downed logs and windfalls for cover. Additionally, Canada lynx are highly mobile and can move long distances in search of prey (see Background section, above). Home range sizes vary widely (12 to 243 sq km (5–94 sq mi) depending primarily on the density of lynx and availability of prey in an area. For example, the estimated range of one male lynx would encompass all protected lands in the White Mountain National Forest in New Hampshire and Maine (Brocke *et al.* 1993).

The Service concludes it would not be beneficial to designate specific geographic locations as critical habitat because snowshoe hare habitat and lynx denning habitat will always shift spatially and temporally across the landscape as a result of natural (e.g., fire, forest maturation, seasonal) and human-caused changes (e.g., logging, thinning). Canada lynx would reasonably be expected to relocate in response to the natural dynamics of lynx population levels, prey availability, and habitat conditions, thereby making little use of specific areas designated as critical habitat.

Attempting to encompass lynx movements or the spatial shifts in lynx foraging or denning habitat that will occur over time by designating critical habitat on a large-scale (e.g., an entire national forest or wilderness area) would not be beneficial to the species. Under such a designation, it would be impracticable to assert that a single Federal action would appreciably diminish the value of critical habitat for both the survival and recovery of a listed species or that the entire expansive area requires special management or protection (the purpose of a critical habitat designation) for lynx. Additionally, Forest Plans that dictate how an entire national forest would be managed are already subject to review under section 7.

A large-scale designation would be over inclusive because it would contain many areas that never were or will be lynx habitat and areas that, although they may be used by lynx, would not require special management or protection for lynx. For example, in 1994, nearly 60 percent of the approximately 17 million acres of national forests in Montana were classified as roadless or designated wilderness areas (J. Gatchell, Montana Wilderness Association, pers. comm. 1994). However, a large proportion of these areas are not suitable lynx habitat because they consist of rock- and ice-covered mountaintops.

A substantial amount of Federal land exists in the Western and Great Lakes regions of the contiguous United States lynx population segment in Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, Minnesota, Wisconsin, and Michigan. Actions on these Federal lands are ensured of the benefit of review under section 7 of the Act, regardless of whether or not critical habitat is designated. Potential and occupied Canada lynx habitat exists primarily on Federal lands managed by the U.S. Forest Service. Additional Federal land managers include but are not limited to the National Park Service and Bureau of Land Management. Currently, the U.S. Forest Service, Bureau of Land Management, and the Service are developing a section 7 conferencing and consultation strategy to conserve lynx on the 56 National Forests and numerous Bureau of Land Management districts within its historic range in the contiguous United States (B. Ruediger, *in litt.* 1998).

Designation of critical habitat provides no limitations or constraints on private landowners if there is no Federal involvement and, as such, provides the species no conservation benefit. The amount of Federal land in the northeastern United States range of the lynx is small (primarily the White Mountain and Green Mountain National Forests in parts of Vermont, New Hampshire, and Maine) compared to the amount of non-Federal land. Because few Federal actions occur in the northeastern United States range of the lynx, project review under section 7 of the Act would be rarely required (M. Amaral, pers. comm. 1998).

In the Rocky Mountain/Cascades, Great Lakes, and Northeast regions of the lynx range, there are large parcels of land in corporate ownership. Actions on these lands will either have no Federal nexus or will require review under section 7 of the Act.

Protection of lynx habitat can be addressed in habitat conservation plans voluntarily developed by landowners under the section 10 permitting process. In the State of Washington, Canada lynx are covered under a multispecies Habitat Conservation Plan on forest lands owned by Plum Creek Timber Company in the central Cascades mountain range.

Therefore, because of the increased vulnerability of the lynx, the spatial and temporal changes in lynx foraging and denning habitats, the high mobility of individual lynx, the inability to control lynx habitat in Canada, and the fact that designation of critical habitat would provide little different or greater benefit than that provided by the jeopardy standard under section 7 regulations, the Service has determined that the designation of critical habitat for the contiguous United States population of the Canada lynx is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires

that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The contiguous United States population of the Canada lynx occurs on lands administered by the U.S. Forest Service, National Park Service, Bureau of Land Management; Tribal lands, State lands, and private lands. Examples of Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include timber, silviculture/thinning, road construction, fire, and recreation management activities or plans by the Forest Service, Bureau of Land Management, and National Park Service; Federal highway projects, and U.S. Housing and Urban Development projects.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Regulations governing permits for species listed as threatened due to similarity of appearance are codified at 50 CFR 17.52 and regulation implementing CITES are codified at 50 CFR part 23.

It is the policy of the Service (59 FR 34272; July 1, 1994) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

For the contiguous United States population of the Canada lynx, the Service believes the following actions would not likely result in a violation of section 9:

(1) Actions that may affect Canada lynx in the contiguous United States that are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act;

(2) Actions that may result in take of Canada lynx in the contiguous United States when the action is conducted in accordance with a permit under section 10 of the Act; For the contiguous United States population of the Canada lynx, the following actions likely would be considered a violation of section 9:

(1) Actions that take Canada lynx that are not authorized by either a permit under section 10 of the Act, or an incidental take permit under section 7 of the Act; the term ''take'' includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken Canada lynx;

(3) Interstate and foreign commerce (commerce across State and international boundaries) without the appropriate permits under section 10(a)(1)(a), 50 CFR 17.32 and/or CITES.

(4) Significant lynx habitat modification or degradation, including but not limited to forest management (e.g., logging, road construction and maintenance, prescribed fire), and recreational, urban, or agricultural development, to the point that it results in death or injury by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Special Rule

The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31), except when a special rule promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)). Section 4(d) of the Act provides that whenever a species is listed as a threatened species, the Service shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Conservation means the use of all methods and procedures necessary to bring the species to the point at which the protections of the Act are no longer necessary. Section 4(d) also states that the Service may, by regulation, extend to threatened species, prohibitions provided for endangered species under Section 9.

This special rule will provide for the take of captive-bred Canada lynx without permit, allow the continuation of the export of captive-bred Canada lynx under CITES export permits, and provide for the transportation of lynx skins in commerce within the United States. The export of properly tagged (with valid CITES export tag) skins from lynx documented as captive-bred will be permitted in accordance with part 23 of this chapter. Properly tagged skins may be transported in interstate trade without permits otherwise required under part 17.32.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, distribution, and population size of the species;

(3) Current or planned activities in the subject area and their possible impacts on this species;

(4) Additional information pertaining to the promulgation of a special rule to provide States and Tribes the opportunity to maintain the lead role in protection, management, and recovery of the species through the voluntary development and implementation of a conservation plan. Such conservation plans would address activities having the potential to adversely impact lynx or lynx habitat, including activities that may result in the take of lynx incidental to otherwise lawful activities; provisions to avoid and minimize those impacts; and existing or planned conservation measures that will be implemented to result in a net recovery benefit for lynx. Potential activities to be addressed in such a plan may include trapping and hunting programs that target species other than lynx; forest management; road construction, maintenance and use; and recreational development. Approved conservation plans would authorize the non deliberate or non purposeful take of lynx incidental to otherwise lawful State or Tribal activities.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for at least one public hearing on this proposal, if requested. However, given the high likelihood of several requests throughout the species' range, the Service has scheduled hearings in advance of any request. For additional information on public hearings, see the **SUPPLEMENTARY INFORMATION** section.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (or subspecies or population segment) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment will substantially facilitate the enforcement and further the policy of the Act.

The Canada lynx is included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty that regulates international trade in certain animal and plant species. Exports of animals and plants listed on CITES Appendix II as a similarity of appearance species may occur only if the Scientific Authority has advised the Management Authority that such exports will not be detrimental to the survival of the look alike species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection. The Canada lynx was included in CITES Appendix II on February 4, 1977, as a part of the listing of all Felidae that were not already included in the appendices. A CITES export permit pursuant to 50 CFR part 23 must be issued by the exporting country before an Appendix II species may be shipped. All Felidae were included in Appendix II to enable better protection of look alike species that were or could be threatened with extinction without strict regulation of trade. After inclusion of the lynx (as well as the bobcat and river otter) in CITES Appendix II, the Service worked with the States to develop guidelines for State programs that would provide the information needed to satisfy CITES export requirements. Under the State CITES export programs, all skins to be exported are required to be tagged with a permanently attached, serially numbered tag that identified the species, State of origin, and season of taking. The tags are provided to the States by the Service. The States that were approved for export of lynx are Alaska, Idaho, Minnesota, Montana, and Washington. Canada lynx in Alaska are not encompassed by this listing, all existing CITES requirements remaining the same. Of the 48 contiguous States, Montana is the only State that still has a wild lynx harvest with a quota of two.

Currently there are facilities in Idaho, Minnesota, Montana, North Dakota, and Utah that raise captive-bred Canada lynx for commercial purposes. At least some of the farms report that their initial stock was obtained from Canada. From 1992 through 1997, Minnesota and Montana reported that a total of 139 lynx pelts were tagged for export under the CITES program and these primarily originated from farmed animals. The Service currently has an application pending for the export of 254 captive-bred lynx from Utah. These captive-bred specimens have neither a positive or negative effect on the species in the wild.

Current prices for lynx pelts are relatively low so there is little present incentive to trap lynx. However, should pelt prices increase again in the future, there could be strong incentive to trap wild lynx and export their pelts. Lynx are easy to trap and the illegal take of lynx may present an enforcement and inspection problem for Service personnel. Captive-bred Canada lynx cannot be effectively differentiated from wild Canada lynx by Service law enforcement and inspection personnel without proper tagging. For these reasons, the Service is listing the captive populations of Canada lynx within the United States as threatened due to similarity of appearance. However, under the latitude for threatened species afforded by the Act and 50 CFR 17.31(c) the Service is proposing to issue permits for captive-bred Canada lynx to facilitate the lawful export of Canada lynx. The listing of the captive populations of Canada lynx within the United States as threatened due to similarity of appearance eliminates the ability of persons to misrepresent illegally taken wild Canada lynx as captive-bred Canada lynx for commercial purposes.

This proposed rule would, in addition to the export under 50 CFR part 23 of live captive-bred Canada lynx, allow the export of skins derived from captive-bred populations of Canada lynx if the specimens are tagged with a CITES export tag and accompanied by a valid CITES export permit. The import of lawfully obtained Canada lynx pelts originating in the nation of Canada would continue to require the necessary CITES export permits, but no additional Endangered Species Act import permit would be required. Interstate transport and/or commerce in skins that are properly tagged with valid CITES export tags would be allowed without permits otherwise required under 50 CFR 17.32. The export or interstate transport of skins of Canada lynx taken incidental to otherwise lawful trapping for species other than Canada lynx will not be permitted under the special rule. The import of live specimens would require permits under the Act.

Regulations implementing the Endangered Species Act are set forth at 50 CFR part 17. Any person intending to engage in an activity for which a permit is required such as exporting lawfully obtained Canada lynx must, before commencing such activity, obtain a valid permit authorizing such activity. Permit requirements for threatened species are set forth at 50 CFR 17.31 and 17.32. Permit requirements for species

listed by similarity of appearance are set forth at 50 CFR 17.52, with exceptions to permit requirements provided by special rule as proposed herein. The Service's general permit procedures are set forth at 50 CFR part 13. Uniform rules and procedures for the importation, exportation and transportation of wildlife are set forth at 50 CFR part 14.

In summary, CITES/Endangered Species Act permits will be required for U.S. captive-bred lynx being sold abroad. No U.S. Fish and Wildlife permits will be required for the importation of lynx products into the U.S., and permits will not be required for interstate transport and commerce in skins that are properly tagged with valid CITES export tags.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements for which Office of Management and Budget (OMB) approval is required. Persons exporting captive-bred Canada lynx may continue to obtain permits which are already authorized under 50 CFR part 23 as approved by OMB and assigned clearance number 1018–0022.

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with the special rule for the captive Canada lynx population. In particular the Service is interested in obtaining information on any significant economic impacts of the proposed rule on small public and private entities. Once we have reviewed the available information, we will prepare an initial regulatory flexibility analysis for the special rule and make this available for public review. This analysis will be revised as appropriate and incorporated into the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Pursuant to the Endangered Species Act, the ROC is not applicable to the listing of the Canada lynx. In accordance with the criteria in Executive Order 12866, neither the listing nor the special rule are significant regulatory actions subject to review by the Office of Management and Budget.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Montana Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Lori H. Nordstrom, Montana Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend 17.11(h) by adding the following, in alphabetical order under ''MAMMALS,'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Lynx, Canada	*Lynx canadensis.*	USA (WA, OR, WA, OR, ID, MT, ID, MT, UT, UT, WY, CO, MN, WY, CO, MN, WI, MI, ME, VT, WI, MI, ME, NH, NY, MA, VT, NH, NY, PA, MA, PA, AK), Canada.	(Unless bred in captivity)	T		N/A	N/A
Do	.....do	.....do	All captive animals within the coterminous U.S.A. (lower 48 States), activities as prohibited or allowed under 17.31, 17.32, 17.40(k), 17.52, and part 23.	T(S/A)		N/A	17.40(k)
*	*	*	*	*	*	*	

3. Amend § 17.40 by adding paragraph (k) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(k) Canada lynx (*Lynx canadensis*) population—(1) *Prohibitions.* (i) Except as noted in paragraph (k)(2) of this

section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 and 17.52 apply to the captive Canada lynx population within the coterminous United States (lower 48 States).

(2) *Exceptions.* (i) The Service may issue incidental take permits or permits authorizing activities that would otherwise be unlawful under paragraph (k)(1) of this section for education purposes, scientific purposes, the enhancement or propagation for survival of Canada lynx, zoological exhibition, and other conservation purposes consistent with the Act in accordance with 50 CFR 17.52 and pursuant to a section 6 cooperative agreement with a State, if applicable.

(ii) No permit will be required for taking of lawfully obtain captive-bred lynx. The Service may issue CITES export permits for captive-bred Canada lynx and properly tagged captive-bred Canada lynx skins in accordance with 50 CFR part 23. Interstate transport and or commerce in skins that are properly tagged with a valid CITES export tag would be allowed without a permit. The export or interstate transport of skins of Canada lynx taken incidental to otherwise lawful trapping for species other than Canada lynx will not be permitted.

Dated: June 26, 1998.

Donald Barry,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 98–17771 Filed 6–30–98; 11:22 am]

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federal register

Wednesday
July 8, 1998

Part III

Department of Education

Systems-Change Projects To Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support; Notices

DEPARTMENT OF EDUCATION

RIN 1820–ZA11

Systems-Change Projects To Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of a final priority and definitions for fiscal year (FY) 1998 and subsequent years.

SUMMARY: The Secretary announces a final priority and definitions for Systems-Change Projects To Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support. The Secretary may use this priority and these definitions for competitions in FY 1998 and subsequent fiscal years. The Secretary takes this action to focus attention on an area of national need. The priority is intended to enhance collaboration in existing systems to increase competitive employment opportunities for individuals with disabilities who are participants in public support programs funded by Federal, State, and local agencies.

EFFECTIVE DATE: This priority and definitions take effect August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Pedro Romero, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3316, MES Building, Washington, D.C. 20202–2650. Telephone: (202) 205–9797. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a final priority and definitions for Systems-Change Projects To Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support. The authority for these projects is contained in section 12(a)(3) of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 762(b)(3)). Under this competition the Secretary makes awards to consortiums consisting of, at a minimum, the State vocational rehabilitation agency, the State welfare agency, the State educational agency, the State agency responsible for administering the Medicaid program, and an agency administering an employment or employment training program supported by the U.S. Department of Labor.

On May 20, 1998, the Secretary published a notice of a proposed priority and definitions for this program in the **Federal Register** (63 FR 27806).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority and definitions, 14 parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority and definitions follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Two commenters stated that the priority should target specific sub-groups of individuals with disabilities. One commenter suggested that the priority specifically target adults with disabilities who are on public assistance but not eligible for assistance under Temporary Assistance to Needy Families (TANF). The other commenter recommended that the priority target hard-to-employ recipients of TANF.

Discussion: The Secretary believes that applicants should have the flexibility to identify the specific groups they wish to target under their proposed project as long as the targeted populations are comprised of individuals with disabilities who participate in public support programs funded by Federal, State, and local agencies.

Changes: None.

Comment: Two commenters stated that coordination between the Department of Education and both the Social Security Administration and the Department of Labor would enhance the priority. One of the commenters stated that there is a need for coordination between these projects and similar systems-change projects that will be funded by the Social Security Administration.

Discussion: The Office of Special Education and Rehabilitative Services, Department of Education (ED/OSERS), the Social Security Administration, Office of Disability (SSA/OD), the Department of Labor, and other Federal agencies are members of the Systems-Change Interagency Workgroup, which was established by ED/OSERS in accordance with Executive Order 13078, to develop barrier removal strategies and assist in the preparation of this priority. Additionally, SSA/OD is using this same priority language in a SSA/OD priority to support similar systems-change projects. ED/OSERS, SSA/OD, Labor, and the other Interagency Workgroup members will provide both the ED/OSERS and SSA/OD projects with ongoing technical assistance to ensure their success. Finally, projects supported by either agency will be required to develop partnership agreements with the local district offices of SSA and must participate in meetings of the Federal Interagency Workgroup—activities that will foster further coordination and collaboration between the projects and the Federal agencies.

Changes: None.

Comment: Two commenters suggested that educational institutions be involved in project activities.

Discussion: The Secretary agrees that input provided by the educational community is essential to any systems-change effort.

For that reason the priority as written requires that consortiums include a State's educational agency. In addition, consortiums have the discretion to include educational institutions as consortium members or partners, if those institutions would be able to effectively assist in removing barriers to employment for individuals with disabilities.

Changes: None.

Comment: One commenter stated that a consortium of non-profit organizations representing all individuals with disabilities should be empowered to lead projects funded under this priority.

Discussion: The Secretary believes that the State agencies administering public support programs and identified in this priority as required consortium members are most able to effectuate systems-change across State programs. Still, the Secretary encourages project participation by non-profit organizations that represent individuals with disabilities. Such organizations may assist consortiums, either as members or partners, in identifying systemic barriers and in developing and implementing strategies to remove those barriers.

Changes: None.

Comment: One commenter suggested that the Secretary clarify the reference to ''employment and training organizations funded by the U.S. Department of Labor'' under paragraph C(1) by requiring projects to develop partnership agreements specifically with community-based and other non-

profit employment and training organizations supported by the U.S. Department of Labor.

Discussion: The Secretary agrees that the suggested change is warranted.

Changes: The Secretary has revised paragraph C(1) by clarifying that projects may develop partnership agreements with community-based and other non-profit employment and training organizations funded by the U.S. Department of Labor.

Comment: Two commenters indicated that consumer involvement must be required in order to achieve meaningful and lasting results.

Discussion: The Secretary agrees that consumer involvement is essential to the success of projects funded under this priority and that the priority should better reflect the need for individuals with disabilities to participate in the development of project activities.

Changes: The Secretary has amended paragraph A to require that consortiums establish a Consumer Advisory Board consisting of individuals with disabilities and their representatives. This Board shall assist the consortiums in developing, implementing, and evaluating appropriate barrier-removal strategies.

Comment: One commenter expressed skepticism that the limited length of time that will likely be available for preparing project applications would allow for meaningful participation in the development of applications by Advisory Councils to consortium members.

Discussion: The Secretary agrees that meaningful participation in the development of the application by the Consortium members' Advisory Councils may be hindered by limited preparation time.

Nevertheless, the Secretary expects Advisory Councils to participate in developing applications to the extent possible and intends to facilitate their involvement by directly mailing applications to State agencies that have been identified as required consortium members once the final priority is published and by providing approximately two months for the development and submission of the application. Moreover, the final priority will require that Consumer Advisory Councils assist in developing barrier-removal strategies and in implementing and evaluating those strategies throughout the project period.

Changes: The Secretary has revised paragraph A(3) to require consortiums to seek consumer input during development of the application to the extent possible. In addition, paragraph A(5) requires consortiums to establish a Consumer Advisory Board that will assist in the development, implementation, and evaluation of barrier-removal strategies.

Comment: Two commenters believed that projects should be required to identify Federal-level barriers to employment and that the Federal Government should address these barriers to facilitate the projects' systems-change activities.

Discussion: Projects are not limited to identifying only State or local agency policies, practices, procedures, or rules that inhibit individuals with disabilities from becoming competitively employed. Pursuant to Executive Order 13078, members of the Systems-Change Interagency Workgroup will be working together to address Federal-level barriers, including those identified by funded projects. Thus, the Secretary encourages projects to identify Federal-level barriers to employment for people with disabilities and present relevant information to the Systems-Change Interagency Workgroup. Nevertheless, the priority requires that projects focus on those policies and practices with which the project can readily effectuate systems-change, *i.e.*, State or local policies within the control of consortium members.

Changes: None.

Comment: One commenter indicated that, although multiple State involvement may be feasible in some regions, submissions should not be given preference based on the number of States included in a given proposal.

Discussion: The Secretary does not propose to give preference to applications that serve multiple States.

Changes: None.

Comment: One commenter stated that the projects' focus on ''employment'' should include self-employment and small business ownership for adults and youths.

Discussion: The Secretary emphasizes that projects are expected to focus on increasing ''competitive employment'' opportunities for individuals with disabilities. Accordingly, projects may assist individuals with disabilities to achieve self-employment and small business employment outcomes, as long as those outcomes would be considered competitive, *i.e.*, the individual earns at least minimum wage and works in an integrated setting. The Secretary also believes that the priority should be amended to better reflect the required emphasis on competitive employment.

Changes: The Secretary has clarified the priority to require that projects focus on increasing competitive employment opportunities for individuals with disabilities. In addition the Secretary has added the term competitive employment, as defined in 34 CFR 361.5(b)(10), to the definition section of the priority.

Comment: One commenter stated that the external evaluation of funded projects needs to focus intently on improvements in practices by State agency staff.

Discussion: Projects funded under this priority must participate in an external evaluation at the Federal level that, among other things, will examine the effect of specific innovative systems-change approaches and strategies on State or local agency policies, practices, including staff practices across involved programs, and rules affecting the employment of individuals with disabilities.

Changes: None.

Note: This notice of final priority does not solicit applications. In any year in which the Secretary chooses to use this priority, the Secretary invites applications through a notice in the **Federal Register**. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Priority

Background

According to the 1994 Harris Survey of Americans with Disabilities, two-thirds of individuals with disabilities between the ages of 16 and 64 are not working. Many of these individuals receive financial support or services through programs funded by Federal, State, and local agencies. Examples of these programs include Temporary Aid to Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Medicaid (including Medicaid waiver programs), Medicare, subsidized housing, and food stamps.

Statistical data reveal that of the 32 percent of adult recipients of Aid to Families with Dependent Children (AFDC) who had a work or functional disability, 15 percent were able to work despite their functional limitations (National Health Interview Survey on Disability, U.S. Department of Health and Human Services, 1994). Studies conducted in Kansas and Washington indicate that up to 60 percent of the current TANF recipients in those States have some type of disability. At the same time, the TANF program requires recipients to work and also limits the length of TANF assistance—recent developments that further underscore the need to reduce barriers to employment confronted by individuals with disabilities on public support.

In addition, the proportion of individuals with disabilities receiving public support through SSI or SSDI continues to increase. Over the past decade, the total number of SSI and SSDI beneficiaries has doubled, and cash payments for these individuals increased to over $55 billion (World Institute on Disability, 1996). Social Security recipients often do not work since they would lose their Social Security and Medicaid benefits if their earnings increased beyond a threshold level. Thus, few individuals leave the Social Security system. New adult SSI recipients receive benefits for an average of 10 years, whereas individuals who receive SSI benefits as children remain on the rolls for an average of approximately 27 years (Rupp and Scott, 1995).

Many individuals participating in public support programs, including the programs discussed previously, are unable to obtain the services or supports they need to become competitively employed and achieve economic independence. Employment training programs that serve the general population, as well as employers themselves, are often unable to meet the specialized needs of these individuals. In addition, individuals with disabilities who are not eligible for State vocational rehabilitation services, or who do not believe that they need a comprehensive rehabilitation program, are still unlikely to receive work-related services from employment training programs that serve the general population. Consequently, many individuals with disabilities who are capable of working essentially ''fall between the cracks.'' The Secretary expects that the models developed under the priority will demonstrate how employment training and other related programs can more effectively coordinate services so that individuals with disabilities can obtain competitive employment.

Seventy-nine percent of unemployed individuals with disabilities have indicated that they would prefer to be working (Harris Survey, 1994). The combination of the high costs associated with living with a disability, work-related expenses, and the reduction in public supports available to persons once they become employed often dissuade individuals with disabilities from pursuing competitive work. Some of the specific barriers to the employment that individuals with disabilities commonly confront include—

- Lack of adequate health insurance (*e.g.*, individuals' fear of losing public health care coverage, inability to obtain private medical insurance, or limited access to treatment and prescription services)
- Underutilization of existing work incentives from Social Security and other State and local agencies (*e.g.*, Plan for Achieving Self Support (PASS), and Impairment Related Work Expenses, section 1619 a and b of the Social Security Act)
- Lack of affordable, accessible housing and transportation
- Insufficient education and training services
- Lack of child care;
- Inadequate supports for employees with disabilities (*e.g.*, onsite and offsite job accommodations and long-term follow-along services)
- Inadequate supports for employers (*e.g.*, incentives for hiring, retaining, and promoting individuals with disabilities and technical assistance and follow-along consultation to assist employers in addressing the ongoing needs of employees with disabilities and to clarify employer misperceptions and misinformation).

Lack of information and coordination of public support programs can cause program-related barriers that inhibit individuals with disabilities from effectively using available services. In many instances, individuals with disabilities are simply unaware of existing employment-related programs, work incentives, or available services. Another common barrier is the lack of coordination between separate programs with separate eligibility criteria even though the same individuals often require services from each program. The Secretary expects projects to address these types of program-related barriers, as well as any other type of barrier that impedes individuals with disabilities from becoming employed and self-sufficient.

There is a critical need for greater coordination between multiple public programs that support individuals with disabilities that would foster increased economic self-sufficiency and a more efficient use of public resources. In an effort to address this need, the Secretary announces the following priority in order to provide a framework for assisting individuals with disabilities to reduce their reliance on various public support programs and obtain and maintain employment in the competitive labor market.

The requirements in the priority are designed to facilitate systems-change projects that eliminate barriers to employment for individuals with disabilities and are based on existing studies and reports, the experiences of State vocational rehabilitation agencies in working with individuals participating in other public support programs, and on information provided by other Federal agencies that administer disability-related programs. These Federal agencies were particularly helpful in assisting the Secretary to identify the employment-related barriers confronted by individuals with disabilities that the Secretary is targeting through this priority and to identify the types of State agencies whose participation in the project would be most critical to eliminating those barriers. The identified State agencies serve as members of a consortium that the systems-change project establishes under paragraph (A) of the priority.

The Secretary emphasizes that the model systems-change projects supported under this priority are part of a larger effort on the part of the Federal Government to create a coordinated and aggressive national policy to reduce the unemployment rate of individuals with disabilities and to assist those individuals in obtaining competitive jobs. This effort is directly reflected in Executive Order 13078, signed on March 13, 1998, entitled ''Increasing Employment of Adults With Disabilities'' (63 FR 13111, March 18, 1998). For example, Executive Order 13078, in part, calls for an analysis of existing programs and policies to determine what modifications and innovations may be necessary to remove work-related barriers experienced by individuals with disabilities; the development and recommendation of options for eliminating barriers to health insurance coverage for those with disabilities; and an analysis of work-related youth programs and the outcomes of these programs for young people with disabilities. The Secretary announces the following priority as one means of addressing the purposes of Executive Order 13078. As other Federal agencies design and carry out activities in response to the Executive order, it is expected that many of those activities will complement the systems-change projects funded under this priority.

The Secretary also emphasizes the need for projects supported under this priority to begin implementing strategies for removing barriers early in the project period in order for the project to have a measurable effect on the rate by which individuals with disabilities become competitively employed. For that reason, the Secretary expects project recipients to work with Rehabilitation Services Administration staff to ensure that planning steps, including development of partnership

agreements and, if appropriate, submission of Medicaid waiver requests under paragraph (C) of the priority, are promptly completed and that projects begin implementing their barrier-removal strategies as soon as possible.

The purpose of the absolute priority is to establish five-year model demonstration projects that stimulate and advance systems change in order to expand competitive employment outcomes for individuals with mental or physical disabilities, or both, who are participants in Federal, State, and local public support programs (*e.g.*, TANF, SSI, SSDI, Medicaid, Medicare, subsidized housing, and food stamps, etc.)

Absolute Priority

Under 34 CFR 75.105(c)(3) and section 12(a)(3) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A. General Requirements for Applicants

Applicants under this priority shall satisfy the following requirements:

(1) Applicants shall form a consortium of, at a minimum, the State vocational rehabilitation agency, the State welfare agency, the State educational agency, the State agency responsible for administering the Medicaid program, and an agency administering an employment or employment training program supported by the U.S. Department of Labor. Additional entities (*e.g.*, public and private non-profit organizations) that could effectively assist in removing barriers to employment for individuals with disabilities also may be included as part of the consortium.

(2) The members of the consortium shall either designate one of their members to apply for the grant or establish a separate, eligible legal entity to apply for the grant. The designated applicant shall serve as the grantee and be legally responsible for the use of all grant funds, overall fiscal and programmatic oversight of the project, and for ensuring that the project is carried out by consortium members in accordance with Federal requirements.

(3) Consortium members shall be substantially involved in the development of the application. To the extent possible, consortiums also shall involve consumers in the development of the application.

(4) The members of the consortium shall enter into an agreement that details the activities that each member plans to perform and that binds each member to the statements and assurances included in the application. Each member is legally responsible for carrying out the activities it agrees to perform and for using the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant. The agreement must be submitted as part of the application.

(5) Consortiums shall establish a Consumer Advisory Board consisting of individuals with disabilities and, as appropriate, their representatives that will assist in the development, implementation, and evaluation of barrier-removal strategies.

(6) The application submitted under this priority also must identify the specific locality or region that would be served by the project.

B. Project Objectives

Projects supported under this priority must—

(1) Identify systemic barriers, including State or local agency policies, practices, procedures, or rules that inhibit individuals with disabilities who are participants in public support programs from becoming competitively employed.

(2) Develop and implement replicable strategies to remove identified barriers, including, at a minimum, strategies for—

(a) Establishing effective collaborative working relationships among project consortium members and their partners as described in paragraph (C)(1) of this priority (*e.g.*, providing interagency staff training and technical assistance on program requirements and services or collaboratively using labor market and job vacancy information);

(b) Establishing coordinated service delivery systems (*e.g.*, common intake and referral procedures, customer databases, and resource information) and developing innovative services and service approaches that address service gaps (*e.g.*, developing employee and employer support networks);

(c) Improving access to health insurance for individuals with disabilities who become employed;

(d) Increasing the use of existing resources by State and local agencies (*e.g.*, Medicaid waivers, Home Community Based Services waivers, Job Training Partnership Act income exemptions, and work incentive provisions such as Plan for Achieving Self Support);

(3) Design and implement an internal evaluation plan for which—

(a) The methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the project;

(b) The methods of evaluation provide for examining the effectiveness of project implementation strategies;

(c) The methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(d) The methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(e) The evaluation will provide guidance about effective strategies suitable for replication or testing in other settings; and

(4) Disseminate information on effective systems-change approaches developed under these projects to Federal, State, and local stakeholders and facilitate the use of systems-change models in other geographic areas. As examples, consortiums may make presentations before national, State, or local conferences, consult with and provide technical assistance to other States or localities, develop Internet web sites, and distribute project publications.

C. Project Requirements

In carrying out the priority, the projects must—

(1) Develop partnership agreements, as described under **DEFINITIONS,** with the local district offices of the Social Security Administration; the State agency or agencies responsible for mental retardation, developmental disabilities, and mental health services; existing transportation or paratransit service providers; and appropriate public and private sector employers. Partnerships also may be formed with other appropriate entities identified by the consortium, including but not limited to, Centers for Independent Living, consumer advocacy organizations, economic development councils, Private Industry Councils, Governor's committees on the employment of persons with disabilities, developmental disabilities councils, mental health centers, community rehabilitation programs, Indian Tribes, labor unions, and community-based and other non-profit employment and training organizations funded by the U.S. Department of Labor;

(2) Make timely, formal requests for Medicaid waivers if necessary for projects to be able to implement developed strategies;

(3) Implement, in a timely manner, the strategies developed by the project

to expand employment outcomes for individuals with mental or physical disabilities, or both;

(4) Participate, as appropriate, in meetings of a Federal Interagency Employment Initiative Workgroup and inform workgroup members of project activities; and

(5) Participate in, and provide data for, an external evaluation of the systems-change projects as directed by the Commissioner of the Rehabilitation Services Administration. The evaluation would examine—

(a) The effect of specific innovative systems-change approaches and strategies on State or local agency policies, practices, or rules affecting the employment of individuals with disabilities;

(b) The effect of specific innovative systems-change approaches and strategies on increasing the number of individuals with disabilities who obtain competitive employment, including job retention, promotion, and satisfaction, and wage growth; and

(c) The cost effectiveness of employment supports and services implemented by the project.

Definitions

Competitive employment, as defined in 34 CFR 361.5(b)(10), means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

Consortium means a group of eligible parties formed by the applicant seeking a Federal award under this priority. Members of the consortium shall enter into an agreement and carry out their responsibilities consistent with the requirements in paragraph (A) of the priority. Members of the consortium shall also ensure that project partners carry out their agreed-upon activities.

Disability with respect to an individual means a physical or mental impairment that substantially limits one or more of the major life activities of that individual, having a record of such an impairment, or being regarded as having such an impairment.

Locality means specific geographical areas within a State or States.

Partner means an entity with which the consortium has entered into an agreement to carry out specific activities, goals, and objectives of the project.

Partnership agreement means a written arrangement between a consortium and its partners to carry out specific activities related to the project.

Public support means Federal, State, and local public programs that provide resources or services to individuals with disabilities. These programs include, but are not limited to, Temporary Aid to Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Medicaid (including Medicaid waiver programs), Medicare, subsidized housing, and food stamps.

Region means two or more States participating in the project.

Selection Criteria

In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of the Education Department General Administrative Regulations. The selection criteria to be used for this competition will be provided in the application package for this competition.

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Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This final priority addresses the National Education Goal that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

This final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The Secretary has determined that there are no costs associated with this priority. Announcement of this priority will not result in costs to State and local governments, recipients of grant funds, or to individuals with disabilities and their families. The benefit from this priority will be to focus activities and Federal assistance on increasing competitive employment outcomes for individuals with disabilities who are participants in public support programs through enhanced collaboration and coordination.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 29 U.S.C. 762(b)(3).

(Catalog of Federal Domestic Assistance Number 84.811A, Systems-Change Projects to Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support)

Dated: July 1, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–18057 Filed 7–7–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.811A]

Systems-Change Projects to Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support; Notice Inviting Applications for New Awards for Fiscal Uear (FY) 1998

Purpose of Program: To provide financial assistance to model demonstration projects that stimulate and advance systems change in order to expand employment outcomes for individuals with mental or physical disabilities, or both, who are participants in Federal, State, and local public support programs.

Eligible Applicants: Consortiums composed of, at a minimum, the State vocational rehabilitation agency, the State welfare agency, the State educational agency, the State agency responsible for administering the Medicaid program, and an agency administering an employment or employment training program supported by the U.S. Department of Labor.

Deadline for Receipt of Applications: September 3, 1998.

In order to ensure timely receipt and processing of applications, an application must be received on or before the deadline date announced in this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was: (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102 (d) and (e). Applications delivered by hand must be received by 4:00 p.m. (Eastern Time on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 74.102(b) which requires an application to be mailed, rather than received, by the deadline date.

Note: All applications must be received on or before the deadline date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Deadline for Intergovernmental Review: September 18, 1998.

Applications Available: July 8, 1998.

Available Funds: $1,000,000.

Estimated Range of Awards: $250,000–$600,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Pedro Romero, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3316, Switzer Building, Washington, D.C. 20202–2650. Telephone: (202) 205–9797. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: Section 12(a)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)).

Dated: July 1, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–18058 Filed 7–7–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
July 8, 1998

Part IV

Department of Health and Human Services

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA); Notice of Reopening of Application Period for FHIP and Housing Counseling; and Technical Correction

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4361–N–02]

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA); Reopening of Application Period for FHIP and Housing Counseling; and Technical Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Reopening of the application periods for the FHIP and Housing Counseling Competitions under the National SuperNOFA; and Technical Correction to the Housing Counseling Program and TOP/EDSS NOFA.

SUMMARY: The purpose of this notice is to reopen the application periods for the education/training components of the Fair Housing Initiatives Program (FHIP), and the Housing Counseling Program under the National SuperNOFA published in the **Federal Register** on April 30, 1998. The application period for the National Lead Hazard Awareness Campaign Program, also announced under the April 30, 1998 National SuperNOFA, is not being reopened. This notice also makes a technical correction to the Housing Counseling Program and the TOP/EDSS NOFA published on April 30, 1998.

DATES: *Application Due Dates:* The application due date for the Fair Housing Initiatives Program (FHIP), and the Housing Counseling Program announced under the National SuperNOFA is *August 11, 1998.*

FOR FURTHER INFORMATION CONTACT: For information concerning the Fair Housing Initiatives Program, National Focus Education and Outreach Competition, you may contact Ivy Davis, Director, FHIP/FHAP Support Division at 202–708–0800 (this is not a toll-free number). Persons who use a text telephone (TTY) may call 1–800–290–1617.

For information concerning the National Housing Counseling Training Program you may contact the Marketing and Outreach Division at HUD Headquarters at 202–708–0317. Persons who use a text telephone may call the SuperNOFA Information Center at 1–800–HUD–2209.

For information concerning the TOP/EDSS NOFA, you may contact the Public Housing Information Resource Center at 1–800–955–2232. Persons who use a text telephone may call the SuperNOFA Information Center at 1–800–HUD–2209.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1998 (63 FR 15490), HUD published its National SuperNOFA announcing the availability of approximately $5,050,000 in HUD National Competition Programs operated and managed by the following HUD Offices: Fair Housing and Equal Opportunity (FHEO), Housing, and Lead Hazard Control [FR–4361–N–01]. The purpose of this notice is to reopen the application period for two of the three programs under the National SuperNOFA: Fair Housing Initiatives Program (FHIP) National Focus Education and Outreach, and the Housing Counseling Program. The application period is not being reopened for National Lead Hazard Awareness Campaign Program announced under the National SuperNOFA.

Reopening of the Application Periods for FHIP and Housing Counseling Programs Under National SuperNOFA

In the National SuperNOFA, HUD announced that the application due dates for the national education/training components of the Fair Housing Initiatives Program (FHIP), Housing Counseling Program and Hazard Control Program to be July 7, 1998. Due to changes from previous years in the requirements for collaborative efforts, the extension of the application due date for the FHIP and Housing Counseling Programs, announced under SuperNOFA I, published on March 31, 1998 (the extension notice was published on May 29, 1998) created a hardship for FHIP and Housing Counseling applicants trying to meet the July 7, 1998 deadline under the National SuperNOFA. Accordingly, to assist FHIP and Housing Counseling program applicants, HUD is reopening the application period and the new application due date is August 11, 1998. Applicants under both the FHIP and Housing Counseling Programs are not required to submit applications by the original July 7, 1998 application due date, but those applicants who submitted applications by the July 7, 1998 application due date are eligible to amend their applications if they choose to do so.

Technical Corrections to Housing Counseling Program NOFA and TOP/EDSS NOFA

In addition to reopening of the application period for the FHIP and Housing Counseling Programs announced under the National SuperNOFA, published on April 30, 1998, the following corrections are made:

1. In the Super Notice of Funding Availability for National Competition Programs (National SuperNOFA), published on April 30, 1998 (63 FR 23958), a correction is made to the Housing Counseling Training Program component of the National SuperNOFA. On page 23977, in the middle column, under Section I(D)(1), the first sentence of the first paragraph of this section is revised to read ''Applicants must be public or private non-profit organizations with at least 2 years of relevant training experience.''

2. In the Super Notice of Funding Availability (SuperNOFA) for Economic Development and Empowerment Programs, published on April 30, 1998 (63 FR 23876), a correction is made to a typographical error that appeared in the Consolidated Economic Development and Supportive Services and Tenant Opportunities Program component of this SuperNOFA (63 FR 23907). On page 23912, in the third column, under Section III((A)(6), the indicator number for the Resident Initiatives indicator is Indicator #7, not #8. Accordingly, paragraph (6), titled ''PHMAP Score'' is corrected to read as follows: ''An applicant cannot have a PHMAP score less than a C for either Indicator #6, Financial Management, or Indicator #7, Resident Services/Community Building on its most recent PHMAP.

Dated: July 2, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

[FR Doc. 98–18125 Filed 7–2–98; 4:02 pm]

BILLING CODE 4210–32–P

federal register

Wednesday
July 8, 1998

Part V

Department of Education

William D. Ford Federal Direct Loan Program; Federal Family Education Loan Program; Notice

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program; Federal Family Education Loan Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program for the period July 1, 1998, through June 30, 1999.

SUMMARY: The Assistant Secretary for Postsecondary Education announces the interest rates for variable-rate loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program for the period July 1, 1998–June 30, 1999.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program: Brian Smith, Program Specialist. For the Direct Loan Program: Barbara F. Grayson, Program Specialist. Mailing address: Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3045, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5345. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

General

Section 455(b) of the Higher Education Act of 1965, as amended (the HEA), 20 U.S.C. 1087e(b), provides that variable interest rates apply to loans made under the Direct Loan Program. Section 427A of the HEA, 20 U.S.C. 1077a, provides that variable interest rates apply to certain loans made under the FFEL Program. The variable rates for Direct Loan Program loans and FFEL Program loans are determined annually and apply for each 12-month period beginning July 1 and ending June 30.

The formulas for determining the interest rates charged to borrowers for Direct Loan Program and FFEL Program loans, *except for Consolidation loans in both programs,* are provided in the following legislation:

- For Direct Loan Program loans for which the first disbursement is made before July 1, 1998, section 455 of the HEA (20 U.S.C. 1087e).
- For FFEL Program loans for which the first disbursement is made before July 1, 1998, section 427A of the HEA (20 U.S.C. 1077a).
- For FFEL Program loans and Direct Loan Program loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998, section 8301 of Pub.L. 105–178 (the Transportation Equity Act for the 21st Century).

The interest rate calculations for all parent and student loans in the Direct Loan and FFEL programs *for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998,* are based on the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1.

The formulas for determining the interest rates charged to borrowers of Direct Consolidation loans and FFEL Consolidation loans are provided in the following legislation and regulation:

- For Direct Consolidation loans, 34 CFR 685.215(g).
- For FFEL Consolidation loans for which the consolidation loan application was received by an eligible lender before November 13, 1997, section 428C(c)(1) of the HEA (20 U.S.C. 1078–3(c)(1)).
- For FFEL Consolidation loans for which the consolidation loan application was received by an eligible lender on or after November 13, 1997, and before October 1, 1998, section 428C(c)(1)(D) of the HEA, 20 U.S.C. 1078–3(c)(1)(D) (as added by the Emergency Student Loan Consolidation Act of 1997).

Section 455(g) of the HEA, 20 U.S.C. 1087e(g), gives the Secretary discretion to establish the interest rates for Direct Consolidation loans. Under 34 CFR 685.215(g), for consolidation loans, the interest rate is the same as the interest rate for student and parent loans made during that time.

As described later in this notice, the interest rate for FFEL Consolidation Loans is set by statute.

The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year is used as the index to calculate annual interest rates charged to borrowers with the following loans:

Federal Direct Stafford/Ford loans (Direct Subsidized).

Federal Direct Unsubsidized Stafford/Ford loans (Direct Unsubsidized).

Federal Direct Subsidized Consolidation loans.

Federal Direct Unsubsidized Consolidation loans.

FFEL Stafford loans (subsidized and unsubsidized).

FFEL Consolidation loans for applications received on or after November 13, 1997.

Federal Direct PLUS loans for which the first disbursement is made on or after July 1, 1998.

Federal Direct PLUS Consolidation loans made on or after July 1, 1998.

FFEL PLUS loans for which the first disbursement was made on or after July 1, 1998.

The bond equivalent rate of the 52-week Treasury bills auctioned in the final auction held before June 1 of each year is used to calculate annual interest rates charged to borrowers with the following loans:

Federal Direct PLUS loans for which the first disbursement was made before July 1, 1998.

Federal Direct PLUS Consolidation loans for which the first disbursement was made before July 1, 1998.

FFEL PLUS loans for which the first disbursement was made before July 1, 1998.

FFEL Supplemental Loans for Students (SLS).

The bond equivalent rate of the 91-day Treasury bills auctioned on May 26, 1998, is 5.155 percent, which rounds to 5.16 percent.

The bond equivalent rate of 52-week Treasury bills auctioned on May 21, 1998, is 5.434 percent, which rounds to 5.43 percent.

William D. Ford Federal Direct Loan Program

Interest Rates for Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans

1. Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans for which the first disbursement was made prior to July 1, 1995—the interest rate may not exceed 8.25 percent: Pursuant to section 455(b)(1) of the HEA, 20 U.S.C. 1087e(b)(1), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.25 percent (5.16 percent plus 3.1 percent equals 8.26 percent, which exceeds the 8.25 percent cap).

2. Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans for which the first disbursement was made on or after July 1, 1995, and before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: Pursuant to section

455(b)(2) of the HEA, 20 U.S.C. 1087e(b)(2), the interest rate for the period July 1, 1998, through June 30, 1999, is 7.66 percent (5.16 percent plus 2.5 percent equals 7.66 percent).

(b) During all other periods: Pursuant to section 455(b)(1) of the HEA, 20 U.S.C. 1087e(b)(1), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.25 percent (5.16 percent plus 3.1 percent equals 8.26 percent, which exceeds the 8.25 percent cap).

3. Direct Subsidized and Direct Unsubsidized Loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: Pursuant to section 8301 of Pub. L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 6.86 percent (5.16 percent plus 1.7 percent equals 6.86 percent).

(b) During all other periods: Pursuant to section 8301 of Pub.L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

4. Direct Subsidized Consolidation and Direct Unsubsidized Consolidation Loans for which the first disbursement is made on or after July 1, 1998, or for which the consolidation loan application is received by the Secretary on or after July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: Pursuant to section 455(g) of the HEA, 20 U.S.C. 1087e(g) and 34 CFR 685.215(g), the interest rate for the period July 1, 1998, through June 30, 1999, is 6.86 percent (5.16 percent plus 1.7 percent equals 6.86 percent).

(b) During all other periods: Pursuant to section 455(g) of the HEA, 20 U.S.C. 1087e(g) and 34 CFR 685.215(g), the interest rate for the period July 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

Interest Rates for Direct PLUS and Direct PLUS Consolidation Loans

1. Direct PLUS loans and Direct PLUS Consolidation loans for which the first disbursement was made before July 1, 1998: Pursuant to section 455(b)(4) of the HEA, 20 U.S.C. 1087(e)(b)(4), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.53 percent (5.43 percent plus 3.1 percent equals 8.53 percent).

2. Direct PLUS loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998—the interest rate may not exceed 9 percent: Pursuant to section 8301 of Pub.L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

3. Direct PLUS Consolidation loans for which the first disbursement is made on or after July 1, 1998, or for which the consolidation loan application is received by the Secretary on or after July 1, 1998—the interest rate may not exceed 9 percent: Pursuant to section 455(g) of the HEA, 20 U.S.C. 1087e(g) and 34 CFR 685.215(g), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

Federal Family Education Loan Program

Interest Rates for ''Converted'' Variable-rate FFEL Stafford Loans

1. FFEL Stafford loans which were made with an interest rate of eight percent with an increase to ten percent and that were subject to the ''windfall profits'' provisions of section 427A(i)(1) of the Act, 20 U.S.C. 1077a(i)(7), and that have been converted to a variable interest rate—the interest rate may not exceed 10 percent: Pursuant to section 427A(i)(7)(A) of the HEA, 20 U.S.C. 1077a(i)(7)(A), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.41 percent (5.16 percent plus 3.25 percent equals 8.41 percent).

2. Seven percent, eight percent, nine percent and eight/ten percent loans that were subject to the ''windfall profits'' provisions of section 427A(i)(3) of the HEA, 20 U.S.C. 1077a(i)(3), and that have been converted to a variable interest rate—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: Pursuant to section 427A(i)(7)(A) of the Act, 20 U.S.C. 1077a(i)(7)(A), the interest rate for the period July 1, 1998, through June 30, 1999, is 7 percent for 7 percent loans, 8 percent for 8 percent loans, 8.26 percent for 9 percent loans, and 8.26 percent for 10 percent loans (5.16 percent plus 3.1 percent equals 8.26 percent, which exceeds the cap for 7 percent loans and 8 percent loans).

Interest Rates for Regular Variable-rate FFEL Stafford Loans

1. FFEL Stafford loans made to ''new'' borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994, (i.e., a late disbursement)—the interest rate may not exceed 9 percent: Pursuant to section 427A(e)(1) of the HEA, 20 U.S.C. 1077a(e)(1), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for a period of enrollment that includes or begins on or after July 1, 1994, for which the first disbursement was made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: Pursuant to section 427A(f)(1) of the HEA, 20 U.S.C. 1077a(e)(1), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.25 percent (5.16 percent plus 3.1 percent equals 8.26 percent which exceeds the 8.25 percent cap).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for which the first disbursement was made on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: Pursuant to section 427A(g)(2) of the HEA, 20 U.S.C. 1077a(g)(2), the interest rate for the period July 1, 1998, through June 30, 1999, is 7.66 (5.16 percent plus 2.5 percent equals 7.66 percent).

(b) During the repayment period (except deferment periods): Pursuant to section 427A(f)(1) of the HEA, 20 U.S.C. 1077a(f)(1), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.25 percent (5.16 percent plus 3.1 percent equals 8.26 percent, which exceeds the 8.25 percent cap).

4. FFEL Stafford loans, for which the first disbursement is made on or after July 1, 1998, but before October 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: Pursuant to section 8301 of Pub.L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 6.86 percent (5.16 percent plus 1.7 percent equals 6.86 percent).

(b) During all other periods: Pursuant to section 8301 of Pub.L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students Loans

1. Variable-rate FFEL PLUS loans and FFEL SLS loans made before October 1, 1992—the interest rate may not exceed 12 percent: Pursuant to section 427A(c)(4)(B) of the HEA, 20 U.S.C. 1077a(c)(4)(B), the interest rate for the period July 1, 1998, through June 30,

1999, is 8.68 percent (5.43 percent plus 3.25 percent equals 8.68 percent).

2. FFEL SLS loans for which the first disbursement was made on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: Pursuant to section 427(c)(4) of the HEA, 20 U.S.C. 1077a(c)(4), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.53 percent (5.43 percent plus 3.1 percent equals 8.53 percent).

3. FFEL PLUS loans for which the first disbursement was made on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed 10 percent: Pursuant to section 427A(c)(4)(D) of the HEA, 20 U.S.C. 1077a(c)(4)(D), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.53 percent (5.43 percent plus 3.1 percent equals 8.53 percent).

4. FFEL PLUS loans for which the first disbursement was made on or after July 1, 1994 but prior to July 1, 1998—the interest rate may not exceed 9 percent: Pursuant to section 427(c)(4)(E) of the HEA, 20 U.S.C. 1077a(c)(4)(E),the interest rate for the period July 1, 1998, through June 30, 1999, is 8.53 percent (5.43 percent plus 3.1 percent equals 8.53 percent).

5. FFEL PLUS loans for which the first disbursement is made on or after July 1, 1998, and before October 1, 1998—the interest rate may not exceed 9 percent: Pursuant to section 8301 of Pub.L. 105–178, the interest rate for the period July 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

Interest Rates for FFEL Consolidation Loans

1. FFEL Consolidation loans made before July 1, 1994—the interest rate may not exceed 9 percent: Pursuant to section 428C(c)(1)(B) of the HEA, 20 U.S.C. 1078–3(c)(1)(B), the interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

2. FFEL Consolidation loans made on or after July 1, 1994, for which the consolidation loan application was received by an eligible lender before November 13, 1997: Pursuant to section 428C(c)(1)(C) of the HEA, 20 U.S.C. 1078–3(c)(1)(C), the interest rate is the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application is received by an eligible lender on or after November 13, 1997—the interest rate may not exceed 8.25 percent: Pursuant to section 428C(c)(1)(D) of the HEA, 20 U.S.C. 1078–3(c)(1)(D), the interest rate for the period July 1, 1998, through June 30, 1999, is 8.25 percent (5.16 percent plus 3.1 percent equals 8.26 percent which exceeds the 8.25 percent cap).

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Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1077a and 20 U.S.C. 1087e).

Dated: July 6, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101 and 120

Food Labeling: Warning and Notice Statement: Labeling of Juice Products; Final Rule

Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice; Extension of Comment Period; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0524]

RIN 0910–AA43

Food Labeling: Warning and Notice Statement; Labeling of Juice Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its food labeling regulations to require a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present. FDA is taking this action to inform consumers, particularly those at greatest risk, of the hazard posed by such juice products. FDA expects that providing this information to consumers will allow them to make informed decisions on whether to purchase and consume such juice products, thereby reducing the incidence of foodborne illnesses and deaths caused by the consumption of these products.

DATES: Effective September 8, 1998; however, compliance for juice other than apple juice or apple cider is not required until November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 28, 1997 (62 FR 45593), FDA published a notice of intent (''the notice of intent'') that announced a comprehensive program to address the incidence of foodborne illness related to consumption of fresh juice and ultimately to address the safety of all juice products. In the notice of intent, the agency invited comment on the appropriateness of its strategy to: (1) Initiate rulemaking on a mandatory Hazard Analysis and Critical Control Point (HACCP) program for some or all juice products; (2) propose that the labels or the labeling of juice products not specifically processed to prevent, reduce, or eliminate pathogens bear a warning statement informing consumers of the risk of illness associated with consumption of the product; and (3) initiate several educational programs to minimize the hazards associated with consumption of fresh juices. The agency stated that it would address comments received within 15 days of publication of the notice of intent as part of any rule proposed by the agency and would consider all comments to the notice of intent received after 15 days in any final rulemaking.

FDA considered the comments received within 15 days of the notice of intent and other information available to the agency. Based on this information, FDA tentatively concluded in a proposed rule (''the HACCP proposal'') (63 FR 20450, April 24, 1998) that the most effective way to ensure the safety of juice products is to process the products under a system of preventive control measures. Consequently, in the HACCP document, the agency proposed to require that juice products be processed under HACCP programs.

Although FDA had tentatively concluded that HACCP is the most effective means of ensuring the safety of juice products, it also tentatively concluded in a proposed rule (''the juice labeling proposal'') (63 FR 20486, April 24, 1998), that there is an immediate need to inform consumers of the health risks associated with the consumption of juice products not processed to prevent, reduce, or eliminate pathogens that may be present. As fully discussed in the juice labeling proposal, FDA proposed that packaged untreated juice products[1] bear a warning statement informing at-risk consumers of the hazard posed by untreated juices to allow them to make informed decisions on whether to purchase and consume such products. Interested parties were given until May 26, 1998, to comment.

FDA prepared a single Preliminary Regulatory Impact Analysis (PRIA) that addressed both the juice labeling proposal and the HACCP proposal (63 FR 24254, May 1, 1998). Interested parties were given until May 26, 1998, to comment on aspects of the PRIA relating to the juice labeling proposal and until July 8, 1998, to comment on aspects of the PRIA relating to the HACCP proposal. Elsewhere in this issue of the **Federal Register**, FDA is announcing a 30-day extension of the comment period on the juice HACCP proposal to August 7, 1998.

FDA received approximately 85 responses to the notice of intent, each containing one or more comments. FDA addressed some of these comments in the juice labeling proposal. FDA subsequently received approximately 150 responses to the juice labeling proposal, each containing one or more comments. Responses to the notice of intent and to the juice labeling proposal were received from industry, trade organizations, consumers, consumer interest groups, academia, and State government agencies. Some of the comments supported the proposal. Other comments opposed the proposal or suggested modifications of various provisions of the proposal. The agency discusses below the significant comments bearing on the proposed labeling regulation and, when applicable, any revisions to the proposed regulation made in response to these comments. Responses to the notice of intent that bear on the juice labeling proposal and that were not addressed in that proposal are also addressed in this document. For simplicity, the agency's discussion does not categorize comments with regard to whether they were received in response to the notice of intent or in response to the juice labeling proposal.

Proposed § 101.17(g)(6) of the juice labeling proposal states that the requirements of that regulation would not apply to juice processed in a manner that will produce, at a minimum, a 5-log (i.e., 100,000-fold) reduction in the pertinent microorganism for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, where the ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in the juice. This provision is directly linked to the process controls for pathogen reduction (the pathogen reduction performance standard; proposed § 120.24 that is part of the agency's HACCP proposal. This standard is pivotal in both the juice labeling and juice HACCP proposals, and interested persons could comment on the standard in response to either or both proposals.

FDA received several requests to extend the comment period, e.g., for an additional 30 days, for an additional 45 days, or for an additional 60 days. Some of these requests discussed the fact that the proposed pathogen reduction performance standard was an important

[1] As discussed in the juice labeling proposal, the terms ''juice'' and ''juice products'' are used interchangeably. Thus, ''juice'' refers both to beverages that are composed exclusively of an aqueous liquid or liquids extracted from one or more fruits or vegetables and those beverages that contain other ingredients in addition to juice. Similarly, ''juice product'' refers both to beverages that contain only juice and beverages that are composed of juice and other ingredients.

In the remainder of this document, products not processed to prevent, reduce, or eliminate pathogens will be referred to as ''untreated juice products.'' In addition, processing to ''prevent, reduce, or eliminate'' pathogens will be referred to as processing to ''control'' pathogens.

provision of both the juice labeling proposal and the HACCP proposal and stated that 30 days was an insufficient time to address that standard. In a memorandum dated June 5, 1998, from the Deputy Director of FDA's Regulations Policy and Management Staff to the Dockets Management Branch, FDA extended the comment period until June 22, 1998, for those persons who had requested an extension, in accordance with § 10.40(b)(3) (21 CFR 10.40(b)(3)). Thereafter, in a memorandum dated June 10, 1998, FDA extended the comment period until June 22, 1998, for all interested persons. The agency's memoranda noted that comments submitted to the juice labeling rule must be received in the Dockets Management Branch on or before 4:30 p.m., e.d.t., June 22, 1998, and that no other extensions would be considered. The public was notified of both extensions by placing copies of the two memoranda in the agency's public docket.

In this document FDA addresses those comments that were received on or before 4:30 p.m., e.d.t., June 22, 1998, in response to the notice of intent, in response to the juice labeling proposal, or in response to the HACCP proposal that bear on the proposed warning statement requirement or on the proposed pathogen reduction performance standard. However, in this document, FDA does not address any comments, received either in response to the notice of intent or in response to the juice labeling proposal, that bear on aspects of the HACCP proposal other than the pathogen reduction performance standard (proposed § 120.24). Those comments will be addressed in any final rule that the agency issues with respect to the HACCP proposal.

As noted, since the publication of the notice of intent in August 1997, FDA has intended to propose two regulations, a juice HACCP regulation and a juice warning statement regulation, that in combination with one another, as well as certain educational programs, would establish a comprehensive program to ensure the safety of fresh juice. As discussed in the juice labeling proposal, the warning statement requirement is designed to provide public health information during the development and implementation of a HACCP rule. FDA recognizes that as a result, certain provisions of the juice labeling proposal and the juice HACCP proposal are very closely linked, including the scope of each rule (e.g., what is defined as ''juice'') and the pathogen reduction standard (the so-called ''5-log standard''). See also comment 40. The agency is also aware that the comment period announced in the juice HACCP proposal is continuing, and in fact, elsewhere in this issue of the **Federal Register**, the agency is announcing a 30-day extension of that comment period to August 7, 1998. Thus, comments are likely to be made on the HACCP proposal, including on these common issues, after the publication of this final rule.

Although there are these overlapping issues in the two juice rulemakings, FDA believes that the public health risk presented by untreated juice is such that it is essential that the warning statement rulemaking be completed and the rule implemented promptly. In order to complete the warning statement rulemaking, the agency must consider and respond to all significant comments on the juice labeling proposal, including those comments that relate to issues presented in both the HACCP and warning statement rulemakings. Thus, this final rule addresses and responds to all significant comments made on the juice labeling proposal; the resolution of these comments is based upon the administrative record of this proceeding at this time. Once the comment period closes on the HACCP proposal, FDA will evaluate all comments received on that proposal and utilize such information to develop a final HACCP rule for juice, if such a rule is supported by the record. To the extent that the agency's analysis of the record for the HACCP proceeding results in the resolution of a common issue or issues in a way that differs from the issue's resolution in this final rule, FDA will initiate the amendment of the juice labeling regulation to ensure conformance with any final HACCP rule.

II. Rationale for Warning Statement

A. Risk Associated with Consumption of Juices

In the notice of intent and the juice labeling proposal, FDA documented that certain juices have been the vehicle for outbreaks of foodborne illness (62 FR 45593). Consequently, in the juice labeling proposal, FDA proposed to require a warning statement for juice products to alert consumers, especially those at greatest risk, of the potential hazard so that they may make informed decisions on whether to purchase and consume such juice products.

1. Some comments contended that FDA has not conducted an adequate risk assessment and, therefore, has no basis to require a warning statement.

The agency performed a detailed evaluation of the hazards posed by untreated juices, which was filed in the administrative record of the HACCP proposal and was included as an appendix to the PRIA (Ref. 1). This evaluation was based on available scientific information and was appropriate to the circumstances. FDA believes that this evaluation provided an adequate assessment of risks and a sufficient basis for requiring a warning statement.

2. Many of the comments contended that the health hazard associated with juice products is not sufficient to justify a warning statement. Some of the comments asserted that the health hazard is limited to apple juice and, therefore, the remedies should be limited to apple juice. Another comment asserted that FDA's estimate of the risk of foodborne illness is inaccurate because that estimate did not consider recent steps taken by members of the juice industry to address microbial contamination. Some comments argued that most of the outbreaks have occurred because of poor manufacturing practices and suggested that FDA increase its inspection of food manufacturers rather than issue regulations to require a warning statement.

The agency does not agree with the comments that contend that the health hazard associated with the consumption of fresh juices is insufficient to justify requiring a warning statement. Risk is a function of two factors: Likelihood of occurrence of an event and severity of the event. As discussed in the HACCP proposal (63 FR 20450 at 20459), severity is the seriousness of the consequences of exposure to the hazard. Considerations of severity (e.g., impact of sequelae and magnitude and duration of illness or injury) can be helpful in understanding the public health impact of the hazard. Likelihood of occurrence of a hazard is generally judged based on processing experience, epidemiological data, and information in the technical literature.

As discussed in the juice labeling proposal, there are documented cases of foodborne illness associated with the consumption of various juice products contaminated with microorganisms such as *Escherichia coli* O157:H7, *Salmonella* species, *Cryptosporidium*, and *Vibrio cholerae*. These various microorganisms, which were found in apple juice, apple cider, orange juice, and frozen coconut milk, were associated with foodborne illness throughout the United States (e.g., in CA, CO, MA, NY, CT, NJ, MD, and WA) over a 6-year period (i.e., 1991 to 1996).

Furthermore, some of the illnesses associated with certain untreated juice have been very severe (e.g., cases of long-term reactive arthritis and severe chronic illness); in one case, consumption of contaminated juice has resulted in death. As is the case with most food associated disease, because of the likelihood of underreporting, it is assumed that these outbreaks represent a fraction of the outbreaks and sporadic cases that actually occur.

Importantly, the comments did not provide the agency with additional data that either contradict FDA's detailed hazard evaluation (Ref. 1) or that could be used to reevaluate the health risks associated with consumption of untreated juice products. Therefore, the comments have not persuaded FDA that there is insufficient risk to warrant requiring a warning statement for untreated juice products.

The agency recognizes the recent steps taken by members of the juice industry to address microbial contamination. However, FDA notes that industry practices may vary. The agency is not aware that all members of the juice industry are addressing the potential for microbial contamination in an equally effective manner. Accordingly, the agency continues to see a need for a comprehensive Federal regulatory approach for all juice products.

FDA tentatively concluded in the HACCP proposal (63 FR 20450 at 20456) that a preventive system, such as HACCP, appears to offer the most effective long-term solution to control the significant microbial hazards, along with other hazards, that have become a problem with juice. Increased inspection, while having some beneficial impact on the safety of juices, is resource intensive to the agency. Even if funds were available to the agency for this purpose, the agency tentatively concluded in the HACCP proposal that increased inspection likely would not be the best way for the agency to utilize its resources to protect the public health. It is ultimately the responsibility of manufacturers to ensure that their products are safe.

Current good manufacturing practices (CGMP's) are plantwide operating procedures that also address sanitation. Although FDA supports the use of CGMP's, the agency also tentatively concluded in the proposed HACCP rule that the use of CGMP's alone would not be sufficient to control the problems with juices because CGMP's do not concentrate on the identification and prevention of food hazards.

Based on information the agency has received in response to the juice labeling proposal, FDA has concluded that the use of CGMP's and increased FDA inspections by themselves do not adequately address the safety of juices. Labeling addresses the need to provide a warning to consumers until juice processors implement measures to control pathogens.

3. Comments stated that the results of FDA's 1997 national cider mill survey indicate that the health risk posed by cider is not sufficient to warrant a warning label. Although the results of the survey have not been published, these comments asserted that no pathogenic bacteria were found in the cider samples evaluated by the agency.

These comments refer to a 1997 assignment in which FDA inspected fresh unpasteurized apple cider operations and collected in-line product for microbiological analysis at 237 establishments in 32 States. Although FDA has not issued its summary of results from this assignment, the agency notes that this assignment generated microbiological data at several stages of operation in these facilities including the incoming apples, wash water, apples taken after washing but before processing, and finished cider both preserved and unpreserved. The microbiological analyses at these various steps were for pathogens such as *E. coli* 0157:H7 and *Salmonella sp.* and also for fecal coliforms and generic *E. coli*, which are not foodborne pathogens, but are used as indicators of fecal contamination that could be a potential source for contamination by pathogens. It was the agency's intent to consider all of the data generated to assess microbiological safety factors for cider. The agency does not consider it appropriate to focus on any one aspect of its findings, i.e., the lack of any positive finding for pathogens in finished product, for drawing conclusions about the microbiological safety of cider.

This assignment did not result in the detection of any pathogens in a finished cider product intended to be sold to the public. However, FDA's preliminary findings from this assignment show that one firm's incoming apples tested positive for *Salmonella sp.* indicating that microbial hazards that necessitate effective control measures are reasonably likely to occur on incoming apples. Moreover, FDA's preliminary findings show that fecal coliforms and *E. coli* were found in the wash water used at several firms, indicating that the water is of poor quality. In addition a small number of finished cider products tested positive for fecal coliforms and generic *E. coli* was found in 14 percent of the finished product samples.

These findings further support the agency's action here in that they establish that risk factors such as pathogenic bacteria and fecal coliforms can exist in cider processing operations and could give rise to microbiological safety hazards in finished cider products. The findings of this FDA assignment clearly do not support the comment's contention that the health risk posed by cider is insufficient to justify a warning label.

4. Several of the comments that opposed warning statements on juice products contended that they are unnecessary. Two of these comments asserted that FDA should educate the consumer that the problem is not the juice, but rather, the fact that the juice is contaminated with animal feces and not properly processed.

FDA does not agree with this comment to the extent that it asserts that a warning statement should not be part of the Federal response to the problem of contaminated juice. Juice products that contain pathogenic microorganisms can be a vehicle for foodborne illness regardless of whether the microbial contamination arises from the source fruit or vegetable or from insanitation during manufacture. FDA's HACCP proposal is designed to ensure the safe and sanitary processing of juice. The warning statement, which is itself a form of education, is required only for those juices that have not been processed to achieve the pathogen reduction performance standard. Consumers, particularly those at greatest risk, need to know that untreated juice may contain harmful bacteria that could cause serious illness so that they may make informed choices. FDA expects that the warning statement will reduce the risk of illness because some of the at-risk consumers likely will choose not to expose themselves to the hazard.

B. Juice Products Versus Other Food Products That May Contain Pathogens

5. Several comments claimed that the agency's actions were discriminatory in nature and not proportional to the health hazard posed by unpasteurized juices. These comments questioned why other food products associated with recent foodborne illnesses are not required to bear warning statements (i.e., fruits, berries, eggs, melons, poultry, hamburgers, meat products, seafood, etc.).

The agency disagrees with these comments. Juice products historically have been consumed by individuals without treatment to control pathogenic microorganisms. In addition, the presence of some of the pathogens (i.e., *E. coli* O157:H7 and *Crytosporidium*)

that have been responsible for recent outbreaks of foodborne illnesses associated with untreated juice products is a relatively new phenomenon. Therefore, consumers do not associate such pathogens, and the risk that they present, with the consumption of untreated juice. Accordingly, in the juice labeling proposal, the agency tentatively concluded that a juice warning statement is needed to protect the public health because consumers are unaware of the nature and magnitude of the hazard.

In contrast, other mechanisms are in place to reduce the risk of foodborne illness from consumption of many of the foods discussed in the comments. First, consumers have some awareness that meat and poultry products have the potential to contain harmful microorganisms; also, these foods ordinarily are cooked prior to consumption. Moreover, meat and poultry products that are regulated by the U.S. Department of Agriculture's Food Safety and Inspection Service (USDA/FSIS) are subject to that agency's HACCP regulations. In addition, regulations issued by USDA/FSIS require safe handling instructions on raw meat and poultry products advising consumers to thoroughly cook the products.

Other products mentioned in the comments are regulated with the goal of ensuring microbial safety. For example, seafood products are now required to comply with FDA's HACCP program for seafood products. Recently, FDA issued draft guidelines for good manufacturing practices and good agricultural practices regarding raw agricultural commodities (63 FR 18029, April 13, 1998). In addition, the agency recently requested public comment on its plan to implement a comprehensive ''farm to table'' strategy to decrease food safety risks associated with shell eggs (63 FR 27502, May 19, 1998).

Thus, FDA's requirement for a warning statement on untreated juice products has a rational foundation and is part of a comprehensive approach to solve a larger problem. The agency therefore finds no merit in the assertion that the agency's proposed actions are discriminatory when compared to the regulatory approaches that are already in place or that are being considered for other food products that have been associated with foodborne illness.

C. Regulatory Approach

6. Some comments asserted that the purpose of the juice labeling rule is to force manufacturers to pasteurize juices, particularly apple cider. Comments from some cider manufacturers contended that their customers don't want pasteurized cider, and a few of these comments contended that pasteurizing cider converts the product to apple juice.

While pasteurization is an effective and proven mechanism that has been shown to satisfy the pathogen reduction standard, it is not the only mechanism capable of achieving a 5-log reduction. As discussed in the HACCP proposal, the pathogen reduction performance standard is a performance-based, rather than process-based, standard. Thus, as addressed in response to comment 35, mechanisms other than pasteurization may be used to satisfy the pathogen reduction performance standard. Thus, FDA disagrees with these comments.

7. Some of the comments argued that a warning statement will not reduce the hazards associated with unpasteurized juice or make a safer juice industry.

The agency agrees that a warning statement will not directly reduce the hazards associated with juice products. However, the purpose of the warning statement is to provide consumers with information regarding the potential hazards associated with untreated juice and thereby to allow consumers, including those most vulnerable, to make informed choices. Thus, FDA expects that the warning statement will reduce the risk of illness because some of the at-risk consumers likely will choose not to expose themselves to the hazard.

The agency also acknowledges that warning statements will not directly make a safer juice industry. Indeed, it is for that very reason that the agency concurrently proposed a HACCP program to reduce or eliminate the hazards associated with juice products.

8. One comment contended that warning labels will encourage producers to ignore good manufacturing practices (GMP's) because of their belief that the presence of the warning statement will remove the producer's liability for the product.

The agency rejects the comment. The presence of the warning statement does not remove the manufacturers' responsibility of adhering to GMP's or his liability for the finished product. Regardless of this final rule, a juice product that is found to contain harmful bacteria would be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) and thus, illegal.

9. One comment asserted that the requirement for a warning statement is contrary to agency policy of disallowing adulterated products to be sold. This comment also asked whether a juice product that bears the warning statement would be subject to recall if it were found to be contaminated with pathogenic microorganisms.

The evidence available at this time documents that there is a risk of foodborne illness from consumption of untreated juice. The agency does not contend, nor does the validity of the juice labeling proposal require, a showing that all unpasteurized juice is adulterated. Thus, FDA disagrees that requiring a warning statement essentially permits adulterated food to be marketed. As noted, the warning statement is intended to provide consumers important information not otherwise available on the label or in labeling (namely, that a risk of serious illness exists if the products are consumed by certain groups of the population.) Upon the effective date of this final rule, a covered product that does not comply with the labeling requirement would be misbranded under sections 201(n) and 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 343(a)(1)). Regardless of this final rule, a juice product that is found to contain harmful bacteria would be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) and thus, illegal. This adulterated status would persist regardless of whether product labeling included the warning statement.

Similarly, although FDA has no express authority to mandate the recall of adulterated foods, FDA fully expects that any manufacturer who has distributed an adulterated juice product would voluntarily recall that product as soon as a microbial contamination problem was identified.

10. Several comments suggested that FDA should implement HACCP requirements immediately rather than require warning labels on untreated juice products. Other comments supported the use of a warning statement on food products only as an interim measure until the agency establishes a more comprehensive solution to the problem of microbial contamination in juice.

In each of the recent agency documents regarding juice (i.e., the notice of intent (62 FR 45593 at 45594), the juice labeling proposal (63 FR 20486 at 20487), and the HACCP proposal (63 FR 20450 at 20457)), FDA tentatively concluded that the implementation of its proposed HACCP program is the most effective long-term measure for controlling pathogens and other safety concerns related to the production and distribution of juice products. As discussed in the juice labeling proposal, warning statements are intended to serve as a short-term alternative for almost all untreated juice products until

HACCP programs that ensure that the juice will be processed in a manner that meets the pathogen reduction performance standard can be developed and implemented by the juice industry. Once such HACCP programs are in place, the agency does not presently foresee the need for a warning statement on products processed in a manner that meets the pathogen reduction performance standard, and this final rule is consistent with that view. However, the agency's proposed HACCP regulations would not cover: (1) The operation of a retail establishment; or (2) the operation of a very small business that is also a retail establishment and that makes juice on its premises, provided that the establishment's total sales of juice and juice products do not exceed 40,000 gallons per year, and provided that the establishment sells such juice directly to consumers or other retail establishments. Thus, it is likely that not all juice products will be produced under a HACCP system. In addition, a program as comprehensive as the agency's proposed HACCP program requires more time to implement than a labeling requirement. This is particularly true in light of the provision in the juice labeling proposal that the warning statement requirement may be met, in the short term, by labeling (i.e., a sign or placard that is displayed at the point of sale) rather than by application of the warning statement to the product label (proposed § 101.17(g)(3)). FDA believes that the warning statement, together with HACCP, makes the agency's response to this problem a comprehensive solution. Therefore, the agency is making no changes to its regulatory approach in response to these comments.

11. Several comments expressed the opinion that use of the terms ''pasteurized'' or ''unpasteurized'' alone is sufficient to inform consumers of potential risks associated with consumption of juice products. Some of these comments maintained that use of the term ''fresh, unpasteurized'' would more clearly indicate that the juice is unprocessed.

Other comments agreed with the agency's rationale in the juice labeling proposal that a warning statement that merely characterizes juice as ''pasteurized'' or ''unpasteurized'', without also including the information about the nature and magnitude of the hazard, would be incomplete. Some comments noted that unpasteurized juice may have a reputation among many consumers for being a particularly fresh and healthful food. These comments contended that it is important to ensure that product labeling meets both the needs of consumers who are at risk of serious illness as well as the needs of consumers who prefer to purchase untreated juice because they perceive such products to be healthful.

In the juice labeling proposal, the agency fully discussed its rationale for tentatively concluding that not providing information about the nature and magnitude of the hazard presented by untreated juices would constitute misbranding of the product. The agency is concerned that some consumers do not know the significance of pasteurization and, therefore, would not be able to make an informed decision on whether to purchase and consume the products. In focus group research, FDA determined that, while most participants had a good understanding of what pasteurization was, a significant number of the participants did not. The agency acknowledged that indicating whether a product is ''pasteurized'' or ''unpasteurized'' may be useful to consumers who are seeking to purchase either type product. However, FDA tentatively concluded that use of the terms ''pasteurized'' or ''unpasteurized,'' alone, informs the consumer on the type of treatment, or lack of treatment, that a product has received and would not give consumers information about the risks presented by untreated juices. In reaching this tentative conclusion, the agency considered comments to the notice of intent that expressed opinions similar to the comments subsequently submitted to the juice labeling proposal. The latter comments provided no new information to provide a basis for FDA to change that tentative conclusion. Therefore, FDA is not adopting the suggested approach that, instead of the warning statement requirement, the agency require all juice products to be labeled as ''pasteurized'' or ''unpasteurized.'' Nonetheless, as a general matter, statements that are truthful and not misleading are always permitted under the act. Thus, manufacturers who choose to make a statement, on the product label or in labeling, that describes a juice product as ''pasteurized'' or ''unpasteurized'' may do so as long as the statement is factually accurate and is not presented in a manner that would cause the statement to be misleading.

12. One comment questioned FDA's proposal to require that untreated juice products bear a warning statement in light of the fact that the agency does not require foods containing known allergens, such as peanuts, to bear a warning statement.

FDA disagrees with the suggestion contained in this comment. The purpose of a warning statement is to provide consumers with important information that did not otherwise appear on the product label or in labeling. FDA recognizes that many foods contain substances (e.g., peanuts) that cause an allergic response in those persons sensitive to the substance. Current food labeling regulations require, in virtually all cases, a complete listing in the ingredient statement of all of the ingredients of the food. Consequently, the label of foods containing such substances already provides sufficient information to allow sensitive individuals to avoid food products that contain substances to which they are allergic. Thus, as a general rule, a statement warning about the potential for an allergic reaction is not needed to protect the public health. With untreated juice, there is no other disclosure regarding the potential presence of pathogens in unprocessed juice, and, due to the relatively recent nature of such risk, sensitive individuals (which may be as much as 25 percent of the general population) (Ref. 2) are not aware of the hazard.

13. Some comments contended that warning statements are not generally effective at preventing the targeted behavior, pointing to the failure of warnings on other commodities, such as cigarettes and alcohol, to have the desired effect. Other comments considered it likely that the proposed warning statements would be effective because the risks associated with consuming untreated juice are not widely known or understood and consumers would use the new information to make informed choices that they were unable to make without the new information. Some comments advocated the use of brochures or pamphlets outlining the risks associated with consumption of untreated juices as an alternative to a warning statement.

In its focus group research on juice labeling, and in recent survey results (Ref. 3), FDA confirmed that consumers are largely unaware of the potential hazards of consuming untreated juice. Thus, the proposed warning statement contains information that is new to consumers. This fact separates the proposed warning statement from warning statements on other commodities such as alcohol or tobacco where the information contained in the statement is already widely known and familiar to most people. Research on warning statement effectiveness has identified the lack of new information in the warning statement as the principal reason that warning

statements are ineffective (Ref. 4). Participants in the focus groups said that the information about the risks of untreated juice was new and would have a substantial impact on their juice product choices.

The agency agrees that the effectiveness of the warning statement would be enhanced by an educational campaign that provides consumers with materials such as brochures or pamphlets containing information giving a fuller context to the hazard. FDA is continuing to provide educational information to consumers concerning juice. However, the FDA focus group participants strongly expressed a need for product specific information that clearly identified a product, on its label, as ''unpasteurized'' and that described the nature of the hazard. The reasons given by the focus group participants were that this was new information to them and they considered such information necessary to make informed choices. Educational materials could be an adjunct to a warning statement, and the agency encourages firms to develop and provide them where possible. However, FDA believes that the warning statement required by this final rule is necessary to adequately and efficiently communicate to consumers the risks presented by unprocessed juice. Therefore, FDA declines the suggestion in the comments that educational materials such as brochures or pamphlets should substitute for the warning statement.

14. Several of the comments asserted that, in general, a warning statement would remind consumers of products such as cigarettes, which are well known to be a health hazard for the general population, or alcoholic beverages, which are well known to be harmful to the general population when consumed in excess or to a developing fetus when consumed by a pregnant woman. In essence, these comments contended that a warning statement on a juice product, which consumers perceive as healthful, is inappropriate because it casts that product in the same light as products that are a known health hazard.

FDA agrees that products such as cigarettes and alcohol have characteristics that present a known health hazard to the general population. However, these products also are subject to regulatory control mechanisms, other than warning statements, commensurate with their risk. Relative risk aside, FDA believes that the level of risk associated with untreated juice justifies the requirement for a warning statement. The focus group research reflects the importance of this information in that many focus group participants said that the risk information would have a substantial impact on their juice product selection. Even participants who said that they would continue to drink untreated juice products because of the perceived benefits also said that the information would influence whether they would give such products to their children.

15. Some comments maintained that a warning statement on covered juice products would be tantamount to stating that the products contain pathogens.

FDA does not agree with these comments. The agency's warning statement is carefully worded to state that the products in question ''may contain'' harmful bacteria. This statement is factually accurate.

16. Some comments pointed out that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) did not support warning statements.

The agency disagrees with the comments' view that NACMCF did not support a warning statement for juice products. In fact, NACMCF stated that it lacked sufficient data to evaluate the effectiveness of labeling statements as safety interventions or to help consumers make informed choices. Therefore, NACMCF declined to endorse labeling as an interim safety measure and instead endorsed implementation of a comprehensive HACCP program as a preventive system of hazard control to ensure the safe and sanitary processing of fruit and vegetable juices and juice products. As already discussed, the agency has likewise tentatively concluded in the HACCP proposal that a HACCP program for juice products is the best long-term strategy for public health protection; the juice warning statement is intended largely as an interim measure to inform consumers about the potential risk associated with untreated juice products until the application of HACCP principles increases the safety of juice products. Thus, FDA is making no changes to its regulatory approach in response to these comments.

17. Several comments questioned the precedent set by FDA in applying a warning label to fresh juice. The comments noted that requiring this warning label establishes a regulatory trend which, if continued, would result in virtually all foods carrying warnings. Having too many warnings on food would make the warnings meaningless.

FDA agrees that too many warning labels on foods could result in loss of consumer credibility and effectiveness. However, the agency does not agree that it is establishing a trend toward too many warning labels. The agency has used the authority under sections 201(n) and 403(a)(1) of the act only rarely to require warnings or other cautionary label statements. FDA cannot require labeling unless the need for it meets the statutory criteria of being necessary either to clarify existing label statements or because of consequences that may result from customary or usual use of the food.

18. A few comments cited an agency memorandum that is part of the administrative record of the juice labeling proposal (Ref. 5). These comments interpreted the memorandum to reflect the agency's opinion that warning statements are an ineffective method for communicating with consumers or that the agency does not have data that show that warning statements are effective in convincing target populations to avoid a particular substance.

The agency does not agree with these comments. The key point of the memorandum is that warning statements need to be evaluated in consumer testing because it is difficult for experts to anticipate consumers' assumptions and prior beliefs about a product and its potential hazards. The memorandum identified communication problems encountered with a variety of proposed warning statements and concluded that the remedy to these kinds of potential problems is to subject proposed warning statements to consumer testing to determine if they communicate as intended. The memorandum underscored the need to test proposed options for the juice warning statement, and the agency did so, with the results summarized in a report that is in the administrative record of this rulemaking. This consumer testing helped the agency to identify a statement that can inform consumers about a previously unrecognized hazard without being overly alarming.

In addition, these comments incorrectly suggest that FDA has no basis for believing that warning statements can be effective. In fact, the memorandum focuses on the communication effectiveness of warning statements rather than the broader policy question of how well warning statements work in the marketplace. The intent of warning statements is to provide consumers with information necessary to make informed choices. Qualitative research suggests that warning statements are effective in alerting vulnerable populations to potential risks but that consumers' ultimate decisions are based on a variety

of considerations, including their prior experiences, personal preferences, the tradeoffs they are willing to make, and their awareness of particular risks gained by reading warning statements.

Because these comments misinterpret FDA's position, the agency is making no changes to its regulatory approach in response to these comments.

19. Some comments expressed the opinion that FDA acted contrary to public relations research theory by developing script guidelines used by focus group moderators. This comment asserted that, as a result, the focus group results were biased by FDA.

FDA disagrees with the assumption underlying this claim of bias—i.e., that the moderator of the focus groups was given a script. The agency has extensive experience conducting focus group studies, which are a qualitative type of research that generates discussion on the issues in question, allowing for many points of view and differing levels of interest and knowledge. The agency's goals in conducting focus group research are to understand how consumers think about the subject issues, to see how they react to language that the agency and other interested parties have suggested to convey health-related messages, and to uncover erroneous beliefs and assumptions about how consumers will think and respond to proposed communications. In FDA-sponsored focus group research, the moderator is a professionally trained neutral party, who is briefed on the subject matter of the study to the extent necessary to lead the discussion. The moderator works closely with FDA to ensure that the materials and questions meet the highest standards for the conduct of qualitative research. The moderator's guide is a primer to help the moderator cover the topics of interest rather than a ''script.'' Accordingly, the agency finds no merit in the assertion in the comment that the focus group studies were biased.

20. Some comments contended that a warning statement could have a potentially negative impact on consumers by discouraging the consumption of all fruit and vegetable juice products, regardless of whether the products had been processed to control pathogenic microorganisms. Some of these comments expressed the opinion that this negative impact could potentially carry over to other healthful products such as fruits and vegetables.

These comments provided no data or other information to substantiate the assertion that a warning statement on untreated juice products will result in a decreased consumption of all juice products or of fruits and vegetables generally. Nonetheless, FDA will seek to minimize any remote possibility that consumers' reaction to the juice warning statement would be to avoid all juice products or to avoid fresh fruits and vegetables by emphasizing in the agency's ongoing consumer education initiative that: (1) Most juice products are processed to control pathogenic microorganisms and therefore are safe; (2) the warning statement has a limited and targeted scope based on the distinctive characteristics of untreated juice products; and (3) the warning statement will be a reliable cue to tell whether a product has or has not been processed to control pathogenic microorganisms. Accordingly, FDA concludes that the concerns raised in these comments provide no basis to alter the agency's regulatory approach.

In the juice labeling proposal, FDA acknowledged that it would take time for manufacturers to make label changes and deplete existing label inventories. Accordingly, FDA proposed that, as a temporary alternative to providing the information on the label, firms could provide the warning statement in labeling, e.g., signs or placards, at the point of purchase.[2] Under proposed § 101.17(g)(3)(i), manufacturers could provide the warning statement in labeling until January 1, 2000, the next uniform compliance date for other food labeling changes. To relieve the burden on small businesses, proposed § 101.17(g)(3)(ii) provided that small businesses could provide the warning statement in labeling until January 1, 2001.

21. Some comments contended that consumers may not notice the warning in a sign or placard at all. Other comments expressed concern that the message would not be apparent to the consumer when the product was ready to be consumed or would not be apparent to other members of the household who did not have the opportunity to see the sign at the point of purchase.

Other comments expressed concern that consumers would not correctly link the warning message with the appropriate juice product. The comments stated that, for example, a sign may be placed outside a refrigerator that contains both pasteurized and untreated juice products and the label of many juice products does not inform the consumer as to whether the product has been pasteurized. As a consequence, consumers could choose not to purchase any product at all.

The majority of comments that addressed the issue of labeling as an interim means of compliance with the warning statement requirement opposed the length of time that labeling would be allowed. Some comments pointed out that, if the urgency of the public health concern justified the shortening of the comment period, then FDA should not allow an extended time for the warning statement to appear on the label. Other comments contended that FDA's notice of intent provided ample notice to firms to prepare for label changes because FDA urged voluntary compliance at that time.

Some of these comments also opposed the additional time allowed for small businesses to place the warning statement on the labels of their products. The comments asserted that the public health concern existed whether or not the firm was small.

FDA finds merit in these comments. The agency agrees that placards and signs may be less effective than package labels for the purpose of communicating product-specific information to consumers. FDA's experience with the voluntary labeling of fresh fruits and vegetables in supermarkets also indicates that this is the case. While the agency found high levels of voluntary nutrition labeling in supermarkets, consumer research showed that only a small proportion of consumers reported that they had seen this labeling in stores (Ref. 6).

However, as a practical matter, producers of unpasteurized juice need time to modify their labels to include the warning statement. In response to the concerns about the effectiveness of signs and placards, FDA is reducing the length of time that it will permit manufacturers to provide the warning statement in labeling. The label change being required is not complex. FDA believes that small business will not experience more difficulty than large businesses in making the change. Therefore, FDA is giving small and large businesses the same amount of time to make the change. Accordingly, the effective date of this final rule applies equally to all manufacturers of packaged juices, regardless of size. Thus, this final rule (§ 101.17(g)(4)) provides that, except for unpackaged juices (which have no label), the required warning statement may be provided in labeling at point of purchase, until 1 year from the date of compliance with the final rule. In essence, this provision provides

[2] The term ''label'' means any written, printed, or graphic matter on the immediate container of an article (section 201(k) of the act). The term ''labeling'' means all labels and other written, printed, or graphic matter either on any article or its containers or wrappers, or accompanying such article (section 201(m) of the act). Thus, signs and placards that appear at point-of-sale are a type of labeling.

manufacturers the alternative of using labeling for a single juice season. This flexibility will postpone by a juice season a manufacturer's need to revise and reprint labels that would be affixed to packaged untreated juice products.[3] During this interim period, the agency's ongoing food safety education campaign will help consumers to look for, and understand, juice labeling posted at the point of purchase.

The agency acknowledges that there are some costs associated with this revision to the proposed rule. FDA's analysis of the economic impact of this revision is discussed in section VIII of this document.

22. Some comments suggested that a more appropriate interim measure than the use of signs or placards would be the application of the warning statement to the product label via stickers. One comment estimated the cost of placing stickers with the warning statement on packaged containers. For 1,000 bottles, the comment estimated the cost to be $28.25. The estimate in the comment was based on several assumptions. First, the time and cost to design the sticker is negligible. Second, the total cost to pay the bottle supplier to apply the 1,000 labels is 70 cents. Third, there are no printing charges beyond the basic per unit cost of the label.

FDA acknowledges that firms could comply with the warning statement requirement through the use of stickers. Many manufacturers may find it more convenient to apply the warning statement to packaged product by means of stickers than to provide signs or placards to all retailers who sell their product.

However, there are costs associated with using stickers to revise a label. FDA disagrees with the estimate included in the comment because FDA disagrees with the underlying assumptions presented in the comment. First, there are always costs of specifying to the printer what the sticker will say and the way it will look, as well as costs of finding the printer to produce the stickers. The agency estimates that these administrative costs are $100. Second, it is not feasible to have bottle suppliers place labels on bottles this close to the beginning of the juice seasons. As some comments noted, bottles and labels for this season are already in inventory and waiting for the beginning of processing. The agency estimates the cost of applying the labels by multiplying the average rural hourly cost of labor ($13.00) by the number of hours it would take to label 10,000 gallon size packages (the average size of plant that will be using the warning statement) and the cost of extra equipment needed to apply this volume of labels. The agency estimates this cost to be $600. Third, printers levy one time charges for set-up in addition to the basic per unit cost of labels. The agency has estimated total printing costs for a 10,000 gallon operation to be $250. Thus, the agency's estimate of the cost of achieving compliance within 60 days through use of stickers is approximately $1,000. This is in contrast to the $100 agency estimate of the cost of achieving compliance through use of signs or placards. Thus, while FDA considers stickers an acceptable means of revising a label, in light of the cost differential between labels and placards, the agency is not persuaded that it should mandate the use of labels with stickers for the 1998 juice season. Accordingly, FDA is making no additional changes to its provisions for interim compliance with the warning statement requirement through labeling in response to these comments.

23. Some comments that objected to allowing juice product manufacturers to use labeling while they change labels noted that the USDA requirement for safe handling instructions on raw meat and poultry, which was issued in response to a similar public health concern, was effective 60 days after its publication, with no temporary allowance for labeling.

FDA acknowledges that the final regulation requiring safe handling label statements on meat and poultry products (59 FR 14528, March 28, 1994) became effective for comminuted products 60 days after publication, with no temporary allowance for labeling. However, the comment failed to fully describe the circumstances surrounding the FSIS rulemaking. On August 16, 1993 (58 FR 43478), FSIS published an interim final rule requiring the safe handling statements, with opportunity for comment. On October 12, 1993 (58 FR 52856), FSIS published a final rule requiring the safe handling statements, with an immediate effective date. On November 4, 1993 (58 FR 58922), FSIS withdrew the October 12, 1993, rule as a result of litigation and reproposed its regulations requiring safe handling instructions. Finally, FSIS published the final rule cited by the comments, with an effective date of 60 days—i.e., May 27, 1994—for comminuted products.[4] Because the safe handling statements did not change between October 12, 1993, and March 28, 1994, the meat and poultry industry had approximately seven and one half months to prepare new labels. Moreover, in its rulemaking and subsequent FSIS Directives, FSIS allowed the use of any labels that bore the safe handling instructions proposed in August 1993, until the inventory was depleted.

Given these circumstances, the alternative provided by § 101.17(g)(4) that manufacturers may comply with the warning statement requirement through labeling is, as a practical matter, similar to the added time that manufacturers received to comply with the FSIS rule requiring safe handling statements as a result of FSIS' withdrawal of the October 12, 1993, rule. The agency believes that these comments require no changes to the provisions of § 101.17(g)(4).

III. Covered Products

A. Unpackaged Juices

In the juice labeling proposal, FDA proposed to require a warning statement on packaged juice products not processed to prevent, reduce, or eliminate pathogens. FDA specifically noted that the agency's proposal excluded unpackaged juice sold for immediate consumption (e.g., juice sold by the glass in restaurants, grocery stores or other food establishments). Comments from the restaurant industry supported the exclusion from the warning statement requirement of unpackaged juice sold for immediate consumption. Other comments requested that the warning statement requirement not exclude unpackaged juice products. In general, these comments asserted that unpackaged fresh juices pose the same risk as fresh juices sold in containers.

24. A few comments pointed out that unpackaged juices have accounted for some of the cases of serious illness that have been associated with consumption of fresh cider. Another comment expressed the view that contamination of fresh juices may be more likely in retail establishments that prepare unpackaged juices than in manufacturing facilities that prepare packaged juices because personnel who work in retail establishments may lack relevant training that ordinarily is provided to personnel who work in manufacturing facilities. Other comments contended that the agency's proposal that the warning statement

[3] As discussed in section VI of this document, this final rule establishes a compliance date for apple juice and apple cider that will closely coincide with the 1998 fresh apple juice season. This final rule also establishes a compliance date for juice products other than apple juice and apple cider that will closely coincide with the 1998 fresh citrus juice season.

[4] The effective date for all other meat and poultry products was July 6, 1994.

requirement apply only to packaged juices would create consumer confusion. For example, consumers would be unable to distinguish, in all circumstances, between unlabeled juice that had been processed to control pathogenic microorganisms and unlabeled juice that had not been so processed. Most of these comments asserted that the warning statement requirement should apply equally to packaged and to unpackaged juices.

As part of its decision to propose to require a warning label on untreated juice, FDA considered, among other things, the issues raised in these comments, and tentatively concluded not to specifically require the labeling of unpackaged juice. As stated in the juice labeling proposal, this approach is consistent with the agency's food labeling regulations which do not apply to food distributed to consumers in unpackaged form unless specifically noted in the regulations (63 FR 20486 at 20487). Because these comments did not provide any information that the agency had not considered at the time it published the proposal, the agency is maintaining its position to not include unpackaged juice in the scope of the warning labeling requirement.

B. Apple Juice Products versus Non-Apple Juice Products

Several comments, almost exclusively from citrus juice interests, asserted that the labeling requirement should apply only to apple juice and apple juice products and should not apply uniformly to juices of other fruits, especially citrus fruits, or to vegetable juices. The comments provided a number of reasons as justification for a differential application of the warning statement requirements. FDA discusses these specific comments, and the agency's response, below.

25. Some comments claimed that the extraction methods for citrus juices justify excluding such juices from the warning statement requirement. Specifically, comments asserted that the extraction of apple juice necessarily involves contact of the expressed juice with a substantial portion of the peel surface for an extended period of time, during which pathogenic organisms on the peel can pass into the juice. The comments asserted that, in contrast, the extraction of citrus juice involves contact of the expressed juice with a small fraction of the peel surface for a period of time much shorter than that for the extraction of apple juice, thereby limiting the opportunities for microorganisms on the peel to pass into the juice. In addition, one comment stated that the smooth surface and disposable outer peel of citrus fruit make it easier to sanitize and prepare citrus fruit for juice extraction. This comment also stated that drops (i.e., fruit that has fallen to the ground) are not used in the fresh citrus juice industry, the extraction method typically used allows less than 2 percent of the presanitized peel surface to come into contact with the juice, and the interior of the citrus fruit is sterile.

FDA does not agree that the described differences in juice extraction methods, with concomitant differences in peel/juice exposure, justify the selective application of the warning statement requirement. The agency acknowledges that the physical characteristics of citrus fruits may help to facilitate safe and sanitary citrus juice extraction operations. However, the comments did not include sufficient data to demonstrate that these factors are sufficient to ensure the safe and sanitary processing of citrus juices. Moreover, the significance of the peel-juice contact as a source of pathogens that may be present in the juice depends on the microbial load on the peel; that initial microbial load may vary with preextraction conditions. In addition, the comments provided no substantive information to establish the rate of transfer of pathogens from peel to expressed juice; thus, a minimum timeframe for contamination remains unknown.

26. One comment asserted that citrus juices should be exempt from the warning statement requirement because the citrus industry is rapidly adopting the following practices to achieve, at a minimum, a 3-log reduction in microbial count: (1) A grading line to remove compromised fruit; (2) rinsing stations; (3) washing fruit with commercial cleaning agent and brush scrubbing; (4) application of sanitizer; (5) heat dryers; (6) extraction equipment that minimizes the amount of peel that contacts the juice; and (7) imposition of good manufacturing practices (GMP's) set out in part 110 (21 CFR part 110).

The agency agrees that the described operations are major pathogen reduction steps and would likely result in a reduction of pathogen levels. Indeed, in the HACCP proposal, the agency acknowledged that it is possible that whole oranges with an intact skin may be processed so that pathogens on the surface of the fruit are destroyed (63 FR 20450 at 20478). However, once again, the comments provided no data or other substantive information to verify that such operations have been adopted industry-wide. In addition, the comments claimed only that these processing practices allowed the citrus industry to achieve, at a minimum, a 3-log reduction in microbial count. As noted, both in the proposed rule (proposed § 101.17(g)(6)) and in this final rule (§ 101.17(g)(7)), the pathogen reduction performance standard would require a 5-log reduction in pathogens. Moreover, consistent with customary scientific practices, the method that produces the 5-log reduction should be validated. Thus, the comments do not establish that the citrus juice industry is universally or automatically meeting the pathogen reduction standard established in this final rule. Accordingly, the comments did not provide a basis for the agency to exclude citrus juices from the warning statement requirement. However, as discussed later in this document (see comment 42), the agency believes that citrus processors should be able to achieve and validate a 5-log reduction.

27. Some comments asserted that the chemical composition of certain fruits and vegetables justifies differential application of the warning statement requirement.

The agency recognizes that various fruits and vegetables differ in their indigenous chemical composition. In fact, even within a variety of a particular fruit or vegetable, there can be some variation in composition depending on growing conditions. However, the comments provided no data to show how chemical composition of a juice bears on its safety. The comments also provided no data to show how chemical attributes that are unique to citrus products will ensure the safety of fresh citrus juices. Therefore, FDA does not agree that differences in chemical composition of various fruits and vegetables and their juices justify the comments' request that certain juices not be subject to the warning statement requirement.

28. Finally, some comments asserted that differences in the degree to which citrus juices have been associated with illness outbreaks justify exempting citrus juices from the warning statement requirement.

The agency disagrees. A 1997 study of recombinant *E. coli* 0157:H7 growth in apple juice and orange juice indicated that citrus juices provide an environment for growth of this microorganism (Ref. 9). In the study, there was only a small decline in numbers of *E. coli* 0157:H7 inoculated into orange juice over a 24-day period at refrigeration temperatures. The fact that *E. coli* 0157:H7 can survive in citrus juice and the fact that human illnesses from other pathogens have been traced epidemiologically to citrus juice demonstrates that, if contaminated,

these juices have potential to cause human illness. Therefore, the agency finds no basis in the comments to conclude that the level of association of citrus juices with illnesses of public health significance is so low as to justify their exclusion from the warning statement requirement.

29. A few comments questioned whether the warning statement requirement should apply to carrot juice because there have been no outbreaks of illness linked to this product.

FDA acknowledges that there are no documented incidents of illness associated with carrot juice sold commercially. This lack of reported incidences may be due to lower exposure because of the total amount of carrot juice consumed. [5]

FDA believes that this absence of documented instances of illness does not justify exempting carrot juice from this final rule. According to information available to FDA, carrot juice is one of the top three fresh juices sold, following orange and apple juice. Because it is derived from a root vegetable, carrot juice has the potential to be directly contaminated with soilborne pathogens. In addition, carrot juice has a higher pH (i.e., it is less acidic) than juices such as apple juice or orange juice, and thus, will better support the growth of microorganisms, including pathogens, which a juice with a more acid pH is more likely to inhibit. In addition, carrot juice itself is a rich source of nutrients that will support microbial growth. Therefore, the agency concludes that there is no basis to exclude carrot juice from § 101.17.

30. Several comments requested clarification on which products are covered by the proposed rule. Comments asked whether a final product that contained a diluted pasteurized juice needed to be labeled if the final product itself is not pasteurized. Other comments inquired about citrus oils, juice concentrates not packaged directly for consumer sale, and lemon and lime juice concentrates that are not sold as beverages. A few comments asked whether certain juices were subject to the warning statement requirement because such juices are sold for use as ingredients in other beverages, such as wine or hard cider.

In considering these comments, FDA identified three questions that bear on whether a particular juice product is subject to the warning statement requirement. First, does the product meet the definition of ''juice'' in § 101.17(g)(1)? With respect to the specific products described in the comments, FDA advises that juice concentrates not packaged for retail sale to consumers meet the definition of ''juice'' in § 101.17(g)(1). Likewise, lemon and lime concentrates, which often are sold for use as ingredients in beverages such as a blend or ''punch,'' also meet the definition of ''juice'' under § 101.17(g)(1). Finally, juices sold for use as an ingredient in either wine or hard cider, which are beverages, are ''juice'' within the meaning of § 101.17(g)(1). In contrast, citrus oils are not ''juices'' under § 101.17(g)(1) because they are not aqueous liquids.

The second question that bears on whether a particular juice product is subject to the warning statement requirement is whether a product that is ''juice'' within the meaning of § 101.17(g)(1) has been processed in a manner that satisfies the pathogen reduction performance standard in § 101.17(g)(7); if so, such ''juice'' is exempt from the warning statement requirement. Thus, neither a pasteurized juice concentrate nor a beverage containing such a concentrate would be subject to the warning statement requirement, as proposed, because a pasteurized ''juice'' satisfies the pathogen reduction performance standard.

The third question that bears on whether a particular juice product is subject to the warning statement requirement is whether the product is intended for retail sale to consumers or is being sold for use as an ingredient in the manufacture of another beverage. FDA acknowledges that, under proposed § 101.17(g)(1), the requirement for a warning statement applied to any juice sold as such or used as an ingredient in another beverage. FDA's proposal to require the warning statement on juice sold for use as an ingredient in another beverage was intended to ensure that manufacturers of beverages had access to information about whether a juice ingredient that they include in their product had been processed in a manner to satisfy the pathogen reduction performance standard. Such information is necessary to allow manufacturers of beverages to comply with the warning statement requirement. However, after consideration of the comments that questioned whether juice sold for use as an ingredient is subject to the warning statement requirement, FDA has reconsidered its proposal.

The warning statement is intended to inform consumers of the hazards presented by untreated juices so that they may make informed choices. Although the use of this warning statement on the label or in labeling of a juice product that is being shipped for use solely in the manufacture of other foods or that is to be processed, labeled, or repacked at a site other than originally processed could serve to inform manufacturers who receive the ingredient that the juice is untreated, the same goal of providing information to manufacturers could be accomplished by customary trade practices. For example, a statement that describes whether the juice has, or has not, been processed in a manner to meet FDA's pathogen reduction performance standard could be included on an invoice or product specification sheet.

Accordingly, in this final rule FDA is adding new § 101.17(g)(3) to clarify that juice that is not for distribution to retail consumers in the form shipped and that is for use solely in the manufacture of other foods or that is to be processed, labeled, or repacked at a site other than originally processed, is exempt from the warning statement requirement, provided that for juice that has not been processed in the manner described in § 101.17(g)(7), the lack of such processing is disclosed in documents accompanying the juice, in accordance with the practice of the trade.

C. The Proposed Pathogen Reduction Performance Standard

As discussed in section I of this document, proposed § 101.17(g)(6) of the juice labeling proposal is directly linked to the pathogen reduction performance standard that is part of the agency's HACCP proposal (proposed § 120.24). As discussed in both the juice labeling proposal and the HACCP proposal, these two proposed regulations would function together as a comprehensive program to address the incidence of foodborne illness related to consumption of fresh juices and to ultimately address the safety of all juice products.

31. Several comments opposed the pathogen reduction performance standard that FDA included in both the juice labeling proposal and the HACCP proposal. Under proposed § 101.17(g)(6), the requirement for a warning statement would not apply to juice processed in a manner that

[5] Alternatively, it is possible that this lower rate of reported incidences is related to some inherent characteristics of this product. The agency is aware that research shows that carrot juice contains a broad spectrum of antimicrobial activity due to the presence of phytoallexins. This activity may be useful as a barrier to kill or prevent the growth of *Listeria monocytogenes* in particular, and may possibly also function to keep in check other foodborne pathogens and spoilage microorganisms. Nonetheless, the conditions under which the antimicrobial effects of carrot juice are manifested have not been fully defined. Accordingly, at this time, such research does not establish a basis to exclude carrot juice from the warning statement requirement.

satisfies the pathogen reduction performance standard—i.e., juice processed such that there is, at a minimum, a 5-log (i.e., 100,000-fold) reduction in the pertinent microorganism for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions. (The proposals defined the ''pertinent microorganism'' as the most resistant microorganism of public health significance that is likely to occur in the juice.) Some comments asserted that the 5-log performance standard is unnecessary and unreasonable and questioned the scientific basis of the NACMCF recommendation of that standard.

Based on information the agency has received in response to the juice labeling proposal, FDA has concluded that the pathogen reduction performance standard in proposed § 101.17(g)(6) is the most appropriate standard to ensure that juice is safe. The agency advises that no food processing method can be shown scientifically to achieve a ''zero'' probability that a pathogenic microorganism will be present in the processed food. However, food processing methods can be shown scientifically to reduce, by mathematical increments (i.e., by ''logs''), the level of pathogens that may be present in food and as a result to reduce any potential risk of illness from the food. As explained in the HACCP proposal (63 FR 20450 at 20477), the 5-log reduction is a performance standard intended to provide assurance that juice produced consistent with this standard does not pose more than a tolerable level of risk of illness. FDA notes that the 5-log value was arrived at by consensus of the Fresh Produce Working Group of the NACMCF, and subsequently adopted by the NACMCF, as a target that would provide adequate public health assurances while minimizing the impact of treatments on the sensory attributes of the juices (Ref. 10).

With respect to the comment that questioned the basis for the NACMCF's recommendation, FDA advises that the agency relied on the collective judgment of this group of experts. The comment did not present specific challenges to the scientific basis underlying NACMCF's recommendation, nor did it provide a basis, data, or other information to support any other performance standard.

For these reasons, these comments have not persuaded FDA to make any changes to the pathogen reduction performance standard in proposed § 101.17(g)(6).

32. One comment suggested that a zero tolerance for *E. coli* O157:H7 would be more appropriate than the adoption of a performance standard. Another comment requested that a ''safe harbor'' bacterial load level be added to or used in lieu of the 5-log reduction criteria.

FDA disagrees with these comments. In general, FDA would consider a food product that contains pathogenic microorganisms to be adulterated under section 402(a)(1) of the act because it would contain a poisonous or deleterious substance that may render the food injurious to health. In contrast, FDA considers a total bacterial plate count as an indication that the food may have been prepared, packed or held under insanitary conditions. FDA would generally conduct an inspection of the processing facility to determine whether insanitary conditions exist in the facility. If insanitary conditions are found in the facility, any food produced under such conditions would be adulterated under section 402(a)(4) of the act.

The agency advises that while it could conceivably issue a tolerance for *E. coli* O157:H7, FDA has authority under section 402(a)(1) of the act to take regulatory action against any juice that contains a pathogenic microorganism that may render the juice injurious to health. Further, it would be impractical for juice processors to establish procedures to ensure actual compliance with such a tolerance because it would be necessary to channel a significant portion of the end product into testing to provide a statistically valid indication of compliance. Finally, a zero tolerance means the pathogens are undetectable in the food. For microbiological methods this is about one pathogen per 100 grams. For *E. coli* O157:H7, this is not a safe level. In contrast, the performance standard is a way to ensure that the presence of *E. coli* O157:H7 is much lower than that. In addition, the performance standard required in proposed § 101.17(g)(6) is a tool that can be applied in a practical manner to processing to ensure that all the juice has been processed to control pathogens.

Regarding the use of a ''safe harbor'' bacterial load level, FDA considers a ''safe harbor'' bacterial load level to mean a maximum total bacterial count. As discussed, under section 402(a)(4) of the act, very high aerobic plate counts may indicate that the food has been prepared, packed, or held under insanitary conditions, which may contribute to increased risk of pathogen occurrence and outgrowth. FDA has established regulations in part 110 concerning CGMP in manufacturing, packing, or holding human food that already apply to juice. Because these regulations directly address appropriate conditions for preparing, packing, and holding food, a ''safe harbor'' bacterial load level would not directly address such conditions, FDA concludes, based on comments received in response to the juice labeling proposal, that establishing a ''safe harbor'' bacterial load level is not necessary.

33. One comment stated that the proposed pathogen reduction performance standard is premature given that the source of *E. coli* 0157:H7 contamination in apples is not known. Additional comments questioned whether E. coli 0157:H7 could be found anywhere other than in bovine manure.

The agency disagrees that the proposed pathogen reduction performance standard is premature because the source of *E. coli* O157:H7 is unknown. First, although *E. coli* will likely be the ''pertinent'' microorganism of public health concern for apple juice, it may not be the ''pertinent'' microorganism for other juices. Second, in some outbreaks, a likely source has been determined (Ref. 11). Although *E. coli* O157:H7 may be found in bovine manure, there are other possible sources for this pathogen, such as deer manure (Ref. 12). Third, regardless of its source, *E. coli* O157:H7 is a pathogen that has been found to be present in fresh juice, including apple juice (Ref. 12). In fact, the agency's proposed pathogen reduction performance standard is a logical response to the comment's assertion that the source of *E. coli* O157:H7 in products such as apple juice is unknown. The knowledge that *E. coli* and other pathogens have been found in juice and have caused illness indicates that a processor must take steps (i.e., pathogen reduction steps to achieve the performance standard) to ensure that juice is safe. These steps must include prevention of contamination, destruction of any pathogens of concern that may be present, or both. If future research determines new sources of *E. coli* O157:H7 or other pathogens in juice products, processors could then develop appropriate measures to prevent contamination from these sources and apply measures that are determined to be effective toward the pathogen reduction performance standard.

34. Several comments requested clarification on which aspects of a process could be included for the purpose of meeting the proposed pathogen reduction performance standard. Respondents asked about the appropriate place in the production operation to start measuring pathogen reduction and whether specific farming,

harvesting, and processing practices may be counted toward meeting the proposed pathogen reduction performance standard.

The pathogen reduction process control can begin at the point at which the processor has control over the preparation of the product. The 5-log reduction may be accomplished cumulatively (e.g., through a combination of special culling, use of appropriate sanitizers, and specific extraction methods) or by a one-step process (e.g., pasteurization). The 5-log reduction standard is designed to achieve appropriate microbial risk reduction under all conditions that may be encountered in the manufacture of juice, including the conditions in which the fruit is grown and harvested. Therefore, farming, harvesting, and processing practices may be considered in achieving the 5-log reduction, so long as the processor has control over these activities and the control measures are effective.

35. FDA received a number of comments regarding achievement of the proposed pathogen reduction performance standard. Some comments expressed the opinion that the rule would in essence require pasteurization. Other comments asked about options for achieving the 5-log reduction, such as ultraviolet (UV) radiation, pulsed light, or sodium benzoate. Additionally, several comments indicated that instituting a ''no dropped fruit'' policy, using potable water, and following CGMP's would provide an adequate measure of safety for juice products.

FDA disagrees that the proposal would require pasteurization of juice products. While pasteurization currently may be the most practical process to achieve the proposed pathogen reduction performance standard, it is not the only alternative. A manufacturer who demonstrates that the measures discussed in the comments (i.e., use of UV radiation, pulsed light, and sodium benzoate) are effective in controlling pathogenic microorganisms may apply such measures in achieving the pathogen reduction performance standard.

FDA agrees that the various steps proposed in the comments (e.g., ''no dropped fruit'') have the potential to contribute to the reduction of microbial contamination. Animal manure, whether applied as fertilizer or from animals (e.g., cows, deer) present in orchards, can be a source of *E. coli* O157:H7. Not using produce that has come into contact with the ground reduces the risk of this contamination. However, there are other possible sources of contamination that may not be avoided as easily. For example, dust, insects, and birds may be vectors of contamination. Likewise, a water supply that does not meet the requirements of § 110.37(a) (21 CFR 110.37(a)) that any water that contacts food or food-contact surfaces be safe and of adequate sanitary quality may also be a source of contamination.

FDA believes that these comments require no changes to its proposed regulations.

36. Other comments asserted that adherence to State-enforced GMP's, quality assurance programs (QAP's), or HACCP programs, or any validated HACCP program should be as acceptable as a means of satisfying FDA's proposed pathogen reduction performance standard as would be adherence to the proposed Federal (i.e., FDA) HACCP program.

FDA recognizes that State GMP's, QAP's, and HACCP programs can serve as a useful foundation to assist processors in achieving public health goals and may in fact allow a manufacturer to attain the performance standard required by proposed § 101.17(g)(6). Nonetheless, these programs vary from State to State and may not exist in some States. Therefore, juice that is in interstate commerce may be subject to one or more State requirements or to no State requirements. Accordingly, FDA continues to see a need for a comprehensive Federal regulatory approach for all juice products.

The agency encourages processors to develop and use an appropriate HACCP program in the processing of juice. However, FDA emphasizes that it had tentatively concluded in the HACCP proposal that an appropriate HACCP program must include control measures that will produce, at a minimum, a 5-log reduction in a pertinent microorganism. As noted, the warning statement will not be required on products produced under a HACCP program validated to achieve the pathogen reduction performance standard described in proposed § 101.17(g)(6).

37. Several comments questioned why, as part of its HACCP program, the agency is proposing a pathogen reduction performance standard rather than requiring pasteurization. A few comments contended that to ensure the safety of juices, the agency should require that all juices be pasteurized. Other comments suggested that not all 5-log reduction methods are equally effective and that some could be less effective than pasteurization.

The agency does not believe that mandating pasteurization is necessary. Pasteurization is one method of achieving the pathogen reduction performance standard proposed in the HACCP rule and established in this rule as the basis for exemption from the warning statement requirement. FDA believes that establishing a performance standard rather than mandating the use of a particular process (such as pasteurization) provides flexibility in how the pathogen reduction can occur and will permit the development of new technology. Importantly, however, a performance standard will not preclude the use of pasteurization to achieve the standard. The agency recognizes that some methods may achieve a 5-log reduction in a more direct manner than other methods (i.e., in one step versus in several steps). Nevertheless, by its very definition, a 5-log reduction in the pertinent microorganism is the same reduction—i.e., a reduction by a factor of 100,000—regardless of the method used.

For these reasons, in this final rule, FDA is maintaining its performance standard approach rather than mandating pasteurization.

38. A few comments stated that pasteurization would not solve all the problems with juice and could provide a false sense of security to consumers.

The agency agrees with these comments. Pasteurization does not address all problems that may occur during the manufacture of juice and that have an adverse effect on public health. Recognition of the multiplicity of hazards that are reasonably likely to occur and of the need for their control is the basis for the agency's HACCP proposal.

39. One comment stated that the juice labeling rule was not necessary because the pH in cider is too low for pathogens to grow in it.

The agency agrees that acidic pH is generally considered to be an unfavorable environment for the survival of pathogens. However, as discussed in detail in both the labeling and HACCP proposals, there are documented cases of outbreaks of disease caused by *E. coli* 0157:H7 or other pathogens in apple juice and apple cider. Indeed, these outbreaks are of particular concern because apple cider typically has an acidic pH (i.e., a pH of approximately 3.5 to 4.0), due to the presence of malic and lactic acids in apples. Contrary to longstanding beliefs regarding microbial tolerance of acidic environments, the available evidence shows that *E. coli* 0157:H7 strains are tolerant of acid pH, particularly when held under refrigerated conditions consistent with juice manufacturing (Ref. 13). Therefore, the agency believes

that while acidity may be lethal or inhibitory to some pathogens, it cannot be relied upon as a control measure to reduce the risk of foodborne illness.

40. A few comments asked that FDA provide a grace period on labeling compliance for processors using a validated HACCP program without the pathogen reduction performance standard until the proposed HACCP rule for juices becomes final.

As discussed in the HACCP proposal, the agency has tentatively concluded that an adequate HACCP program for juice must include the pathogen reduction performance standard in proposed § 120.24. Accordingly, the agency incorporated this standard into the juice labeling proposal in proposed § 101.17(g)(6). As discussed above, there are no data or other information in the comments to the juice labeling proposal that demonstrate that the proposed pathogen reduction performance standard is not the appropriate standard.

FDA acknowledges that comments that are submitted to the HACCP proposal may persuade the agency to implement an alternative to the pathogen reduction performance standard set out in the HACCP proposal. However, in the interim between the issuance of this final rule and any final rule based on the HACCP proposal, it is the agency's best judgment, based on the information in the administrative record of this proceeding, that any HACCP program that does not satisfy the proposed pathogen reduction standard—i.e., a 5-log reduction in the pertinent microorganism—cannot be considered adequate for safe juice production, and thus, cannot provide the basis for exempting a product from the warning statement requirement. Accordingly, in this final rule, FDA is retaining (as § 101.17(g)(7)(i)(A)) the provision of proposed § 101.17(g)(6) that the requirement for a warning statement not apply to juice processed in a manner that will produce, at a minimum, a 5-log (i.e., 100,000 fold) reduction in the pertinent microorganism for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions.

However, in recognition of the fact that the agency has not completed its rulemaking on the HACCP proposal, in this final rule FDA is broadening the exemption from the warning statement requirement in proposed § 101.17(g)(6) to include (as § 101.17(g)(7)(i)(B)) juice processed in a manner that will achieve or exceed any pathogen reduction performance standard ultimately established in any final regulation requiring the application of HACCP principles to the processing of juice. In the event that the agency's judgment when it completes the HACCP rulemaking is that the interim pathogen reduction performance standard is more strict than necessary, this amendment will automatically ensure that manufacturers would be able to use the final HACCP pathogen reduction performance standard in determining whether their juice products require the warning statement. In the event that the agency's judgment when it completes the HACCP rulemaking is that the interim pathogen reduction performance standard should be altered, FDA will take the appropriate steps to amend this rule.

41. A few comments stated that a HACCP program (without a performance standard) is adequate because there is no evidence of foodborne illness in fresh apple juice or cider from processors using HACCP programs with GMP's, sanitation standard operating procedures (SSOP's), and raw material standard operating procedures (SOP's).

The issues raised in these comments are beyond the scope of this labeling document. The agency notes that it has tentatively concluded in the HACCP proposal that an appropriate HACCP program must include control measures that will produce, at a minimum a 5-log reduction in a pertinent microorganism. The basis for the proposed requirement was discussed in that proposal (63 FR 20450 at 20477). FDA will respond to these comments fully in the HACCP final rule.

42. Several comments requested guidance on how to determine if their process meets the 5-log reduction.

There are essentially two ways for processors to determine if their process accomplishes a 5-log reduction in a pertinent microorganism. Processors or other entities (such as researchers or a State) may test a particular process with a known level of the target pathogen or an appropriate surrogate microorganism that possesses similar properties to the target pathogen and determine whether the process is reducing the microorganism to the appropriate level. Alternatively, manufacturers of processing equipment or sanitizers may test the process that they are recommending for juice processing and supply the applicable information on their product to the juice processor. Consistent with customary scientific practices, the method that produces the 5-log reduction should be validated.

As discussed in the HACCP proposal (63 FR 20450 at 20478), the agency noted that it may be feasible for a processor to achieve a 5-log reduction in a target pathogen in citrus juice using a combination of CGMP's, sanitation SOP's, and the following three measures: (1) Culling and grading, (2) washing, brushing, and sanitizing, and (3) appropriate methods of extraction. If this procedure is validated, it is unlikely that processors of fresh orange juice, and perhaps other fresh citrus fruit juices, will have to implement pasteurization in order to achieve a 5-log reduction in pathogenic bacteria.

In fact, the agency believes that citrus processors should be able to achieve and validate a 5-log reduction without pasteurization. To provide more detail, a system that could achieve a 5-log reduction without pasteurization would likely include, at a minimum: Strict control of incoming material to ensure fruit are intact and clean (including not using dropped fruit); effective employee hygiene and facility sanitation; appropriate chemical sanitizers; juice extraction equipment that minimizes contact of juice with peel; refrigeration immediately after juicing; and bottling in a closed system to minimize environmental contamination. FDA would be willing to meet with manufacturers or groups of manufacturers to discuss and evaluate their proposed processes.

In addition, the agency will make available, in accordance with part 20 of the agency's regulations (21 CFR part 20), information on various processes that it learns have been validated to achieve a 5-log reduction in order to help processors meet the performance standard.

43. One comment requested a definition of ''moderate abuse conditions.''

Moderate abuse conditions, as described in the HACCP proposal (63 FR 20450 at 20478), occur when unusual circumstances arise during regular handling of the product. Unloading a truck on a hot day where the product may sit on a loading dock for a short period of time is one example of moderate abuse. Another example of moderate abuse is illustrated by a consumer who purchases a product on a warm day, places it in a car, and then runs errands before refrigerating the product. In FDA's view, moderate abuse does not include exposure to high temperatures for extended periods of time.

IV. The Warning Statement

A. General Comments

In the juice labeling proposal, FDA tentatively concluded that certain informational elements were essential to the warning statement, i.e., the statement of the hazard, a description of

why the product may have the hazard, and an identification of the consumers at greatest risk. Consequently, FDA proposed to require the following warning statement on covered products:

WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria which can cause serious illness in children, the elderly, and persons with weakened immune systems.

In this final rule, FDA is replacing the phrase ''which can cause serious illness * * *'' with the phrase ''that can cause serious illness * * *''. This change provides clarity and is not a substantive change.

44. Some comments generally opposed the language in the warning statement on the grounds that it is frightening, confusing or misleading. Some of these comments contended that consumers associate warning statements with products such as pesticides, poisons, or carcinogens.

The agency's intent in requiring a warning statement on untreated juices is to inform consumers that such juices may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems. This statement will ensure that consumers have the information that they need to make informed choices. To achieve this goal, the statement needs to present information about the hazard. By its very nature, any statement that informs consumers about a hazard, particularly a hazard that consumers do not expect, would be, to some extent, ''frightening.''

FDA conducted consumer focus group research to anticipate the likely impact of these statements on the public. This research tested variations in wording to evaluate whether different statements and specific words would produce exaggerated or inappropriate consumer understanding.

Some participants initially considered the warning statement to be alarming because it appeared to contradict their assumption, based on a lifetime of experience consuming these products, that all juices are safe and healthful foods. However, most of the focus group participants who were alarmed by the statements mistakenly assumed that juice products that they routinely consumed were not processed to control pathogenic microorganisms. After receiving information that untreated juice comprises less than 5 percent of all juice consumed, and that most juice products in supermarkets are processed to control pathogenic microorganisms, focus group participants were much less alarmed by the warning statements. Importantly, after receiving this information, many focus group participants appreciated the warning statement because they recognized that it would help them distinguish juice products that were more safe from those that are less safe because the latter products may contain pathogenic microorganisms. Even consumers of untreated juice products such as unpasteurized apple cider were reassured to know that the warning statement would be applied to a narrow and distinctive segment of juice products that had characteristics that specifically warranted the statement because such products had not been processed to control pathogenic microorganisms.

Based on this focus group research, FDA concludes that giving consumers accurate information on untreated juices to better inform their choices is likely to have the desired effect.

45. One comment suggested that the warning statement be changed to reflect that contamination of unpasteurized cider is the cause of a potential hazard. The comment contended that FDA's proposed statement seems to suggest that the presence of harmful bacteria is a matter of a statistical chance and is inherent in the cider, rather than a consequence of contamination of the cider.

FDA disagrees with this comment. While FDA has determined that the fact that bacteria may be present in juice is a material fact within the meaning of section 201(n) of the act, the agency is not persuaded that the process by which the bacteria came to be present is also material information. The comment did not provide a rationale for why the information on what causes bacteria to be present in juice is material with respect to the health hazard. Therefore, the agency is not making this suggested change.

B. Comments on the Term ''Warning''

46. Some comments that supported the use of the word ''WARNING'' in the warning statement asserted that this very explicit term is necessary so that consumers notice and give appropriate attention to the hazard message. Other comments recommended specific alternatives to the term ''WARNING,'' such as ''NOTICE,'' ''CONSUMER ADVISORY,'' ''CONSUMER ALERT,'' ''HAZARD NOTICE,'' ''HAZARD ADVISORY,'' or ''HAZARD ALERT.'' Some of these comments suggested that the term ''WARNING'' be used only for apple juice and that an alternative term, such as ''NOTICE,'' ''ATTENTION,'' or ''CONSUMER ADVISORY'' be used for juice products that pose a lower risk than that posed by apple juice. One comment noted that for oysters a consumer advisory rather than a warning statement is used to inform consumers of the hazard associated with *Vibrio vulnificus* which has a 50 percent mortality rate associated with illness. Comments acknowledged that the use of the same term for all juice products, even those perceived to be of lower risk, may nonetheless be necessary in the interest of uniformity.

FDA disagrees with those comments that suggested that another term be substituted for ''warning'' because the results of the focus group research support the use of the term ''warning.'' Focus group participants examined warning statements that used four signal words, i.e., ''WARNING,'' ''NOTICE,'' ''CAUTION,'' AND ''ATTENTION.'' Participants preferred ''WARNING'' and ''CAUTION'' over ''NOTICE'' and ''ATTENTION'' because these terms were perceived to be stronger and more likely to cause consumers to read the message; participants believed that the word ''WARNING'' was the strongest term. In addition, in identifying their preferred warning statement, most participants preferred the message preceded by the signal word ''WARNING.'' Other terms recommended in the comments, such as ''CONSUMER ADVISORY,'' were not tested in the agency's consumer research. Terms such as ''CONSUMER ADVISORY'' or ''CONSUMER ALERT'' are moderate signal terms, falling between the stronger signal terms tested (''WARNING'' and ''CAUTION'') and the weaker signal terms tested (''NOTICE'' and ''ATTENTION''). Consumers in the focus groups clearly preferred a strong signal to alert them to the warning statement. The term ''WARNING'' was viewed as a simple and unambiguous signal because it is a familiar word that most people readily understand. The comments that suggested alternative terms to ''WARNING'' did not provide consumer data or a compelling rationale to support their recommendations. FDA has conducted several studies of warning messages (in addition to juice) and has concluded that consumer testing of proposed language enhances the likelihood that warning messages will correctly communicate critical information (Ref. 5). Accordingly, because the relevant comments provided no consumer data or compelling rationale to support the use of alternative signal words, FDA has concluded that the warning statement for juice products should utilize the signal word ''warning,'' a signal that is supported by consumer research data. Furthermore, the agency believes that

warning is the more suitable term because it is consistent with past agency regulations (e.g., § 101.17(a), (b), (d)(1), and (e)) that use a term stronger than ''notice.''

The purpose of the warning statement is to inform consumers of the risks presented by certain juice products, thereby allowing them to make better decisions about the purchase and consumption of such products. This goal can only be achieved to the extent that consumers read and process the warning statement. Accordingly, FDA believes that it is appropriate to require the signal term that consumers say would be most likely to cause them to read the statement. Therefore, FDA is retaining ''warning'' as the signal word for the statement required by this rulemaking.

C. Comments on the Phrase ''Has Not Been Pasteurized''

47. Some comments stated that the phrase ''has not been pasteurized'' is inappropriate in the context of the warning statement because it is misleading. A few of these comments asserted that pasteurization provides a safer product than other processes that would satisfy FDA's proposed pathogen reduction performance standard. These respondents contended that the use of ''has not been pasteurized'' is potentially harmful because consumers might believe that all products that did not bear such a warning statement had been pasteurized and were equally safe.

The agency disagrees with these comments. FDA maintains that products processed in a manner to achieve the pathogen reduction performance standard would achieve an appropriate level of safety, whether they had been processed by pasteurization or by some other means. Products that have not been processed to achieve the pathogen reduction performance standard would require the warning statement. Therefore, the agency concludes that the message that the consumers would take from the warning statement is that products bearing the warning may have potential hazards, whereas those not bearing the statement are processed to ensure safe products.

48. Some comments contended that the term ''has not been pasteurized'' is too narrow a term for the warning statement. While the comments did not oppose the term ''pasteurized,'' the comments asserted that consumers should be made aware that pasteurization is not the only means by which juice products can be processed safely. The comments argued that technology can move quickly, and that use of the term ''pasteurized'' would limit the development of new technology for processing juice to destroy pathogenic microorganisms. Therefore, two of the comments suggested the following language: ''this product has not been pasteurized or otherwise treated * * *.''

FDA acknowledges that the term ''has not been pasteurized'' is not technically precise in the context of the warning statement, because products that have not been pasteurized, but have been otherwise processed to meet the pathogen reduction performance standard, do not need to bear the warning statement. In other words, the warning statement will not be required on all juice products that have not been pasteurized because those products subject to a process that achieves the 5-log reduction standard, other than pasteurization, do not need to bear the warning statement. However, as discussed in the juice labeling proposal, FDA proposed the phrase because consumer focus group participants understood the term ''has not been pasteurized'' better than the term ''has not been specifically processed.'' Moreover, as discussed in the juice labeling proposal, the agency believes that the more important message, i.e., that juice products not treated to remove pathogens present some risk, particularly for certain population groups, will be clearly understood by consumers. The comments did not provide information to show that consumers would be confused by the warning statement. Therefore, the agency is not adopting this suggested modification to the warning statement.

D. Comments on the At-Risk Groups

Most comments supporting the proposed labeling requirements generally supported the proposed description of the consumers at risk, although some comments suggested that these groups should be better defined.

49. One comment maintained that the warning statement should be modified unless specific data can be presented on the risks and those at risk. Another comment questioned whether ''children'' meant persons under 18. Another comment suggested that the term ''children'' be replaced with the term ''infants.'' This comment noted that when botulism was a concern in honey, only parents of children under 1 year old had to be concerned. Other comments stated that the term ''children'' was appropriate because there is no scientific basis for excluding older children and because parents will recognize that infants and young children are included in the broad category of ''children.''

Some comments questioned what is meant by the term, ''elderly.'' One comment suggested that the term ''elderly'' be replaced with the term ''senior (50 years or older),'' whereas another comment recommended that ''elderly'' be replaced with ''senior (55 years or older).''

FDA disagrees that the word ''infants,'' which ordinarily refers to children less than 1 year old, should replace ''children'' in the warning statement because some of the foodborne illnesses associated with consumption of juice occurred in children older than 1 year. Therefore, FDA concludes that use of the word ''infants'' in lieu of ''children'' would be misleading.

In the juice labeling proposal, FDA relied on a task force report, from the Council for Agricultural Science and Technology (CAST), that concluded that certain groups (i.e., young children, the elderly, and persons who are immunocompromised) are at greatest risk of serious illness from exposure to foodborne pathogens (63 FR 20486 at 20489). The report did not define a precise age range for either ''children'' or ''the elderly.'' The comment that questioned whether specific data was available to support FDA's description of the at-risk groups did not provide any data on which to refine the descriptive terms used in the report.

FDA recognizes that the terms ''children'' and ''elderly'' are not precise. They are terms chosen by the Council for Agricultural Science and Technology to reflect groups that, in general, have an immune system that is either incompletely developed or beginning to decline. Although the exact age at which a child's immune system is fully developed is not precisely defined and will depend on the individual development of the child, the task force report indicated that the incompletely developed immune system of infants and children younger than 5 makes this age group especially susceptible to foodborne illness. In addition, the report noted that the infective dose may be related to body weight, which would be less for younger children. Nonetheless, the median age of persons who experienced illness in a recent outbreak of *E. Coli* O157:H7 infections associated with juice products was five (Ref. 14); thus, as many individuals older than 5 years experienced illness as did those under 5 years. Therefore, the agency believes that the descriptive term for ''children'' in the warning statement should not be limited, e.g., to ''young children'' or to children 5 years and under.

Likewise, the task force report stated that elderly individuals undergo a decrease in immune function that makes them more susceptible to foodborne illness than the general population. The report both indicated that this decrease in the immune system can occur as early as 50 to 60 years of age and designated the term ''elderly'' to mean an individual over 65. Because the range given by the task force was so wide, the agency tentatively concluded that it had no basis for identifying a specific age for its category of ''elderly'' in the warning statement.

In the juice labeling proposal, FDA asked for comments on whether the age groups for children and the elderly could be better defined. Although some of the comments to the proposal suggested that the warning statement specify particular ages, the comments did not provide a substantive basis for any of these recommended ages. Accordingly, FDA is making no changes to the terms ''children'' or ''the elderly'' in the warning statement.

50. One comment stated that either the risk groups should be better defined or no risk groups should be mentioned at all.

FDA disagrees with this comment. Although the at-risk groups are not described as precisely as some might wish, as noted, there are few available data to identify the ages of children and adults who are at high risk. FDA has concluded that it is preferable to identify the at-risk groups with slightly imprecise terms than not to designate such groups at all. Therefore, FDA rejects this comment.

51. Several comments suggested that pregnant women be included as at-risk consumers. Only one comment provided any rationale for this addition, stating that pregnant women, who during their pregnancies have impaired immune systems, allegedly do not recognize that they are at greater risk of infection. Another comment pointed out that pregnant women are at risk of having miscarriages if they are infected with *Listeria*.

FDA disagrees with the suggestions that pregnant women be included in the at-risk groups. FDA acknowledges that the CAST report noted that the immune system of a pregnant woman is altered to some extent compared to that of a non-pregnant woman. In looking at the populations at greatest risk from foodborne pathogens, CAST identified pregnant women as a group at risk from *L. monocytogenes*, a widely distributed pathogen that has been associated with miscarriages. Nonetheless, there is no evidence that pregnant women or their fetuses are at any greater risk of serious illness from the foodborne pathogens associated with juices than the general population. The agency notes that *Listeria* has not been identified in the documented cases of illnesses associated with consumption of untreated juices. Therefore, FDA has no basis for determining that risk to a pregnancy from *Listeria* is any greater from the consumption of juices than from the consumption of all other foods.

52. Several comments stated that the term ''serious illness'' should be replaced with ''life threatening illness.'' These comments asserted that it is important that high risk consumers are adequately informed of the potential risks and therefore, the language should be explicit enough so that they will avoid the product. According to one comment, the language should be explicit enough so that consumers will overcome the presumption that the warning is meant for someone else.

FDA disagrees with these comments. The term ''serious illness'' is an accurate description of the hazard. Moreover, the FDA focus group research tested a variety of messages that included the phrases ''serious illness'' and ''life-threatening illness.'' The participants preferred a phrase such as ''serious illness'' because it conveyed a significant consequence without being too extreme. In addition, participants viewed ''serious illness'' as a strong statement for persons with weakened immune systems or immature immune systems such as young children. In contrast, participants viewed terms such as ''life-threatening'' or ''death'' as less credible. Thus, in addition to being objectively conceived, FDA focus group research confirmed that the phrase ''serious illness'' is subjectively understood. Accordingly, FDA is making no changes in response to these comments.

E. Comments on the Entire Warning Statement

53. In contrast to the comments that suggested alternatives for specific words or phrases in the proposed warning statement, a few comments suggested alternative wording for the entire warning statement. As examples, comments suggested statements such as the following:

> This is a natural product that has not been pasteurized or otherwise treated. There is a slight risk that it may inadvertently contain harmful bacteria that can cause serious illness in children, the elderly and persons with weakened immune systems.
>
> CONSUMER ADVISORY: Unless specifically processed, some juices may contain harmful bacteria known to cause serious illness. This product has not been processed to destroy these bacteria. The risk of life-threatening illness is greatest for children, the elderly, and persons with weakened immune systems.
>
> NOTICE: This product has not been processed to eliminate the possibility of harmful bacteria and, therefore, could cause serious illness to those with weak immune systems, and young children.
>
> Attention: This is a fresh juice. It has not been pasteurized. There is a small possibility it could be harmful to those with weak immune systems.

None of these comments provided a compelling rationale for why the suggested statement was more appropriate than FDA's proposed statement.

FDA's statement was developed and refined based on focus group research that tested multiple warning statements. Because the comments that suggested alternative wording for the entire statement did not provide a sufficient basis to dispute the findings of the focus group studies, FDA is not adopting any of these general suggestions.

F. Comments on Prominence and Placement

54. In the juice labeling proposal, the agency tentatively concluded that the warning statement should appear on the food label in a manner that makes it readily observable and likely to be read. Accordingly, FDA proposed that the statement appear prominently and conspicuously on the information panel or on the principal display panel (PDP) of the product label. Under § 101.2(c) (21 CFR 101.2(c)), information required to appear on the PDP and information panel must appear prominently and conspicuously in a type size no less than one-sixteenth inch. The agency also proposed that the word ''warning'' immediately precede the statement, appear in capital letters and bold type, and that the statement be set off in a box by use of hairlines.

In this final rule, FDA is revising proposed § 101.17(g)(4) (now § 101.17(g)(5)) to remove the provision that the term ''WARNING'' immediately precede the remainder of the warning statement. FDA is making this change, which is not substantive, because it is redundant with the requirements of § 101.17(g)(2), which explicitly places the term ''WARNING'' in front of the remainder of the statement.

55. One comment urged FDA to require that the warning statement appear on the PDP and not the information panel. The comment neither disputed the rationale that FDA presented in the juice labeling proposal in support of its proposal to allow the warning statement to appear on either the information panel or the PDP nor gave a reason for its request. Therefore,

the agency is making no changes in the location of the warning statement in response to this comment.

56. One comment maintained that the statement should not be set off by hairlines and that the agency should follow the same guidelines that it used for other informational statements such as those for saccharin and phenylalanine.

The agency disagrees with this comment. The agency's recent experience with the Nutrition Facts panel has been that the use of hairlines (i.e., enclosing the critical information in a box) greatly increases the prominence of the information. Also, focus group research has shown that such boxes help consumers distinguish the message from other information on the food label. As noted, the warning statement will achieve its purpose only if it is seen and read by consumers. Therefore, the agency is making no changes in response to this comment.

57. A few comments that supported the use of warning statements on juice products stated that a minimum type size of one-sixteenth inch is too small to attract consumer attention. One comment asserted that the proposed type size is too small to be read by many of the elderly, who are one of the at-risk groups targeted by the warning statement. The comment recommended a type size no smaller than 8-point on labels. Another comment suggested a minimum type size of three-sixteenth inch.

The agency does not have data from the comments or elsewhere that indicate that consumers are unable to obtain the information from other warning statements required in § 101.17 and thus, has no reason to believe that consumers would not be able to obtain information from the warning statement in this rule. Accordingly, FDA is making no change to the minimum type size requirements for warning statements for unprocessed juice products.

V. Other Issues

58. A few comments urged FDA to require pasteurized juices to bear a label informing consumers that the product had been pasteurized. These comments contended that juices that have been pasteurized, i.e., heat treated, have lost some of their ''beneficial'' nutrients, e.g., pectin, and certain enzymes and vitamins, and that consumers have a right to this information. The comments further stated that requiring pasteurized juices to bear a label indicating that the product was pasteurized would prohibit manufacturers of pasteurized juice from labeling their products as ''fresh.''

The agency does not object to manufacturers voluntarily labeling their product as ''pasteurized,'' when the product has, in fact, been heat treated in accordance with the practice of the trade. However, to require the term ''pasteurized'' on juice products the agency would have to find that such information was material in light of representations made about the product, or with respect to consequences that may result from use of the product. The comments did not provide the agency with any information on which to make either of these findings. Therefore, the agency is not requiring that the term ''pasteurized'' or any similar term, i.e., heat treated, appear on the label of juice that has been pasteurized. The agency advises that labeling a pasteurized juice product as ''fresh'' is a misbranding violation under section 403 of the act. Such products are subject to regulatory enforcement action.

59. Some comments questioned whether the requirement for a warning statement would apply to products that were manufactured by producers who process their own fruit and sell the resulting fresh juice products directly to consumers at their own retail markets, such as a roadside stand.

Whether the warning statement applies to these products depends on two factors: The ''retail'' status of the producer and the jurisdiction of the FDA.

The source of FDA's authority here is the act. Under the act, FDA's jurisdiction extends to those products, and the manufacturers and distributors of regulated products, that satisfy a necessary connection with interstate commerce. (See 21 U.S.C. 301 and 304.) Juice that is a product of solely intrastate activities (e.g., source of components, location of sales, etc.) is not subject to FDA's jurisdiction and thus, would not be subject to the warning statement requirement.

Nonetheless, in such circumstances, FDA customarily works with State regulatory agencies such as local health departments, who, like FDA, have a mission to protect the public health. Elsewhere in this final rule, FDA has addressed several comments submitted to the juice labeling proposal that described actions already taken by the States to work with producers to ensure the safety of juice products.

60. Several comments asked whether the responsibility for providing a placard or sign, which is an acceptable interim mechanism for manufacturers of packaged juices to comply with the juice labeling rule, lay with a manufacturer who produces the juice and sells it to a wholesaler or retailer or lay with the retailer who actually sells the juice to individual customers.

Under the applicable law, regulations, and agency policy, the firm that is identified as the manufacturer or distributor on the product label bears the principal responsibility to ensure that the product meets all applicable legal requirements, including labeling. However, retailers and wholesalers also have legal responsibility to ensure that products they sell are properly labeled. The legal basis for this shared responsibility is as follows.

Section 301 of the act (21 U.S.C. 331) prohibits the interstate shipment of a misbranded food and also prohibits the misbranding of a food after interstate shipment. In the case of the juice labeling rule, a juice product that is required to, but does not, bear the warning statement is misbranded within the meaning of sections 403(a)(1) and 201(n) of the act. A manufacturer or distributor who ships a misbranded juice product would violate section 301(a) of the act. Likewise, a retailer who fails to provide required labeling containing a warning statement would violate section 301(k). As is FDA's general practice, the agency would evaluate on a case-by-case basis any situation involving a possible misbranding of a covered juice product to determine whether any regulatory action was warranted.

61. Some comments asked whether States would be responsible for enforcing the warning statement requirement for products in intrastate commerce.

State enforcement activities related to this final rule will depend upon the specifics of each State's law (e.g., does that law provide for the automatic adoption of Federal regulations or does that law require a separate State process to establish a State standard?) and the exercise of the State's enforcement discretion.

As a practical matter, the agency is aware that a number of States have already begun to work with producers to improve the safety of juice products. One of FDA's goals in establishing a Federal requirement is to assist States in their efforts and to provide a model to encourage consistency in approach.

62. One comment strongly urged FDA to exempt all growers who process juice and sell directly to consumers at their own retail markets regardless of sales volume. The comment based the request on the belief that the labeling proposal exempted from the warning statement requirement growers who processed their own fruit and sold less than 40,000 gallons of the resulting juice products

directly to consumers and other retailers.

FDA is clarifying that its proposal to require warning statements on untreated juice products did not exempt juices produced by processors that sold less than 40,000 gallons. On the contrary, the agency proposed in the juice labeling proposal that the warning statement appear on the packages of all untreated juice products. Growers, in general, who process their own fruits and sell the resulting juice products commercially are not exempted by FDA from the warning statement requirement based on sales volume. The comment failed to provide the agency with a basis on which to exempt small growers from the labeling requirement, and therefore, the agency declines to do so.

63. Several comments objected to the abbreviated time for comments on the juice labeling proposal. One comment specifically asserted that the shortened comment period resulted in a denial of procedural due process to the industry and the public.

The juice labeling proposal provided interested persons with 30 days to comment on the proposal. In the proposed rule, the agency articulated the basis for its decision under Executive Order 12889 and FDA's regulations, § 10.40(b), for shortening the comment period to 30 days. Subsequently, several interested persons requested an extension of the time for comments. As discussed above, the agency ultimately extended, on June 10, 1998, under the authority of § 10.40(b)(3), the period for comments from all interested persons to June 22, 1998. The agency believes that this comment period is consistent with customary practice and agency regulations. The agency believes that the public health urgency that underlies this rulemaking is sufficient justification under Executive Order 12889 to shorten the comment period from 75 days, a conclusion not challenged in the comments. The agency also believes that the comment schedule of this rulemaking is in compliance with due process. FDA's process here is consistent with the requirements of the Administrative Procedure Act (5 U.S.C. 553). Such requirements are consistent with due process. (See *Bell Lines, Inc.* v. *U.S.*, 263 F. Supp. 40 (D. W. Va. 1967).)

VI. Effective Date

In the juice labeling proposal, FDA proposed that any final rule based on the proposal become effective 60 days after its date of publication in the **Federal Register**.

64. The majority of comments that addressed the proposed effective date supported a 60-day effective date because of the public health concern presented by untreated juices. A few comments asked that the agency change the effective date. One comment suggested that the effective date be changed from 60 to 120 days to allow small processors time to implement HACCP-based programs. Another comment asserted that the 60-day effective date was appropriate if FDA wanted to reach the 1998 apple cider season. That comment suggested, however, that the effective date for other juices be extended to 150 days.

As discussed in the juice labeling proposal, the agency has determined that the urgency of the public health concern with untreated juices requires the mandating of a warning statement as soon as possible, and, in particular, in time for the 1998 ''cider season.'' The comments did not provide any information that contradicted FDA's tentative conclusion that an effective date of 60 days would be needed to coincide with the beginning of the fresh juice season for apple juice and apple cider. Accordingly, the agency is retaining the 60-day effective date for this final rule. Apple juice and apple cider must comply on the effective date of the final rule.

The overarching public health goal of this rulemaking is to provide information about the potential hazards of untreated juice products to consumers at the beginning of the next applicable ''juice season.'' Apple juice and orange juice are the two most consumed juices in the United States, and together account for approximately 80 percent of all juice consumed in the United States (63 FR 24254 at 24365). As discussed in the PRIA (63 FR 24254 at 24273), information available to FDA indicates that the season for apple cider production runs primarily from September through December. Other information available to FDA indicates that the fresh juice season for citrus fruit generally runs from November through June (Ref. 15). Thus, the agency's public health goal can be achieved by establishing a compliance date for citrus juice products that coincides with the start of the fresh citrus juice season. FDA is not aware that the fresh juice season for any juice other than apple juice or apple cider begins as early as the apple juice and apple cider season. Accordingly, in this final rule, FDA is establishing a compliance date for all juices other than apple juice or apple cider at 120 days after the date of publication of the final rule.

As discussed above, in this final rule, § 101.17(g)(4) provides that the required warning statement may be provided in labeling at the point of purchase on a temporary basis until 1 year from the date of compliance with the final rule. In essence, this provision provides manufacturers the alternative of using labeling (e.g., signs or placards) for a single juice season. This flexibility will postpone by a juice season a manufacturer's need to revise and reprint labels that would be affixed to packaged untreated juice products.

VII. Summary of Provisions

In this final rule, FDA is revising its food labeling regulations by requiring a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present. FDA is taking this action to inform consumers that such juices may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems. FDA expects that providing this information to consumers will allow them to make informed decisions on whether to purchase and consume untreated juice products, thereby reducing the incidence of foodborne illnesses and deaths caused by the consumption of these products. The requirement that untreated juice products bear a warning statement is part of a comprehensive program, which may include the establishment of HACCP principles proposed for the processing of juice products, to address the incidence of foodborne illness related to consumption of fresh juices and to ultimately address the safety of all juice products.

This juice labeling final rule includes the following revisions to the juice labeling proposal:

(1) Section 101.17(g)(1) has been revised to remove the provision that any juice sold as such or used as an ingredient in beverages is subject to the warning statement requirement. This proposed provision, which specified those products that are subject to the warning statement requirement, became redundant with the final provisions of § 101.17(g)(2) and (g)(3).

(2) Section 101.17(g)(2) has been revised to reflect that, in addition to any juice that has not been processed to satisfy the pathogen reduction performance standard in § 101.17(g)(7), the warning statement requirement applies to any beverage containing juice where neither the juice ingredient nor the beverage has been processed to satisfy that standard. This, together with the exemption in § 101.17(g)(3), clarifies how FDA intended to cover juice used as an ingredient.

(3) New § 101.17(g)(3) establishes an exclusion from the warning statement requirement for certain juice that is not for distribution to retail consumers in the form shipped and that is for use solely in the manufacture of other foods or is to be processed, labeled, or repacked at a site other than originally processed. A warning statement is not required for such juice even if it has not been processed in the manner described in § 101.17(g)(7), so long as the lack of such processing is disclosed in documents accompanying the juice, in accordance with the practice of the trade.

(4) Under § 101.17(g)(4), the compliance date for the rule depends on the nature of the juice. For apple juice and apple cider, the compliance date is 60 days after the date of publication in the **Federal Register**; for all juices other than apple juice and apple cider, the compliance date is 120 days after the date of publication in the **Federal Register**.

(5) Under § 101.17(g)(4), manufacturers of packaged juices may comply with the rule by means of point-of-sale labeling, e.g., through the use of signs or placards, for up to 1 year after the date for compliance with the rule. In essence, this provision provides all manufacturers, regardless of size, the alternative of using labeling for a single juice season.

(6) The provision in proposed § 101.17(g)(4) (now § 101.17(g)(5)) that the term ''WARNING'' immediately precede the remainder of the warning statement has been deleted because it is redundant with the requirements of § 101.17(g)(2).

(7) The provision in proposed § 101.17(g)(6) (now § 101.17(g)(7)) establishing the processing standard for juices to be exempt from the warning statement requirement has been broadened. It now includes juice processed in a manner that will achieve or exceed any pathogen reduction performance standard established in any final regulation requiring the application of HACCP principles to the processing of juice.

VIII. Final Regulatory Impact Analysis

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs or if it raises novel legal or policy issues. FDA finds that this final rule is a significant regulatory action as defined by Executive Order 12866.

In addition, FDA has determined that this rule is not a significant rule under the Unfunded Mandates Reform Act of 1995 (UMRA) requiring benefit-cost and other analyses. Under UMRA significant rule is defined as ''a Federal mandate that may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year.''

Finally, in accordance with the Small Business Regulatory Enforcement and Fairness Act, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that this final rule is not a major rule for the purpose of congressional review. A major rule for this purpose is defined as one that the Administrator has determined has resulted or is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In the **Federal Register** of May 1, 1998 (63 FR 24254), FDA published a Proposed Regulatory Impact Analysis (PRIA) analyzing the benefits, costs, and regulatory options of proposed regulations regarding warning statement requirements and HACCP for juice. FDA received several comments on the PRIA from juice processors, trade associations, and consumers. In this document, FDA is finalizing the labeling provisions. FDA intends to publish a final rule on the HACCP requirements at a later date. Thus, FDA is only analyzing the impacts of the warning statement requirement.

A. Regulatory Alternatives

1. Prohibit Display of Warning Statement on Signs

FDA received several comments objecting to the proposed provisions that would temporarily allow the use of signs or other labeling to communicate the warning statement.

65. Several comments stated that FDA did not accurately address the costs or benefits of this proposed provision. For example, some comments asserted that signs with the warning statement will communicate that all of the juice in a refrigerated case is subject to the warning statement and thereby impose costs on processors of pasteurized juice. Some other comments said that signs with the warning statement may not be close enough to the product to be effective in achieving the benefits that the agency seeks. FDA believes that the problems mentioned by these comments will not be significant. Both retailers and sales representatives of products to which the warning statements do not apply have a financial interest in ensuring that the warning statements (particularly in sign or placard form) are not used in a way that would create the appearance that the warning statement applies to a broader set of products than required by this rule. For example, retailers may place signs on individual shelves rather than over entire refrigerated cases. In some stores that do sell untreated juice, the untreated juice products are sold in separate refrigerators in the produce section while pasteurized juice is sold with the other refrigerated products. Thus, products that need to be accompanied by the warning statement may be physically separated from other juices. Also, the sign or placard could specify by name the products covered by the warning statement. For these reasons, the agency disagrees with these comments and declines to adjust estimates of the benefits or costs of the rule based on them.

2. Require a 5-Log Process

66. Some comments said that requiring a process to achieve a 5-log reduction in pathogens as the alternative to the warning statement on untreated juice is too expensive an alternative for small businesses that wish to avoid the warning statement. One comment from a small juice processor said that implementing pasteurization to achieve a 5-log reduction would cost $30,000. Some other comments asserted that all juice should be required to be pasteurized.

In the PRIA, FDA provided an estimate of the cost of pasteurization equipment developed especially for small juice processors ($18,200). The agency does acknowledge that this may be a significant cost for some small businesses. Although the agency is encouraging juice processors to implement pasteurization or other process controls sufficient to achieve a

5-log reduction in pathogens, FDA is not mandating a 5-log reduction at this time. Instead, this final rule permits processors to produce untreated juice and offer it for sale accompanied by the warning statement until a final HACCP regulation (if one is established) is in place. The agency believes that requiring a warning statement on untreated juice is the least stringent regulatory approach acceptable for untreated juice. Processors (especially processors of very small volumes of juice) may find that including the warning statement on untreated juice is a less expensive alternative to implementing a 5-log pathogen reduction process.

However, as noted, FDA believes that requiring pasteurization of all juice would unnecessarily restrict innovation and new product development. Such activities are important to maintain competitiveness in the food industry. Additionally, the agency believes that consumer choice would be unnecessarily restricted by requiring all firms to implement a single type of processing technology. Until the agency has the opportunity to review all comments received in response to the HACCP proposal, the agency is satisfied that the proposed approach is the best balance between achieving the intended benefits and allowing flexibility for production.

3. Require Preventive Controls

67. Some comments suggested that FDA should implement GMP or HACCP (preventive control) requirements immediately rather than require warning statements on untreated juice products. Other comments supported the use of a warning statement on food products only as an interim measure until the agency establishes a more comprehensive solution to the problem of microbial contamination in juice. FDA recognizes the importance of preventive controls and has tentatively concluded that it is essential to implement a HACCP regulation for juice. The agency also believes that it is essential to communicate the risks associated with untreated juice to consumers during the considerable amount of time that will be required for the agency to finalize and implement an inherently more complex HACCP regulation for juice.

4. Require Brochures

68. As described earlier, some comments supported the use of brochures or pamphlets outlining the risks associated with the consumption of untreated juices as an alternative to a label warning statement. FDA declines to require brochures as an alternative in this rule because the focus group research shows that brochures would generate fewer benefits than the approach taken in this rule. FDA further notes that requiring the distribution of a brochure with each package of juice is likely to be at least as costly as placing stickers on each package label.

5. Change Length of Time Signs are Allowed

69. Some comments opposed the length of time that signs with the warning statement would be allowed (until January 1, 2000, the next uniform compliance date for other food labeling changes and until January 1, 2001 for small businesses) under the proposed rule. These comments claimed that signs would be less effective than labels in communicating the warning information.

FDA finds merit in these comments. The agency agrees that placards and signs may be less effective than package labels for the purpose of communicating product-specific information to consumers. However, as a practical matter, producers of untreated juice need time to modify their package labels to include the warning statement. In response to the concerns about the effectiveness of signs and placards, in this final rule, FDA is reducing the length of time that the warning statement may be provided in labeling such as signs or placards. FDA has concluded that a full juice season provides all firms, whether large or small, sufficient time to comply with the label requirement. Accordingly, this final rule provides that the required label statement may be provided in labeling at point of purchase, for a period of 1 year from the date for compliance with the final rule. The interim use of signs, placards, or other labeling for 1 year from the date when compliance is required will, in essence, provide manufacturers the flexibility to use labeling for a single juice season.

B. Benefits

1. Estimates of Juice Consumption

70. One comment stated that FDA had underestimated the amount of untreated juice consumed and, therefore, had underestimated the number of cases of illness that would be addressed by the rule. FDA disagrees that the cases of illness addressed by the rule have been underestimated as a result of the agency's consumption estimates. FDA did not estimate the number of cases of illness based on consumption; instead, the agency estimated the number of cases of illness by multiplying confirmed illnesses associated with juice by factors accounting for the under reporting on foodborne illness. Thus, FDA does not agree with this comment.

2. Recent Activity Not Accounted For

71. Some comments asserted that the agency's estimates of illness are outdated because these estimates do not take into account the recent steps that the industry and State governments have taken to reduce risk associated with juice.

FDA has used the most up-to-date information available on foodborne illness associated with juice. Complete data from the Centers for Disease Control and Prevention for 1997 are not available. The agency acknowledges that industry and State governments have been working to reduce the public health risks associated with consumption of untreated juice, and FDA encourages these efforts and hopes that they continue. However, because FDA has no evidence that the industry and State government efforts have sufficiently minimized the risk associated with juice, the agency believes that the warning statement is needed to inform the choices of consumers. Further, the rule will provide an incentive to continue to improve upon these efforts. Where these efforts of industry achieve a 5-log reduction in pathogens, those processors using such processes are not required to apply the warning statement to their products.

3. Value of Information

72. Some comments said that consumers would value the information in the warning statement because it would increase their ability to make informed choices.

FDA agrees that to the extent that the warning statement lowers the cost to consumers of obtaining information, there is a benefit to consumers in addition to the reduction in illnesses estimated in the PRIA. Although FDA is unable to quantify this benefit, it is appropriately counted as an unquantified benefit of the final rule.

4. Impact of Warning Statement on Lawsuits

73. One comment claimed that the warning statement will protect processors from lawsuits and bad publicity because consumers of the product will be taking responsibility for the risk associated with the product. Another comment said that the warning statement will encourage more lawsuits because the warning statement will suggest to consumers that the juice may be the cause of their symptoms.

State liability laws and their interpretations vary. These conflicting comments provided no specifics on these issues. FDA is not able to evaluate the impact of the warning statement on the filing or adjudication of lawsuits. For this reason, the agency has not made

any changes to the benefits or costs estimated for this rule based on these comments.

5. Benefits Summary

Table 1 shows the quantified benefits estimated for the labeling rule in both the PRIA and Final Regulatory Impact Analysis (FRIA (see section VIII of this document)). No comments persuaded the agency to change the quantified benefits of the rule. There are two additional unquantified benefits that, as a result of comments, the agency acknowledges. The first unquantified benefit is the value of the warning information to consumers regardless of changes in their consumption patterns; the agency is unable to quantify this benefit. Second, the agency believes that there will be some increase in benefits resulting from requiring the warning statement on package labels sooner than originally proposed; the agency is unable to quantify this benefit.

TABLE 1.—QUANTIFIED BENEFITS FOR LABELING RULE AS ESTIMATED IN PRIA AND FRIA

PRIA low estimate	FRIA low estimate	PRIA high estimate	FRIA high estimate
$1 million	$1 million	$6 million	$6 million

C. Costs

1. Effect of Warning Statement on Untreated Juice Sales

FDA received comments regarding the impact of the warning statement on sales of untreated juice. These effects stem from either consumer reaction, retailer response, or both.

74. Some comments said that the warning statement will have a negative effect on sales of untreated juice. FDA acknowledges this possible effect. In fact, the agency intends for the warning statement to reduce the consumption of untreated juice by consumers who are most at risk. The inevitable consequence of this goal is to have a negative effect on the sales of untreated juice.

FDA received one comment demonstrating that a market for unpasteurized juice does exist and may not be significantly harmed by the warning statement requirement of this rule. This comment from a juice processor stated that he produces both pasteurized and unpasteurized cider. The unpasteurized cider is sold accompanied by a leaflet warning consumers of the risk associated with untreated juice. This processor reports that 70 percent of his sales continue to come from unpasteurized cider.

FDA applauds this processor's responsible actions. The agency is not, in this rule, prohibiting the sale of untreated juice, nor does the agency believe that the warning statement will dissuade all consumers from purchasing untreated juice. FDA believes that at-risk consumers should carefully consider the consumption of untreated juice and the availability of the warning statement will allow informed decisionmaking by consumers. It is quite possible that this processor will see no change in the demand for either type of juice as a result of this rule, since the processor was already providing consumers with the warning information and offering them a product that has been subject to a 5-log reduction in pathogens. In fact, the agency believes that the experience of this processor shows that this rule will not have the extreme consequences described by some of the comments.

75. Some comments said that the warning statement will confuse consumers, that at-risk consumers will not be deterred from consuming untreated juice, and that consumers who are not at risk will be deterred from consuming juice.

FDA disagrees with these comments because the agency believes that the warning statement communicates a clear, appropriately targeted message. Importantly, the agency does not claim that all at-risk consumers will stop consuming untreated juice. FDA's estimates of consumption changes range from an expected 5 percent to a maximum of 16 percent. The comments that referred to a larger than 16 percent decline in consumption and sales during the last cider season were based on the effects of adverse publicity surrounding the outbreaks associated with untreated apple juice and cider, not on the effects of labeling. Any costs that resulted from adverse publicity that occurred before the agency first became involved in this issue are not attributable to this rulemaking. FDA believes that the decline in sales experienced by some producers in response to adverse general publicity are not indicative of the potential effects of labeling that provides true and not misleading information. Moreover, these sales declines have already occurred and cannot occur again for the same processors. However, the agency acknowledges that some consumers who are not at high risk may choose not to purchase untreated juice because of the warning statement. The agency believes that consumers are better off whenever they make better informed choices, and that better informed choices demonstrate unambiguously an increase in net societal benefits.

76. Some comments from juice processors said that retailers will refuse to sell products with warning statements. Some comments said that virtually all chain and large grocery stores have stopped selling untreated apple juice because of the publicity of the illnesses associated with untreated apple juice. In addition, some comments from citrus processors said that retailers would refuse to carry citrus juice with the warning statement just as apple juice processors have experienced. These comments stated that they expected a 50 percent reduction in sales because retail stores would not even offer consumers the choice of untreated juice with the warning statement. Some comments said, because of their concern that the warning labels will have a negative impact on citrus juice (including pasteurized as well as citrus fruit sold), that the warning statement would cause catastrophic damage to the Florida citrus industry.

FDA acknowledges that retailers may have this reaction to juice products with the warning statement. Like consumers who may decide not to purchase untreated juice because of the warning statement, retailers may decide not to buy untreated juice from wholesalers or processors for retail sale. The agency believes that the warning statement will have a minor effect on the choice of retailers to carry untreated juice products. For the most part retailers have already made a decision about carrying untreated apple juice based on the publicity of the illnesses associated with untreated apple juice. Also, the agency's estimates of the impact of the juice HACCP and warning statement proposals in the PRIA were based on the agency's conjecture that citrus processors may be able to achieve and validate a 5-log reduction without pasteurization (63 FR 20450 at 20478). If processors of untreated citrus juices are able to accomplish this then the citrus industry will experience little effect of this warning statement rule because citrus juices would then not require the warning statement. The agency does not believe that this rule

will have a significant impact on the citrus industry.

77. Some comments said that retailers will refuse to place signs bearing warning statements so that processors will have to place the warning statements on the juice package. One comment representing retailers indicated that retailers did not want the agency to permit the warning statement to appear on signs.

If the only issue is whether the warning statement appears on signs or on package labels, then retailers could make it a condition of sale that the warning statement be on the product package so that they do not have to deal with signs. The agency believes that these issues are best left to the market to determine. Regardless of how these issues are resolved, they do not result in costs of the rule that should be included in the FRIA.

A reduction in sales of untreated juice as a result of the warning statement is not a social cost of the rule if the effect of the warning statement is to restore consumers to a correct understanding of the actual risk posed by consumption. In fact, all estimated gains to public health reflect the agency's belief that the effect of the warning statement is to enable consumers to more correctly account for this risk. However, if the warning statement results in exaggerated consumer risk perceptions, then the warning statement would result in excess reduction in the demand for untreated juice and new, unintended social costs. These new social costs would include reductions in both consumers' and producers' surplus. Thus, the magnitude of net social benefit depends on the extent to which the warning statement changes consumer risk perceptions so as to result in a new demand that overshoots or undershoots the socially optimal demand.

2. Effect of Warning Statement on Pasteurized Juice Sales

78. Some comments asserted that the warning statement will have a negative effect on the sales of pasteurized juice. One comment stated that the warning label would eliminate the competitive edge that untreated juice has over pasteurized juice. Another comment said that the warning statement will eliminate consumer confusion about the difference in risk between pasteurized and unpasteurized products.

FDA agrees that the warning statement referring specifically to unpasteurized products will provide consumers with more information and increase consumers' ability to make informed choices between the two types of juice. Comments that claimed that the warning statement would negatively affect sales of pasteurized juice provided no information or other justification for such statements. Likewise, the agency is unaware of any research showing that warning statements referring to one type of product have a negative impact on the sale of products to which the warning statement does not apply. FDA agrees with the comment that untreated juice will lose some competitive advantage with pasteurized juice. In fact, FDA believes it likely that the warning statement will have a small but positive effect on sales of pasteurized juice because the most likely alternative for consumers who wish to avoid juices covered by the warning statement (i.e., untreated juice) is the purchase and consumption of pasteurized juice, because the closest substitute for unpasteurized juice is probably pasteurized juice.

3. Effect of Warning Statement on International Trade

79. Some comments said that the warning statement could act as a non-tariff trade barrier both to U.S. processors who are interested in exporting untreated juice and to foreign processors who import untreated juice into the United States.

FDA disagrees with these comments. This rule is not a prohibited trade barrier. U.S. trade obligations permit the agency to establish measures that regulate the safety of imported foods as long as the measures are consistent with the Sanitary and Phytosanitary (SPS) agreement. Trade agreements administered by the World Trade Organization (WTO) require that WTO members not apply measures that are more restrictive to imported goods than to domestic goods, without science-based justification. This is not the case with this rule. Further the trade agreements require that measures be based on risk assessment, appropriate to the circumstances, taking into account available scientific information, relevant processes and production methods; and other relevant factors. The agency believes it carried out a comprehensive and science-based evaluation of the risks in making its decision to require a warning statement. The agency recognizes that its decision can impact trade, but believes that the resulting measure is fully consistent with the rights and obligations of the WTO agreements.

4. Cost of Label Change

80. Some comments stated that the warning statement should appear on product labels within 60 days of publication of the final rule. These comments said that label changes could be made by very small businesses easily, quickly, and at very low cost. Some other comments said that if the warning statement were required to be included on product labels this season, processors would suffer extreme hardship and expense. These comments requested more time before the warning statement is required to be placed on labels.

In the PRIA, FDA estimated the cost of label changes for compliance periods of different lengths. In light of these conflicting comments, the agency has further considered the costs of including the warning statement on package labels. As a result of these investigations, FDA is revising the estimate of the administrative costs of the label change in the case of this rule.

The comments outlined the activities and changes that are specific to the juice warning statement situation and identified the activities involved for this rule that are different from those for most label changes. The estimate for administrative costs in the PRIA was based on a model for calculating costs of labeling changes based on more comprehensive changes in food labels. FDA is convinced that the label change involved in this specific rule is simpler and therefore requires a lesser effort (Ref. 14). Because the agency is prescribing the exact words to be used in the warning statement and because affected processors have been so significantly alerted to FDA's intent to establish the rule, the administrative costs of determining the need to and manner in which to comply should be greatly reduced from other labeling change situations. FDA estimates that the administrative costs of making this label change would require 8 labor hours. At $13 per labor hour, the estimated administrative cost is approximately $100 for a 1-year compliance period. Table 2 shows the label change costs for different compliance periods as estimated in the PRIA and in this FRIA.

TABLE 2.—INTEGRATED LABEL CHANGE COSTS PER SKU FOR DIFFERENT LENGTHS OF THE COMPLIANCE PERIOD

Item	2 Months PRIA	2 Months FRIA	6 Months PRIA	6 Months FRIA	1 Year PRIA	1 Year FRIA
Administrative Costs	$6,000	$700	$1,800	$200	$900	$100
Redesign Costs	$1,500	$1,500	$450	$450	$450	$450
Inventory Loss	$800	$800	$250	$250	$0	$0
Total Integrated Labels	$8,300	$3,000	$2,500	$900	$1,350	$550

81. Some comments suggested that stickers could be used to supplement existing labels within 2 months. The agency has investigated the cost of using stickers to augment the package labels so as to include the warning statement on packages without changing labels existing in inventory. Stickers would result in no redesign or inventory loss. However, there would be administrative costs for designing, ordering and coordinating placement of the stickers. The agency believes that the administrative cost for using stickers is significantly lower than that for integrated label changes in the same period of time. In addition to administrative costs, use of stickers would result in costs for printing the stickers and labor and equipment needed to apply the stickers. Table 3 shows the estimated cost for stickers for a very small juice processor producing approximately 10,000 gallons of juice per season. This size plant is typical of the processors likely to be affected by this rule.

TABLE 3.—LABEL STICKER COSTS

Item	Cost
Administrative Costs	$100
Printing Costs	$250
Application Costs	$600
Total Stickers	$1,000

5. Costs Summary

FDA has relied on the most recent data available to estimate risks of foodborne illness from untreated juice and the costs associated with this rulemaking. Information about baseline risk is somewhat older than information about cost; hence, estimates of baseline risk do not account for changes that may have occurred since public concern about the safety of untreated juice arose. However, cost estimates treat as ''sunk'' those expenditures that firms and consumers have made in recent years in response to concerns about the risks associated with untreated juice.

The quantifiable costs of this final rule include the cost of signs or placards, earlier implementation of pathogen controls to avoid warning statements, and changing container labels to include the warning statement.

In this final rule, FDA is requiring that the warning statement appear on products sooner than the proposed rule would have required. The costs estimated in the PRIA were based on a 2-year compliance period. The costs of label changes estimated in this FRIA are based on a 1-year compliance period (2,980 firms x $550 per firm = $1,639,000).

As discussed earlier, the agency acknowledges one category of unquantified costs that result from responses to the comments, specifically, the transaction cost of the working of the legal system for increased product liability lawsuits. The agency believes this cost will be small.

Table 4 shows the quantified costs estimated for the rule in the PRIA and FRIA.

TABLE 4.—COSTS ESTIMATED FOR RULE IN PRIA AND FRIA

Cost	PRIA Estimate	FRIA Estimate
Signs and Placards	$398,000	$398,000
Earlier Implementation of Pathogen Controls to Avoid Warning Statement	$2,688,000	$2,688,000
Container Labels	$1,301,000	$1,639,000
Total	$4,387,000	$4,725,000

IX. Final Regulatory Flexibility Analysis

FDA has examined the impacts of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act (RFA), FDA finds that this final rule will have a significant impact on a substantial number of small entities.

The agency has evaluated comments on the juice labeling proposal and on the Preliminary Regulatory Impact Analysis (PRIA) and Initial Regulatory Flexibility Analysis (IRFA) on matters that bear on small business impacts. The agency's responses to these comments are set out in the next section; that section is followed by a summary of the estimates of costs of this final rule to small businesses.

A. Responses to Comments

1. Warning Statement Effect on Viability of Small Businesses

82. Some comments asserted that the warning statement will harm the viability of small farm businesses. Some of these comments said that the price of purchasing, installing, and operating pathogen controls (so as to avoid application of the warning statement) was too much for small businesses to pay.

FDA acknowledges that the initiation of new pathogen controls may be a significant expenditure for some small businesses. However, the agency believes that the public health risk associated with untreated juice is significant enough to warrant requiring all juice either to be subject to pathogen controls or to bear a statement warning consumers of the health risks associated with untreated juice. These public health risks exist regardless of the size of the producer—small or large. Very few untreated juice processors are stand-alone businesses. Instead, virtually all are side businesses of orchards that use fruit not sent to packing houses for making juice. This primary business—growing fruit for whole packing—should not be adversely affected by this rule.

2. Expense of Label Changes for Small Businesses

83. As noted, some comments stated that the warning statement should be required to appear on product labels within 60 days of publication of the final rule. These comments said that label changes could be made by very small businesses easily, quickly, and at very low cost. Other comments asserted that if the warning statement was required to be included on product labels this season, processors would suffer extreme hardship and expense. These comments requested more time before the warning statement was required to be placed on labels.

As described in the FRIA above, FDA has revised the estimate of the administrative costs of the label change in the case of this rule. The agency has determined that it is appropriate to reduce the length of time that manufacturers will be permitted to provide the required warning statement in labeling, (e.g., on signs and placards) to up to 1 year from the date for compliance with the rule. This will allow the warning statement to appear on signs and placards for one juice season.

3. Coverage of Small Juice Processors

84. One comment requested that processors of less than 40,000 gallons of juice annually be exempt from the rule. The comment stated that small farmers use untreated juice production as an automatic stabilizer to augment their income from the sale of whole fruit, probably when growing conditions are bad. According to the comment, not all fruit grown in an orchard meets the size, shape and other standards necessary for it to be sold as whole fruit. It is not unusual for these culls to amount to 10 percent of the harvest; when crop growing conditions are less favorable (e.g., due to hail damage), the percentage of culls is greater. Farmers may sell culls to large processors for processed juice and other highly processed fruit products, or they may use culls to produce their own untreated juice. The comment asserted that culls used for untreated juice production return 300 percent to 400 percent more than culls sold for highly processed products. Other comments, however, said that small businesses should not be exempt from the rule.

FDA's labeling proposal did not exempt any juice processors. The agency understands that small businesses may lose some income as a result of this rule. The agency believes, however, that it is essential that consumers be informed of the risk associated with the consumption of untreated juice regardless of the size of the processor. The risk faced by the consumer is related only to the product and not to the size of the product's processor. The agency has sought to craft this rule in the most cost-effective manner in order to minimize the rule's burden on processors while still attaining the goals of the rule. Given this fact, the agency is not aware of any rational basis related to the rule's goal that would justify completely excluding small processors from the labeling requirement.

4. Level Playing Field for Business

85. Some comments asserted that the proposed rule gave unfair advantages to large corporations. Other comments claimed that the proposal would give undue consideration to small businesses. Comments on both sides of this issue requested that the agency establish ''a level playing field'' for business. FDA interprets a request for a ''level playing field'' as a request for equitable treatment. The RFA (as amended in 1995) and Executive Order 12866 require that FDA address the issue of equity. The agency has considered these issues, including regulatory alternatives that would reduce the burden on small businesses, and has determined that the risks to public health associated with untreated juice are such that small processors should not be excluded from the labeling requirement.

B. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that will have a significant impact on a substantial number of small entities.

This rule responds to the need to alert consumers to the potential risk of foodborne illness from consumption of juice products not pasteurized or otherwise processed to destroy pathogens that may be present; these pathogens pose a risk of serious foodborne illness. FDA is requiring warning statements for such juice products to inform consumers of the potential hazard of pathogens in such products; such labeling is not required for juice that is processed to achieve a 5-log reduction in the pertinent microorganism. If FDA finalizes a rule requiring the application of HACCP principles to the processing of juice, the warning statement will no longer be required for those products that achieve a pathogen reduction that is equal to, or greater than, the standard established in a HACCP final rule.

C. Definition of Small Business and Number of Small Businesses Affected

The RFA requires a statement of the definition of small business used in the analysis and a description of the number of small entities affected.

Table 5 shows the definition of small business for each type of establishment affected by the rule and an estimate of the number of small entities of each type. The agency has applied the Small Business Administration (SBA) definitions of small business for this analysis.

TABLE 5.—APPROXIMATE NUMBER OF SMALL ESTABLISHMENTS COVERED BY THIS RULE

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by Rule
Juice manufacturers in the OEI	2033, 2037	Less than 500 employees	75%	20
Roadside-type apple juice makers	2033, 2037	Less than 500 employees	100%	1,600
Roadside-type orange juice makers	2033, 2037	Less than 500 employees	100%	300
Grocery stores and supermarkets processing at point of sale	5411	Less than $20 million of annual sales	85%	1,100

TABLE 5.—APPROXIMATE NUMBER OF SMALL ESTABLISHMENTS COVERED BY THIS RULE—Continued

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by Rule
Total				3,020

D. Description of Impact on Small Entities

1. Costs to Small Entities

Table 6 shows the average cost for small entities that can reasonably predict, based on the proposed rule, that they will be required to implement an adequate HACCP program and will therefore implement 5-log pathogen controls (to avoid use of the warning statement) earlier than they would if the warning statement was not required for products without validated 5-log pathogen process controls. Table 6 also shows the average cost for small entities that will not expect to implement 5-log pathogen controls in the future. These entities will be required to adopt the warning statement for their products. The private costs to small businesses of the warning statement also include the lost revenue that results from a reduction in sales. These costs are not societal costs and are therefore not included in the costs estimated in the FRIA.

TABLE 6.—AVERAGE COST OF COMPLIANCE FOR SMALL ENTITIES

Item	Cost for Entities Covered by HACCP Rule	Cost for Entities not Covered by HACCP Rule
Sign or Placard		$100
Container Label Change		$550
Lost Sales Resulting From Warning Statement (for 5-16% loss on average sales of $20,000)		$1,000-$3,200
Early Implementation of 5-Log Pathogen Controls to Avoid Labeling	$16,000	
Total	$16,000	$1,650-$3,850

The impacts that the costs will have on a firm will vary depending on the total revenue derived from juice by a firm and the profit (return on sales) associated with juice production. Data on food manufacturing firms indicates that 75 percent of firms have a return on sales of less than 5 percent.

2. Professional Skills Required for Compliance

The RFA requires a description of the professional skills required for compliance with this rule. Compliance will require managerial skills necessary to design, order, and utilize signs and labels.

3. Recordkeeping Requirements

The RFA requires a description of the recordkeeping requirements of the rule. There are no recordkeeping requirements.

E. Description of Outreach to Small Entities

The RFA requires a description of the outreach activities taken by the agency to inform small entities about the rule and to encourage comments from small businesses.

In addition to publishing the proposed rule in the **Federal Register**, the agency published the rule on the FDA world-wide web site to make the text of the rule more easily and widely accessible. The web site contains instructions about how to submit comments to the agency. FDA officials have on several occasions made speeches and presentations at meetings where small entities have been represented by trade associations, legal counsel, and academic juice specialists who are providing assistance to small entities for commenting and complying. FDA has also made a number of special mailings of the rule to small entities requesting individual paper copies and has fielded a number of phone inquiries about the rule.

F. Minimizing the Burden on Small Entities

The RFA requires an evaluation of any regulatory overlaps and regulatory alternatives that would minimize the costs to small entities.

1. On Requiring a 5-Log Process

86. Some comments said that requiring a process to achieve a 5-log reduction in pathogens as the alternative to the warning statement on untreated juice was too expensive an alternative for small businesses that wish to avoid the warning statement. One comment asserted that implementing pasteurization to achieve a 5-log reduction would cost $30,000. Other comments claimed that all juice should be required to be pasteurized.

In the PRIA, FDA provided an estimate of the cost of pasteurization equipment developed especially for small juice processors ($18,200). The agency understands that this may be a significant cost for some small businesses. Although the agency is encouraging juice processors to implement pasteurization or other process controls sufficient to achieve a 5-log reduction in pathogens, at this time, FDA is not mandating a 5-log reduction. Instead, this final rule permits processors to produce untreated juice and offer it for sale accompanied by the warning statement until a final HACCP regulation (if one is established) requires such processors to implement process controls sufficient to achieve a 5-log reduction in pathogens. The agency believes that requiring a warning statement on untreated juice is the least stringent regulatory approach acceptable for untreated juice. Processors (especially processors of very small volumes of juice) may find that including the warning statement on untreated juice is a less expensive alternative to implementing a 5-log pathogen reduction process.

However, as noted earlier, FDA believes that requiring pasteurization of all juice would unnecessarily restrict innovation and new product and process development. Such activities

are important to maintain competitiveness in the food industry. Additionally, the agency believes that consumer choice would be unnecessarily restricted by requiring all firms to implement a single type of processing technology. At this time, the agency is satisfied that the proposed approach is the best balance between achieving the intended benefits to consumers and allowing flexibility for production.

2. Change Length of Time Signs are Allowed for Small Businesses

The proposed rule would have allowed the use of signs or placards until January 1, 2000, the next uniform compliance date for other food labeling changes, and until January 1, 2001 for small businesses to relieve the burden on such businesses.

87. Some comments opposed the length of time that signs with the warning statement would be permitted. These comments asserted that signs would be less effective than labels in communicating the hazard information. Some of these comments also opposed the additional time allowed for small businesses to comply with the requirement that the warning statement appear on the labels of their products. The comments asserted that the public health concern with untreated juice existed whether the producing firm was large or small. Other comments supported giving small businesses additional time to place warning statements on packages.

The agency agrees that placards and signs may be somewhat less effective than labels for the purpose of communicating product-specific information to consumers. However, as a practical matter, producers of untreated juice need time to modify their labels to include the warning statement. In response to the concerns about the effectiveness of signs and placards, in this final rule, FDA is reducing the length of time that manufacturers will be allowed to provide the warning statement in labeling. The label change is not complex. FDA believes that small businesses will not experience more difficulty than large businesses in making the change. Therefore, FDA is giving small and large businesses the same amount of time to make the change. Accordingly, this final rule provides that the required warning statement may be provided in labeling at point of purchase until 1 year from the date that firms must comply with the requirements of the final rule. The interim use of labeling (e.g., signs or placards) for 1 year will, in essence, provide manufacturers the option of using labeling for a single juice season.

G. Summary of Regulatory Flexibility Analysis

FDA has examined the impact of the rule on small businesses in accordance with the RFA. This analysis, together with the FRIA and remainder of the preamble, constitutes the Final Regulatory Flexibility Analysis. FDA has determined that this rule will have a significant impact on a substantial number of small entities.

X. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (63 FR 20486 at 20491). No new information or comments have been received that would affect the agency's previous determination that this action is of a type that does not individually or cumulatively have a significant impact on the human environment (21 CFR 25.30(k)). Thus, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the warning statement is ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

XII. References

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2. Miller, A. J., R. C. Whiting, and J. L. Smith, ''Use of Risk Assessment to Reduce Listeriosis Incidence,'' *Food Technology*, 51:100–103, 1997.

3. FDA memorandum, ''Consumer Awareness of Unpasteurized Juice as a Risk,'' Brenda M. Derby to Elizabeth Campbell, June 22, 1998.

4. Stewart, D. W. and I. M. Martin, ''Intended and Unintended Consequences of Warning Messages: A Review and Synthesis of Empirical Research,'' *Journal of Public Policy and Marketing*, 13(1):1–19, 1994.

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8. FDA Memorandum, Robert L. Buchanan to the Record, June 15, 1998.

9. Centers for Disease Control, ''*Salmonella typhimurium* Outbreak Traced to a Commercial Apple Cider—New Jersey,'' *Morbidity and Mortality Weekly Report*, 24:87–88, 1975.

10. Centers for Disease Control and Prevention, ''Outbreaks of *Escherichia coli* O157:H7 Infection and Cryptosporidiosis Associated With Drinking Unpasteurized Apple Cider—Connecticut and New York, October 1996,'' *Morbidity and Mortality Weekly Report*, 46(1):4–8, 1997.

11. Miller, L. G. and C. W. Kaspar, ''*Escherichia coli* 0157:H7 Acid Tolerance and Survival in Apple Cider,'' *Journal of Food Protection*, 57(6):460–464, 1994.

12. Centers for Disease Control and Prevention, ''Outbreak of *Escherichia coli* O157:H7 Infections Associated with Drinking Unpasteurized Commercial Apple Juice—British Columbia, California, Colorado, and Washington, October 1996,'' *Morbidity and Mortality Weekly Report*, 45(44):975, 1996.

13. FDA Memorandum, David Zorn to Elizabeth Campbell, June 18, 1998.

14. FDA Memorandum, David Zorn to The Record, June 19, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.17 is amended by adding paragraph (g) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(g) *Juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens.* (1) For purposes of this paragraph (g), ''juice'' means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or puree.

(2) The label of:

(i) Any juice that has not been processed in the manner described in paragraph (g)(7) of this section; or

(ii) Any beverage containing juice where neither the juice ingredient nor the beverage has been processed in the manner described in paragraph (g)(7) of this section, shall bear the following warning statement:

WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.

(3) The warning statement required by this paragraph (g) shall not apply to juice that is not for distribution to retail consumers in the form shipped and that is for use solely in the manufacture of other foods or that is to be processed, labeled, or repacked at a site other than originally processed, provided that for juice that has not been processed in the manner described in paragraph (g)(7) of this section, the lack of such processing is disclosed in documents accompanying the juice, in accordance with the practice of the trade.

(4) The warning statement required by paragraph (g)(2) of this section shall appear prominently and conspicuously on the information panel or on the principal display panel of the label of the container, except that:

(i) For apple juice or apple cider, the warning statement may appear in labeling, including signs or placards, until September 8, 1999;

(ii) For all juices other than apple juice or apple cider, the warning statement may appear in labeling, including signs or placards, until November 5, 1999.

(5) The word ''WARNING'' shall be capitalized and shall appear in bold type.

(6) The warning statement required by paragraph (g)(2) of this section, when on a label, shall be set off in a box by use of hairlines.

(7)(i) The requirements in this paragraph (g) shall not apply to a juice that has been processed in a manner that will produce, at a minimum, a reduction in the pertinent microorganism for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, of the following magnitude:

(A) A 5-log (i.e., 100,000-fold) reduction; or

(B) A reduction that is equal to, or greater than, the criterion established for process controls by any final regulation requiring the application of Hazard Analysis Critical Control Points (HACCP) principles to the processing of juice.

(ii) For the purposes of this paragraph (g), the ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in the juice.

Dated: July 2, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–18287 Filed 7–6–98; 3:34 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 120

[Docket Nos. 97N–0511, 93N–0325, and 97N–0296]

RIN 0910–AA43

Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; preliminary regulatory impact analysis; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of April 24, 1998 (63 FR 20450), a proposed rule to ensure the safe and sanitary processing of fruit and vegetable juices and juice products. In addition, FDA published in the **Federal Register** of May 1, 1998 (63 FR 24254), the preliminary regulatory impact analysis (PRIA) and initial regulatory flexibility analysis (IRFA) on the costs and benefits of two FDA juice proposals, including one proposal to require the application of hazard analysis and critical control point (HACCP) principles to the processing of fruit and vegetable juice and juice products (the juice HACCP proposal). Interested persons were given until July 8, 1998, to comment on the juice HACCP proposal and the corresponding economic impact analyses. FDA has received a number of requests for an extension of the comment period. In response to these requests, the agency is extending the comment period until August 7, 1998, on the juice HACCP proposal and on those aspects of the PRIA and IRFA relevant to HACCP for juice and juice products.

DATES: Written comments must be received by August 7, 1998.

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

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1998 (63 FR 20450), FDA issued a proposed rule (the juice HACCP proposal) to ensure the safe and sanitary processing of fruit and vegetable juice and juice products. In addition, FDA published in the **Federal Register** of May 1, 1998 (63 FR 24254), the PRIA that it prepared under Executive Order 12866 and IRFA that it prepared under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement and Fairness Act, on the costs and benefits of the juice HACCP proposal and a related juice labeling proposal (63 FR 20486). FDA issued the juice HACCP proposal and the juice labeling proposal because of the recent outbreaks of foodborne illness and deaths associated with the consumption of juice products that had not been pasteurized or otherwise processed to control pathogenic microorganisms.

Interested persons were given until July 8, 1998, to comment on the juice HACCP proposal and on those aspects of the PRIA and IRFA relevant to HACCP for juice and juice products. FDA has received a number of requests for an extension of the comment period. After evaluating these requests, the agency has decided to extend the comment period on the juice HACCP proposal and the corresponding economic analyses until August 7, 1998.

To be considered, written comments regarding the juice HACCP proposal and those aspects of the PRIA and IRFA relevant to the juice HACCP proposal must be received by August 7, 1998, by the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 97N–0511 (juice HACCP proposal) and/or Docket Nos. 93N–0325 and 97N–0296 (juice HACCP aspects of the PRIA and IRFA), as appropriate. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 6, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18286 Filed 7–6–98; 3:34 pm]

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